

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of ) Case No. 25-005  
 )  
ROGER AND JENNY PENA ) **ZONE CHANGE / PARTITION**

**ORDER**

**I. Nature of the Application**

This matter comes before the Marion County Hearings Officer on the application of Roger and Jenny Pena to change the zone from UT-10 (Urban Transition -10 acre minimum) to RS (Single Family Residential) and partition a 4.15-acre parcel into a 2.15-acre parcel and a 2-acre parcel located at 6742 Trillium Lane SE, Salem (T8S; R3W; Section 22C; Tax lot 700).

**II. Relevant Criteria**

The standards and criteria relevant to this application are found in the Marion County Code Chapter 16, especially MCC 16.39 (Zone Changes); MCC 16.33 (Subdivision and Partition Requirements); MCC 16.13 (Urban Transition Zone); MCC 16.02 (Single-Family Residential Zone); and Salem Area Comprehensive Plan Goals and Policies.

**III. Public Hearing**

A public hearing was held on this matter on February 19, 2026. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

- |    |               |                                 |
|----|---------------|---------------------------------|
| 1. | John Speckman | Marion County Planning Division |
| 2. | Roger Pena    | Applicant                       |
| 3. | Jenny Pena    | Applicant                       |

No objections were raised as to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing.

**IV. Executive Summary**

Applicants Roger and Jenny Pena to change the zone from UT-10 (Urban Transition -10 acre minimum) to RS (Single Family Residential) and partition a 4.15-acre parcel into a 2.15-acre parcel and a 2-acre parcel located at 6742 Trillium Lane SE, Salem.

The Subject Property is 4.15 acres and has two structures, a home and a shop. Applicants' intent is to divide the property into two approximately two-acre properties. One lot

will have the existing dwelling, and the second lot will have the existing accessory building. No new access will be created.

Applicants have met the burden of establishing criteria with the applicable standards and criteria to change the zone from UT-10 to RS and to partition a 4.15 acre parcel into a 2.15 acre parcel and a 2 acre parcel, and the hearings officer GRANTS the application, subject to conditions of approval necessary for the public health, safety and welfare.

## **VI. Findings of Fact**

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

1. The subject property consists of one parcel totaling 4.15-acres that is in the Salem Urban Growth Boundary (UGB) and is designated Developing Residential in the Salem Area Comprehensive Plan (SACP). The parcel is currently zoned UT-10 (Urban Transition with a 10-acre density limitation).
2. Application of Roger and Jenny Pena to change the zone from UT-10 (Urban Transition - 10 acre minimum) to RS (Single Family Residential) and partition a 4.15-acre parcel into a 2.15-acre parcel and a 2-acre parcel located at 6742 Trillium Lane SE, Salem (T8S; R3W; Section 22C; Tax lot 700).
3. The property is located at a corner of Rees Hill Rd SE which is approximately 1,500' west of where Lone Oak Rd SE intersects Reese Hill Rd SE. The subject property is both east and north of Reese Hill Rd. The property is rectangular in shape and is addressed off Trillium Ln SE which is adjacent to the northwestern corner of the property. The property appears to have a southern access for the accessory structure which comes off Rees Hill Rd SE.
4. Surrounding properties are in use for a mix of rural residential and agricultural purposes. The subject property is bounded on the southern and western property lines by the City of Salem UGB (Urban Growth Boundary). Properties directly south of the subject parcel are zoned SA (Special Agriculture) and properties directly west are zoned AR (Agricultural Residential). Farther west are parcels of mixed AR and SA zoning, and correspondingly mixed uses for rural residential and agricultural uses. Farther south this pattern of rural residential and agricultural parcels is the same. Of note is the water reservoir up Champion Hill Rd, approximately a half mile south of the subject parcel. Properties directly north and east are zoned UT-10, like the subject parcel. These UT zoned parcels are within the City of Salem UGB and remain in Marion County jurisdiction until such time that the parcels are annexed into the City of Salem. Farther north and west are lands within the City of Salem which are either fully developed, or currently being developed, for residential uses at urban densities.

