

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. 18-019**

APPLICATION: Application of Yolanda Guzman to divide a 0.25 acre parcel into two parcels containing 5,890 square feet and 5,000 square feet each and an adjustment to reduce the required 25 foot wide private access easement to 20 feet in a RS (Single Family Residential) zone, located at 4345 Glenwood Drive SE, Salem. (T7S; R2W; Section 31 AC; tax lot 3800).

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 **August 23, 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 18-019. Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed).
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 until the following conditions have been satisfied:

***Condition A** – Prior to plat approval, under an Access Permit, construct a hot mix asphalt driveway approach with drainage culvert centered within the proposed access easement and extending to a roadside swale to be constructed under a Work in Right-of-Way Permit along with a 5-foot gravel shoulder.*

***Condition B** – Prior to plat approval, record a Non-Remonstrance Agreement (NRA) regarding the future funding of roadway 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 approach, sidewalk, closed drainage system, and landscape strip along the subject property Glenwood Drive 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. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from by Planning Director.

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

7. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
8. The applicants should contact Marion County Fire District #1 to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards. Contact Paula Smith at MCFD#1 at (503) 588-6513 for more information.

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 **August 23, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 24, 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 north side of Glenwood Drive SE approximately 815 feet east of its intersection with Elma Avenue SE. The property contains an existing dwelling. The property was created in its current configuration by deed recorded prior to September 1, 1977 and is considered a legal 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 0.25 acre parcel into two parcels containing 5,890 square feet and 5,000 square feet each and an adjustment to reduce the required 25 foot wide private access easement to 20 feet. The existing dwelling will remain on the 5,000 square foot parcel.
5. Public Works Land Development and Engineering Permits requests that the following conditions are included in the land use case. LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file.

“Condition A –Prior to plat approval, under an Access Permit, construct a hot mix asphalt driveway approach with drainage culvert centered within the proposed access easement and extending to a roadside swale to be constructed under a Work in Right-of-Way Permit along with a 5-foot gravel shoulder.

This *Condition* is mainly one of timing in order to meet Public Works (PW) Engineering standard access and frontage requirements prior to plat approval. No Portland Cement Concrete shall be placed in the public right-of-way. The asphalt paving and frontage work are transitional installations prior to future urbanization of the street segment.

Condition B – Prior to plat approval, record a Non-Remonstrance Agreement (NRA) regarding the future funding of roadway 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 approach, sidewalk, closed drainage system, and landscape strip along the subject property Glenwood Drive frontage.

A NRA is in lieu of the immediate design, permitting and construction of urban frontage improvements, in consideration of the surrounding and nearby properties being in a transitional, semi-urban state lacking such similar frontage improvements, and a desire to achieve an overall quality end product in the future. Public improvement requirements for partitions are in accordance with MCC16.33.160 and 16.33.320. The Agreement will require the Applicant and/or their heirs, successors, and assigns to participate financially to a level proportional to the costs of their frontage improvements at the time a governing jurisdiction project or governing jurisdiction-approved third party project is developed that would include the subject property frontage. The Agreement will be binding such that the owner of the parent frontage lot would be financially responsible for the street frontage at the time of project inception. A recordable agreement will be provided by Marion County Public Works for notarization, and will be recorded concurrently with the plat.”

Marion County Surveyor commented: “Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee and recording 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.

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

The applicant’s request is to divide a 0.25 acre parcel into two parcels containing 5,890 square feet and 5,000 square feet each. Both of the proposed lots will be smaller than the 6,000 square foot minimum in the Marion County Code, however, in Partition Case P/ADJ 16-007 the Hearings Officer ruled that the minimum lot size for a partition in the RS zone in the Salem UGB is 4,000 square feet, not 6,000 square feet. The proposed lots exceed the 4,000 square foot minimum lot size and both parcels meet the minimum lot width and depth standards. The existing parcel has frontage on Glenwood Av SE and the new parcel will be served by a private easement. The proposal meets criteria.

7. The applicants have also requested an adjustment to the required minimum width of access easement serving the interior lot. The development standards in the RS zone and the development requirements in Chapter 16.24 MCC and Chapters 16.26 through 16.34 MCC protect the public health, safety and welfare by establishing standard

setbacks, maximum building heights and other development standards that apply to various uses. For lands or uses with unique characteristics, the intent and purpose of the development standards may be maintained while allowing for minimal adjustments to quantifiable requirements. The following criteria shall be used to review and decide applications for adjustments:

- 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 effect 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.*

The proposal is to reduce the required minimum easement width of 25 feet to 20 feet. Since the existing dwelling is located 23 feet from the east property line, this proposed reduction is the smallest that could be done and still allow the parcel to be partitioned and developed, allowing three feet of space between the existing dwelling and the easement to minimize potential for impinging on the easement or the dwelling. If the adjustment is not allowed, it would not be possible to create an additional lot on the property. The proposed reduction of the required minimum width of the access easement will not have a significant impact on surrounding properties or uses or impair the health or safety of people in the area. The proposed adjustment is the minimum necessary to permit access to the new lot through the southern parcel, and still maintain the purpose of providing open space and access to the rear yard.

8. 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 applicants are proposing an access easement to serve the new parcel. As previously stated the applicants are requesting to reduce the required minimum easement width of 25 feet to 20 feet. The requirements in Chapter 16.33.680 can be made a condition of any approval. The easement will serve only the new parcel and does not need to be named. It should be noted that the easement must also meet local Fire District Standards.

9. 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: August 8, 2018

If you have any questions please 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.