

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/ADJUSTMENT CASE NO. 18-002**

APPLICATION: Application of Alejandro Soto to divide a 7,825 square foot parcel into two parcels of 4,003 square feet and 3,822 square feet and for an adjustment to reduce the required 14 foot rear yard setback to 12 feet and to permit a 3,822 square foot parcel where 4,000 square feet is the minimum parcel size in an RS (Single-Family Residential) zone located at 3084 Brown Road NE, Salem (T7S; R2W; Section 18AD; tax lot 500).

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

EXPIRATION DATE: This approval is valid only when the final partitioning plat is recorded by **February 9, 2020**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

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

This decision does not include approval of a building permit.

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

Prior to recording the final plat:

1. The applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036) and shall contain the notation that the survey is the result of Partition Case 18-002. Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed). **This shall be accomplished prior to issuance of any building permit(s) on the resulting parcels.**
2. The applicant is advised that a Partition Plant Service Report, from a title company, will be required upon submission of the final Mylar to the County Surveyor.
3. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use final plat for recordation until the following conditions have been satisfied:

***Condition A** – On the plat dedicate a 20-foot radius for public right-of-way purposes at the NW property corner.*

***Condition B** – Prior to plat approval, design, permit and construct Utah Avenue frontage improvements to Marion County and City of Salem standards for an urban Local street, including road widening to provide a 17-foot half-width, PCC curb/gutter, driveway approaches and sidewalk, closed drainage system, and landscape strip along the subject property Utah Avenue property frontage.*

Prior to issuance of building permits on the resulting parcels:

4. The partition plat shall be recorded.
5. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.

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

6. The dwelling on the resulting 3,822 square foot parcel shall maintain a 12 foot minimum rear yard setback.
7. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from by Planning Director.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying restrictions or conditions. It is recommended that agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

8. 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).
9. The applicants should contact Marion County Fire District #1 to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards. Contact Paula Smith at MCFD#1 at (503) 588-6513 for more information.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 120 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received, together with the appeal fee, in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **February 9, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 10, 2018** unless further consideration is requested.

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

1. The property is designated Single Family Residential in the Salem Area Comprehensive Plan. The major purpose of this designation and the corresponding RS (Single Family Residential) zone is to provide areas for residential development on individual lots at low urban densities.
2. The property is located on the southeast corner of Brown Rd NE and Utah Av NE. The property contains an existing dwelling. The parcel is identified as Lot 4, Block 5 of Middle Grove Tracts and is considered a legally created parcel for land use purposes.
3. The entire area surrounding the parcel is zoned RS and in residential development.
4. The applicant proposes to divide a 7,825 square foot parcel into two parcels of 4,003 square feet and 3,822 square feet each with an adjustment to allow a 3822 square foot parcel where 4,000 square feet is the minimum parcel size in an RS zone and to reduce the required 14 foot rear yard setback to 12 feet on the resulting 3,822 square foot parcel.
5. Public Works Land Development Engineering and Permits requested that Conditions A and B, be included in the land use decision. LDEP also commented on requirements that are not part of the land use decision and are available for review in the Planning file. LDEP will not approve the final plat for recordation until the following conditions have been met.

“Condition A – *On the plat dedicate a 20-foot radius for public right-of-way purposes at the NW property corner.*

Nexus is the need for additional width for future utilities behind already constructed urban pedestrian improvements on Brown Road that wrap onto Utah Avenue [MCC 16.33.260].

Condition B – *Prior to plat approval, design, permit and construct Utah Avenue frontage improvements to Marion County and City of Salem standards for an urban Local street, including road widening to provide a 17-foot half-width, PCC curb/gutter, driveway approaches and sidewalk, closed drainage system, and landscape strip along the subject property Utah Avenue property frontage.*

Public improvement requirements for subdivisions and partitions are in accordance with MCC16.33.160 and 16.33.320 MCC. Additional nexus is to provide for a safe pedestrian route to nearby Arizona Elementary School. Note that the Brown Road frontage was recently improved to the urban standard under a County CIP.”

