

Attention Property Owner: A land use proposal has been submitted for property near where you live or 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/VARIANCE CASE NO. 18-026**

APPLICATION: Application of Daniel and Rebecca Ray to divide a 6.49 acre parcel into three parcels containing of 2.0 acres, 2.0 acres, and 2.49 acres each and a variance to allow more than four dwellings to be served by a private road in an AR (Acreage Residential) zone located at 5658 Dain Dr. SE., Salem (T8S; R2W; Section 15C; tax lot 402).

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

EXPIRATION DATE: This approval is valid only when the final partition plat is recorded by **October 25, 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 drainfield 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/Variance Case 18-026. 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 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.

Prior to issuance of building permits on the resulting parcels:

4. The partition plat shall be recorded.
5. Prior to issuance of building permits, the applicant shall submit evidence that the access easement has been improved to the standards in MCC 17.172. The access easement is also to provide for utilities.

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

6. 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 two acres in size, prior to any right-of-way dedication.

7. 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. It is recommended that the 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 applicant should contact the 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. The Fire District contact person is Paula Smith at (503) 588-6513.

APPEAL PROCEDURE: The Marion 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 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 **October 25, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 26, 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 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 north of Lipscomb Street SE at the eastern end of Dain Drive SE. The property contains an accessory structure. The subject property was created as Parcel 1 of Partition Plat 2016-03.
3. Surrounding uses in all directions consist of rural homesites in an AR zone.
4. The applicant proposes to divide a 6.49 acre parcel into three parcels containing of 2.0 acres, 2.0 acres, and 2.49 acres each and requests a variance to allow more than four dwellings to be served by a private road.
5. Public Works Land Development and Engineering Permits (LDEP) commented:

Engineering Requirements

- A. A water bar shall be installed to divert storm water to the ditch. This was a requirement in the 2013 Access Permit #13-03174 that was not conducted. A recent site visit on a rainy day shows that water ponds where Dain Drive meets Lipscomb Street SE indicating the grading alone is not sufficient to drain the water to the ditch. At the time of application for building permits, an Access Review will be conducted. If the aforementioned water bar installation work has not been done by then, prior to issuance of Building Permits, the Applicant will be given opportunity to accomplish that without obtaining an Access Permit. Otherwise, an Access Permit would be required if the water bar work will be conducted

after Building Permit issuance. Under an Access Permit, installation of a water bar would need to be completed prior to final building inspection.

- B. 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 #00-10R and #98-40R, respectively.”

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 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.”

Marion County On-Site Sewage commented that parcels 1, 2, and 3 will all require septic site evaluations.

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

6. There are no specific approval criteria for partitioning property in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres. Each of the three parcels resulting from the partition would each meet this standard. The proposal meets the criteria for partitioning in the AR zone.
7. Staff recognizes the final partitioning may vary from the proposed plan due to topography or surveying. Minor variations are permitted; however, each resulting parcel shall be a minimum two acres prior to any required right-of-way dedication.
8. The property had previously been approved for a variance to permit 6 dwellings to be served off the private drive (Partition/Variance Case 13-006). The applicant is now requesting that 8 dwellings be served off the private drive. In order to allow more than four dwellings to be served by Dain Drive SE, the proposal must satisfy the variance criteria listed in MCC 17.122.020 which include:
 - (a) *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and.*

The only available access to the subject property is Dain Drive.

- (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*

The subject property was created without any access alternatives other than Dain Drive and of a size that would allow it to be partitioned into additional lots that would all meet the minimum lot size requirements of the AR zone. Marion County Land Development did not identify any needed improvements in order for the portion of Dain Drive used to serve the subject property.

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

The proposed use is to create two new lots resulting in the construction of two additional dwellings. These new dwellings would require access by Dain Drive and this access is the minimum necessary to allow development of the property. Without this access, the property could not be partitioned or developed further.

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

The roadway was required to be improved with an all-weather surface as part of the previous land use decision. It does not appear that using the existing roadway to serve two additional parcels will have an adverse effect on property or improvements in the neighborhood.

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

The proposal can be conditioned to require compliance with Marion County Fire District #1 fire apparatus access standards so the addition of two additional dwellings to be served by Dain Drive would not adversely affect public health or safety.

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

It does not appear that allowing two additional dwellings to be served by Dain Drive would create more traffic than could be accommodated by the road.

9. Based on the above findings, the proposed partitioning complies with the criteria in the AR zone and is, therefore **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: October 10, 2018

If you have any questions please contact Brandon Reich 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.