5. Applicants are requesting to change the zoning of the parcels from UT-10 to RS, and partition a 4.15-acre parcel to create a 2.15-acre parcel and a 2-acre parcel with the intention to establish a new parcel and new single-family dwelling.
6. Various agencies were contacted about the proposal and given an opportunity to comment. The following comments were received:

Marion County Department of Public Works (DPW) Land Development Engineering and Permits (LDEP) commented:

ENGINEERING CONDITION

*Condition A – On the partition plat dedicate a 30-foot R/W half-width over the subject property Rees Hill Road south frontage to meet the County Local road standard, and a 30-foot southwest property corner radius [MCC 17.172.240 & 17.172.200, respectively].*

ENGINEERING REQUIREMENTS

- B. At the time of application for building permits an Access Permit will be required for the change in use and address change of the existing Rees Hill Rd driveway approach.
- C. Transportation System Development Charges (SDCs) & Parks fee will be assessed upon application for building permits for a new dwelling.
- D. Utility extension work in the public right-of-way requires permits from PW Engineering.

Marion County Building Inspection commented: “Permit(s) are required to be obtained to convert an existing residential accessory structure, or portion thereof, into a dwelling for living purposes. Depending on the type of accessory structure, an engineer’s structural according to the 2022 (soon-to-be 2026) Oregon Structural Specialty Code, and if not, the additional structural alterations needed in order to meet a Risk Category II. Discussion with a Building Plans Examiner is suggested prior to obtaining this analysis.

No Building Inspection concerns with proposed Zone Change. No concerns with proposed partition.”

Marion County Septic requested inclusion of the following condition of approval: “The system connecting to the existing dwelling requires an existing system evaluation to verify that setbacks between the system and proposed property lines can be met. The other proposed parcel containing the existing shop requires a site evaluation to establish septic viability/minimum septic requirements.”

Marion County Septic also commented: “All required system setbacks can be found in OAR 340-071-0220 (Table 1).”

Marion County Surveyor’s Office commented:

-Parcels must be surveyed and monumented.

-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.

City of Salem Planning Department commented that the proposed zone change to RS is consistent with the Salem Area Comprehensive Plan designation of Developing Residential, and consistent with Salem's Residential Agriculture zone which is likely how this parcel would be zoned upon annexation. The proposed use of the new parcel for a single-family residence is consistent with Salem's code, however a stand-alone accessory structure on a parcel without a dwelling is would be non-conforming if annexed into Salem. Based on the current distance between the subject parcel land the nearest sanitary sewer main, which is greater than 300 feet, the parcel size of 2-acres would be smaller than the minimum Salem would require and therefore be non-conforming upon annexation.

City of Salem also noted that Rees Hill Road SE does not meet the minimum right-of-way standards and recommends either dedication or special setbacks be applied as a condition of approval. The complete comments from Salem have been provided to the Applicants, and are available in the case file.

Salem Fire Department commented: "FIRE has no concerns as no development is proposed at this time. Items including fire department access and water supply will be required per the Oregon Fire Code at the time of development."

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

7. John Speckman, Marion County Planning, testified that all applicable criteria were addressed with respect to the zone change.
8. Roger and Jenny Pena testified at the hearing and agreed with the staff report presented by Mr. Speckman.

## **VII. Additional Findings of Fact and Conclusion of Law**

1. Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must

resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicants have not met their burden and the application must be denied. If the evidence for every criterion is even slightly in Applicant's favor, the burden of proof is met.

2. Pursuant to MCC 16.36.070, applications shall include the signature of all owners of the subject property. The application was signed by Roger C. Pena and Jenny Pena, the owners of the property. Applicants should be prepared to provide a deed establishing such ownership if requested.
3. Pursuant to MCC 16.39.010, the hearings officer is authorized to make the initial decision on zone change applications.
4. Pursuant to MCC 16.39.040, a hearings officer's decision to approve a zone change does not become final until the Board of Commissioners adopts an ordinance implementing the decision.
5. According to the Salem-Keizer Urban Area (Regional) Procedures and Policies of the Salem Area Comprehensive Plan, the following applies to the question of jurisdiction: Marion County has exclusive jurisdiction over all land use actions applicable within that portion of the Salem Urban Area and Keizer Urban Area that are outside the Salem city limits and outside the Keizer city limits, other than regional planning actions and amendments to the urban area policies.
6. Under Marion County Code (MCC) 16.39.050, approval of a zone change shall include findings that the change meets the following criteria:
7. The requirements for zone changes are found in MCC (Marion County Code) Section 16.39.050 and include the following:
  - A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.*