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

Marion County Assessor’s Office provided comments related to taxes on the subject property.

Marion County Building Inspection commented that permits are required for any new construction.

Marion County Fire District #1 commented that the access easement and water supply must comply with the Oregon Fire Code. The applicant should contact Marion County Fire District #1 to obtain a copy of the District’s Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide.

City of Salem commented that permits from City of Salem will be required for the new parcel’s water and sewer connection.

6. In order to partition land in an RS (Single Family Residential) zone, the standards and criteria in Chapter 16.02.120 of the Marion County Code (MCC) apply:
 - A. *Lot Area. The minimum lot area for a single-family dwelling in a subdivision approved after the effective date of the ordinance codified in this title, is 4,000 square feet when located within the Salem/Keizer area urban growth boundary. In all other cases lots shall be a minimum of 6,000 square feet. (See Chapter 16.27 MCC for density limitations.)*
 - B. *Lot Dimensions. Except as provided in MCC 16.26.800 for planned developments, the width of a lot shall be at least 60 feet; provided, that within the Salem/Keizer urban growth boundary the width of a lot shall be at least 40 feet, and the depth of a lot shall be at least 70 feet.*

7. One of the two proposed parcels meets the minimum lot size requirement. The applicant is requesting a minor adjustment to allow the parcel containing the existing dwelling to be 3822 square feet where 4000 square feet is the minimum parcel size and to reduce the required 14 foot rear yard to 12 feet. The criteria for an adjustment are found in MCC 16.41.030 and include:
 - A. *The proposed development will not have a significant adverse impact upon adjacent existing or planned uses and development; and*
 - B. *The adjustment will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and*
 - C. *The adjustment is the minimum necessary to achieve the purpose of the adjustment and is the minimum necessary to permit development of the property for the proposed use; and*
 - D. *The intent and purpose of the specific provision to be adjusted is clearly inapplicable under the circumstances; or, the proposed development maintains the intent and purpose of the provision to be adjusted.*

8. The applicant indicates that the proposed parcels are large enough in area and dimension to accommodate single family dwellings. Setback requirements on the undeveloped parcel can be met without modification. Parking requirements can be met without modification. The applicants request to reduce the required rear yard setback to 12 feet from the existing dwelling to the south property line along with the adjustment to reduce the parcel size for the parcel with the existing dwelling should have no adverse impacts to planned development in the area since it is zoned for single family use and lots are being created for that purpose. The proposal meets #7(a), as conditioned.

Reducing the size of the parcel will allow for the creation of additional property for a single family dwelling. There will be no adverse impacts on the health or safety of persons working or residing in the area, the criterion in #7(b) is satisfied.

The property contains 7825 square feet which is large enough to accommodate two parcels, if one is reduced below the minimum parcel size required for a parcel in a partition. The request to reduce the minimum parcel size and to reduce the rear yard setback will be sufficient to serve the existing dwelling and the future dwelling and meet the setback requirements. There is no other lot design available to the applicant that would accommodate the two new parcels. The proposal satisfies the criterion in #7(c).

The intent of the minimum parcel size standard in the RS zone is to provide developable lots for single family residences at low urban densities. As previously noted, the property is in the Salem UGB and subject to the Salem Area Comprehensive Plan and its policies. The proposal encourages the efficient use of developable residential land and increases the opportunity for housing to meet the expected population growth with the Salem UGB. The proposed lot sizes are compatible with existing City of Salem parcel size and access standards. The criterion in #7(d) is met.

9. With the granting of the adjustment the proposal meets the minimum lot size standard in #6(a). Both of the proposed parcels meet the minimum lot width and depth standards in #6(b).
10. Based on the above findings, the proposed partitioning complies with the criteria for a partitioning in the RS zone and is, therefore **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: January 25, 2018

If you have any questions please contact Patty Dorr 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.