

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
PARTITION CASE NO. 20-010**

APPLICATION: Application of Brad Fryman to divide a 6.67 acre parcel into three parcels containing 2.0 acres, 2.0 acres and 2.67 acres each in an AR (Acreage Residential) zone located at 5078 Barcelona Ct. SE, Salem. (T8S; R2W; Section 17D; tax lot 3300).

DECISION: The Planning Director for Marion County has **APPROVED** the proposal to divide a 6.67 acre parcel into three parcels of 2.0, 2.0, and 2.67 acres subject to certain conditions.

EXPIRATION DATE: This approval is valid only when the final partition plat is recorded by **May 13, 2022**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposed division is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support a dwelling. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

Prior to recording the final plat:

1. The applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036). Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed).
2. Prior to submitting the final partition plat, the applicant shall obtain an approved septic site evaluation from the Marion County Building Inspection Division on all undeveloped parcels. **The applicant is strongly encouraged to contact Building Inspection, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
3. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director. All parcels shall be a minimum of two acres in size, prior to any right-of-way dedication.
4. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

Condition A – Prior to plat approval, notarize a Road Maintenance Agreement for concurrent recording with the plat, which will acknowledge joint upkeep of Barcelona Ct and the proposed access easement.

Prior to issuance of building permits on the resulting parcels,

5. The partition plat shall be recorded.

6. The applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

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

7. The easternmost parcel shall maintain a 100 foot setback for the dwelling from the east property line.
8. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying restrictions or conditions. The applicant is advised of the following:

9. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at (503) 588-5215 for verification of payments).
10. The applicants should contact the Turner Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards. **Please contact the Turner Fire District at (503) 743-2190 for these regulations.**
11. The applicants should contact Marion County Land Development and Engineering (503) 584-7714 for additional Engineering Requirement listed in Finding #6 below.

APPEAL PROCEDURE: The Marion Zone Code (MCC) provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received, together with the appeal fee, in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on

May 13, 2020. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 14, 2020** unless further consideration is requested.

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

1. The property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas.
2. The subject parcel is located on the south side of Barcelona Court, approximately 350 west of its intersection with Barcelona Drive. The property was created by approval of Hazelwood Subdivision and is identified as Lot 4 of Block 1. The parcel is considered a legal lot for and land use purposes.

3. Properties to the north, south, and west are zoned AR (Acreage Residential) and developed with residential uses. Property to the east is zoned special Agriculture and consists of two farm parcels developed with dwellings and AR zoned residential parcels further to the east.
5. The applicant proposes to divide a 6.67 acre parcel into three parcels containing 2.0 acres, 2.0 acres and 2.67 acres each.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following condition and requirements be included in the land use decision:

ENGINEERING CONDITION

Condition A – Prior to plat approval, notarize a Road Maintenance Agreement for concurrent recording with the plat, which will acknowledge joint upkeep of Barcelona Ct and the proposed access easement.

Nexus is to satisfy MCC 17.172.340.

ENGINEERING REQUIREMENTS

- B. In accordance with Marion County Code 11.10, driveways shall meet spacing, design, and safety standards. At the time of application for building permits, an Access Permit will be required.
- C. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances.

Marion County Surveyor's Office commented:

2. Parcels ten acres and less must be surveyed.
3. Per ORS 92.050, plat must be submitted for review.
4. Checking fee and recording fees required.
5. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.

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

Marion County Building Inspection - On-Site Sewage commented that a septic site evaluation will be required for all parcels.

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

7. There are no specific approval criteria for partitions in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres and the new parcels are consistent with this standard. MCC 17.110.800 requires the following access standard: "*A private drive shall not serve more than four dwelling units*". The parent parcel is served by Barcelona Court, a private road. There are currently two lots with no frontage on a public road that are served by Barcelona Court. The proposal would create two additional lots that would be served by Barcelona Court, resulting in a total of four dwellings on property with public road frontage, served by Barcelona Court. This requirement is met.
8. The recorded plat for the Hazelwood Subdivision includes a restriction prohibiting "redivision of lots 3 and 4, Block 1 as long as the property to the east has farm potential." In 1980, when the plat was recorded, there was no special setback from adjacent farmland in the Marion County Code. An amendment to the Marion Code was made in 1981 and set forth in Chapter 17.128.050 MCC that established special setbacks from farmland and

recording of a farm/forest declaratory statement for the purpose of protecting agricultural activities from the impacts of adjacent rural residential development. This amendment has determined by the Planning director and Marion County Legal Counsel to meet the intent of the restriction on creation of new lots that was placed on the subject property by recording of the Hazelwood Subdivision plat.

9. Chapter 17.128.050 MCC establishes special siting standards for dwellings near resource zones:
 - (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.*
10. The proposed 2.673 acre lot is located adjacent to a parcel in the Special Agriculture zone and currently being farmed. In order to meet the requirements in Finding 9(a), any dwelling placed on this lot shall be located a minimum of 100 feet from the east property line. In addition, the County requires that a Declaratory Statement be recorded with the property deed for all three proposed parcels, because the subject property is near a resource zone. This serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. Any approval can be conditioned to meet this requirement.
11. Based on the above findings, the proposed partition complies with the applicable criteria and is, therefore **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: April 29, 2020

If you have any questions regarding this decision contact Lisa Milliman at (503) 588-5038.

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.