The proposed zone of RS (Single-family Residential) is consistent with the underlying City of Salem Comprehensive Plan designation of Developing Residential. Salem commented on this application that the corresponding zone would be RA (Residential Agriculture) when this property annexes into the City. Salem's RA zone does not have a parallel within Chapter 16 of Marion County Code, however Salem confirmed that the proposed use for a single-family dwelling is consistent with the RA zone. The intent of the proposed RS zone and partition is to establish a new parcel and new single-family dwelling upon that parcel. The proposed zone changes fits the description of the

underlying comprehensive plan land use designation. The Salem Comprehensive Plan Goals and Policies related to housing and urbanization are addressed below and this proposal is found to be consistent with them. The criterion is met.

B. *The request shall be consistent with the purpose statement for the proposed zone.*

The RS (Single-family Residential) zone purpose statement listed under MCC 16.02.000 states: *“The purpose of the RS (single-family residential) zone is to allow development of attached or detached residences on individual lots provided with urban services at low urban densities. Other uses provided in MCC 16.02.010 and 16.02.020 are also appropriate. These areas are designated as single-family residential or equivalent designation in the applicable urban area comprehensive plan.”* Applicants submitted a site plan which indicates the intended use is consistent with the proposed zone. The existing shop structure on the southern portion of the subject parcel was remodeled into a dwelling without receiving all necessary permits. This application, along with the necessary building permits, will bring the property and this newer dwelling both into compliance with County code, which is consistent with the proposed zone. The City of Salem commented that a property with an accessory structure and no dwelling would be non-conforming upon annexation. After the dwelling is permitted, this potential non-conformity will be remedied. The criterion is met.

C. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.*

The site is not served by city water and sewer service. Water for fire protection is available on Rees Hill Road SE. There is an existing transportation system in place which is adequate for residential uses. All other needed facilities and services are in place or will be made available to support the proposed use. At some point in the future urban water and sewer will become available upon annexation. The criterion is met.

D. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

The RS zone is the most restrictive zone in Chapter 16 of MCC which is consistent with the Developing Residential (DR) designation in the SACP. The proposed RS zone allows the same types of uses intended for the Developing Residential designation. The adjacent properties within the UGB are all zoned UT, and designated DR (Developing Residential). The RS zone is the most restrictive Urban zone in Marion County code. There are not uses within the RS zone which would significantly adversely affect allowed uses on adjacent properties within the UT zone, or eventual residential zoning of these properties that reflects the underlying designation of DR. The criterion is met.

8. The existing Plan designation in the Salem Area Comprehensive Plan is Developing Residential, and this Plan designation provides for the application of the RS zone proposed by the applicant. The applicable policies are as follows:

***Housing Goals and Policies***

*H 1.1 Housing types: A variety of housing types shall be allowed and encouraged throughout the Salem Urban Area, including single-family homes, accessory dwelling units, manufactured homes, townhouses, middle housing, and multifamily housing. (SUA)*

*H 1.2 Innovation: The development of new and innovative housing types and designs such as cottage clusters, cohousing, and multigenerational housing should be encouraged in the Salem Urban Area to diversify the housing stock and meet different housing needs.*

*H 1.3 Accessibility and aging in place: The development of affordable and low-income accessible housing, including homes with universal design features, should be encouraged to meet the needs of older adults and people with mental and physical disabilities, particularly in areas near services and transit.*

*H 1.4 Adaptability: Flexibility shall be provided in regulations to allow existing homes to convert to middle housing to adapt to changing housing needs in the future.*

*H 1.5 Housing diversity: New residential developments should be encouraged to incorporate a diversity of housing types and sizes to attract residents of varying income levels, lifestyles, and housing preferences.*

*H 1.6 Multi-dwelling ownership: Homeownership opportunities in multi-dwelling housing should be encouraged, including the creation of townhouses, condominiums, and cooperatives.*

*H 1.7 Specialized housing: The development of specialized housing for the area's elderly, disabled, students, and other groups with special housing needs should be encouraged.*

*H 1.8 Fair housing: Regulatory barriers to housing choices for people in protected classes shall be removed, and the City should coordinate with other agencies and organizations to support programs that aim to affirmatively further fair housing*

