

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
PROPERTY LINE ADJUSTMENT CASE NO. 23-002**

APPLICATION: Application of Walter and Nancy Zolnikov for a property line adjustment to adjust the property lines on a 2.34-acre parcel and a 1.50-acre parcel to create a 2.00-acre parcel and a 1.84-acre parcel in an AR (Acreage Residential) zone located at 7726 Battle Creek Road SE and 3434 Cascade Place SE, Turner (T8S; R3W; Section 25D; Tax Lots 900 & 1001).

DECISION: The Planning Director for Marion County has **APPROVED** the above-listed Property Line Adjustment application subject to certain conditions.

EXPIRATION DATE: Title transfer instruments and any necessary survey plat (see conditions of approval) accomplishing the property adjustments shall be recorded by the applicants with the Marion County Clerk by **February 18, 2025**. The effective period of an approved application may be extended for an additional year subject to approval of an extension (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 uses is for land use purposes only. Due to well, septic, and drain field replacement area requirements, this parcel may not be able to support the proposed activities. To be sure the subject property can accommodate the proposed use the applicant needs to check with 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:

1. 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.
2. Per Marion County Surveyor's Office, the properties must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fee required at the time of review. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4): The deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment.
3. Per Marion County Building Division, if the proposed property line is less than 3 feet to any adjacent structure, additional fire-rated construction may be required on those existing adjacent structures' exterior walls. Permits are required to be obtained prior to any development and/or utilities on the property.

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

4. After the property line adjustment has been completed, 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 any 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned

in the Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

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 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 in the Marion County Planning Division, 5155 Silverton Road NE, Salem, by 5:00 p.m. on **February 21, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 22, 2023**, unless further consideration is requested.

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

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR (Acreage Residential). The primary intent of both this designation and zone is to allow for development of acreage homesites in a low-density environment in order to maintain quality of environment and compatibility with other rural uses.
2. The subject properties are located approximately 400 feet north of the intersection of Battle Creek Road SE and Delaney Road SE. Tax lot 1001 is developed with a stable that appears to be employed in farm use. Tax lot 900 is developed with a single-family dwelling and a barn. Surrounding properties in all directions are also zoned Acreage Residential. Some Exclusive Farm Use (EFU) zoned properties exist further to the south.
3. Both properties are within a "Sensitive Groundwater Overlay" zone; however, this does not affect a property line adjustment process.
4. Tax lot 1001 was created through the execution of Partition Case 97-089, and the property was created through Partition Plat 2001-016. No further changes to tax lot 1001 were recorded by deed (or otherwise) since, and so the property has remained legal. Tax lot 900 has existed in its current configuration prior to September 1, 1977, per a warranty deed recorded in Reel 99, Page 450 of the Deed Records of Marion County, Oregon. No further changes to tax lot 900 were recorded by deed (or otherwise) since, and so the property has remained legal. Both properties are considered legal parcels for the purposes of land use per Marion County Code 17.110.427.
5. The applicants are proposing to adjust the property lines in order to consolidate existing development on one parcel, and then later construct a dwelling on the vacant parcel. The applicant intends to access the resultant eastern parcel via the same existing Cascade Place SE. As a private drive, Cascade Place SE will give access to four or fewer dwellings, and therefore no variance is necessary based on the existing and proposed development.
6. Marion County Surveyor's Office commented:

Must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fee required at the time of review. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4): The deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment.
7. Marion County Assessor's Office provided information regarding taxes on the subject properties.
8. Marion County Building Division commented: if the proposed property line is less than 3 feet to any adjacent structure, additional fire-rated construction may be required on those existing adjacent structures' exterior walls. Permits are required to be obtained prior to any development and/or utilities on the property.

9. Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies either failed to comment or stated no objection to the proposal.
10. No specific criteria exist for property line adjustments in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres, except when a numerical suffix has been applied. Therefore, in this AR zone, the minimum lot size is two acres. When a property line adjustment proposes to alter non-conforming parcels, the proposed configuration must not result in additional non-conformance. In this case, one parcel is already conforming with the minimum lot size, and one is not. After the proposed property line adjustment, one parcel will remain above the minimum lot size, while the second will remain below. This is acceptable because it does not increase non-conformance. These criteria are met.
11. The resulting lots shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
12. Based on the above findings, the applicants' proposal meets the criteria for a property line adjustment. The property line adjustment request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: February 3, 2023

If you have any questions regarding this decision contact Daniel Jansen 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.