Applicants are proposing a change in zone to RS and partition the property to create a new parcel with a newly established single-family dwelling. The area around the subject parcel contains a mix of rural residential and farm uses. The north and east adjacent properties are also zoned Urban Transition and in use for residential purposes. This area of UT extends approximately 1,300 feet to the north and 1,200 feet to the east, to Lone Oak Rd SE. On the other side of Lone Oak Rd SE are new subdivisions developed at density on land within the city limits of Salem. To the west of the subject parcel, on the other side of Rees Hill Rd SE, are AR zoned parcels in rural residential uses. On the other side of Rees Hill Rd SE to the south are SA zoned parcels in a mix of rural residential use

adjacent to Rees Hill Rd SE, and agricultural uses south of those homesites. The proposed zone change, and new single family dwelling, help establish a wider variety of housing types within Salem's UGB by creating a relatively large homesite on very edge of the UGB, appropriate for the surrounding rural uses.

The proposal is consistent with the City of Salem Housing Goals and Policies.

### ***Land Use and Urbanization Goals and Policies***

*L 1.1 Growth management program: The City shall maintain and facilitate an urban growth management program that guides the conversion of urbanizable land to urban uses, provides for the orderly and economically efficient extension of public services and facilities to that land, and takes into consideration the need for an adequate supply of land to meet future development requirements.*

*L 1.2 Land sufficiency: The City shall periodically update inventories and analyses related to housing and economic development – including the Salem Housing Needs Analysis, Economic Opportunities Analysis, and Buildable Lands Inventory – to ensure the Salem area has the amount and type of land needed to accommodate population and employment projections.*

*L 1.3 UGB is urbanizable: The City shall consider urbanizable areas within the urban growth boundary as available for annexation and urban development.*

*L 1.4 Urban growth boundary expansion: If the Urban Growth Boundary for the Salem Urban Area is expanded to include additional land for residential development, the City shall give first priority to lands that have been removed from the 1982 boundary.*

*L 1.5 Annexation coordination: The City shall coordinate with Marion and Polk Counties to encourage the orderly annexation to the City of Salem of the land within the Salem urban area.*

*L 1.6 Annexation legislation: Legislation that removes barriers to annexing land within the Salem urban area to the City of Salem in an orderly fashion should be supported.*<sup>65</sup>  
*Land Use and Urbanization*

*L 1.7 Extension of services: The City shall prohibit the extension of sewer or water service to any land for development outside city limits or County service districts. Such areas must be annexed to the City to receive those services except as may be agreed by the City and appropriate County. (SUA)*

*L 1.8 Septic systems: The City is the appropriate provider of sewer facilities for land within the UGB. In order to ensure the efficient development of land within the UGB and ability to redevelop land at urban densities, septic systems should be limited to situations where sewer is not physically or legally available. Approval of septic systems shall be based on verification of septic suitability by the County Sanitarian. (SUA)*

### *Inside City Limits*

*Property within the City limits shall be connected to City services. Septic systems are allowed inside City limits for low density residential uses subject to standards that assure adequate opportunities for future development at urban densities subject to non-remonstrance agreements and State and Federal requirements. Existing septic systems can be maintained and repaired.*

### *Outside City Limits*

*Unless a different standard has been mutually concurred upon by the City and relevant County, unincorporated property that is contiguous to City limits shall not be approved for septic systems unless city sewer service is physically unavailable. City services shall be extended to contiguous properties upon annexation of the property.*

*Unincorporated, non-contiguous property may have new septic systems and may repair existing septic systems. Approval of septic systems should include consideration of adequate opportunities for future development at urban densities such as future rights of way, access points, and easements.*

*L 1.9 Service districts: No new service districts shall be created within the Salem urban area to provide fire protection, sewer or water service. (SUA)*

*L 1.10 Infill: Development of vacant and underutilized land with existing urban services should be encouraged before converting urbanizable lands to urban uses and extending services beyond presently served areas.*

*L 1.11 Services: The City shall provide levels of services to city residents consistent with community needs as determined by the City Council, within the financial capability of the City, and subject to relevant legal constraints on revenues and their applications.*

*L 1.12 Sizing facility extensions: The City shall ensure that the extension of sewer, water, storm drainage, and transportation facilities within the Salem urban area conforms with the adopted growth management program. Public water and sewer facilities shall be sized and constructed appropriately to serve the areas within the urban growth boundary.*

*L 1.13 Facility responsibility: Where development creates a demand for new or expanded facilities and services, new development should bear a share of the costs of new or expanded facilities and services.*<sup>66</sup> *Land Use and Urbanization*

*L 1.14 Compatibility of improvements: Within the Salem urban area, the City shall coordinate with Marion and Polk Counties to ensure their improvement and construction standards are compatible with the City of Salem improvement and construction standards for street, sewer, densities cited in the Public Facilities Plan.*

Applicants are proposing to change the zoning on the subject property from UT to RS to allow for an additional parcel and dwelling to be established. The current zone does not permit the proposed partition or dwelling, but the proposed zone change would bring the property into conformance with the City's underlying comprehensive plan designation.

The property is within the UGB of the City of Salem and is more than 300 feet from a sanitary sewer line. Inside of city limits, septic systems are allowed for low density residential uses that ensure adequate opportunities for future development. Development on undeveloped properties within the UGB of Salem is prioritized over expanding the growth boundary to encompass new areas, so the proposal is consistent with the Land Use and Urbanization goals related to areas of focus for development. This addresses the goals related to extending and providing urban services. The proposal is consistent with the Land Use and Urbanization Goals and Policies.

9. Applicants propose a partition of the property in addition to the zone change from UT to RS. 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 proposed lots are 87,120 square feet and 93,654 square feet. Each proposed lot is significantly larger than the minimum lot area or dimensions in the proposed RS zone. The criterion is met.

10. All lots within an urban growth boundary are subject to the standards within 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. Evidence that the access has been improved to these standards and a driveway permit has been obtained shall be provided prior to the issuance of building permits on the parcels served by the access easement. The easement shall meet the following standards:*

- a. *Have a minimum easement width of 25 feet;*
- b. *Have a maximum grade of 12 percent;*
- c. *Be improved with a paved surface with a minimum width of 20 feet;*

- d. *Provide adequate sight-distance at intersections with public roadways;*
- e. *Be provided with a road name sign at the public roadway as identification for emergency vehicles in accordance with Chapter 11.55 MCC, Naming and Addressing Roads/Property.*

The submitted site plan indicates both resulting parcels shall have access onto a public right of way. The new dwelling will have a driveway onto Rees Hill Road. The criterion is met.

11. Marion County Planning Staff recommends approval of the proposal, and recommends that if the hearings officer grants the Applicants' request for the change in zone from UT-10 to RS, and partition of a 4.15-acre parcel to create a 2.15-acre parcel and a 2-acre parcel, certain conditions be applied as necessary for the public health, safety and welfare.

### **VII. Decision**

It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval of a zone change from RM to CR have been met. Therefore, the Hearings Officer **GRANTS** the zone change application, subject to the conditions set forth below. The conditions are necessary for the public health, safety and welfare.

1. Applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. The southern parcel shall be addressed 513 Rees Hill Rd SE.
3. The system connecting to the existing dwelling requires an existing system evaluation to verify that setbacks between the system and proposed property lines can be met. The other proposed parcel containing the existing shop requires a site evaluation to establish septic viability/minimum septic requirements.
4. On the partition plat dedicate a 30-foot R/W half-width over the subject property Rees Hill Road south frontage to meet the County Local road standard, and a 30-foot southwest property corner radius consistent with MCC 17.172.240 & 17.172.240.
5. All future development on the property must satisfy the specific development standards in the RS zone, chapter 16.02 and the general development standards found in Chapter 16.27 of the Marion County Code.
6. Parcels must be surveyed and monumented.
7. 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.

### **VIII. Referral of Decision**

This document is a referral to the Marion County Board of Commissioners. A hearings officer's decision to approve a zone change does not become final until the Board adopts an ordinance implementing the decision. Any aggrieved or affected person may file with the Marion County Clerk (555 Court Street NE, Salem, Oregon), a written request for a public hearing before the Board within fifteen (15) days of the date of mailing of this decision. The request must be accompanied by and will not be accepted without payment of a \$500.00 fee. If the Board denies the appeal, \$300 of the fee will be refunded. The Board has discretion whether to hold a public hearing. After fifteen (15) days, the Board may take final action on this application without conducting another public hearing.

DATED this 3<sup>rd</sup> day of March, 2026.



Jill F. Foster  
Marion County Hearings Officer