

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
ADMINISTRATIVE REVIEW CASE NO. 22-011**

APPLICATION: Application of Margaret Gander-Vo with Saalfeld Griggs on behalf of Fountain Valley Apartments LLC for an administrative review to determine the legal status of a lot on a 4.41-acre parcel in an RM (Multiple Family Residential) zone located at 402 Fountain Valley Way NE, Salem. (T7S, R2W, Section 30BD, Tax Lot 7100).

DECISION: The Planning Director for Marion County has **determined that Parcel 1 and 2 as described in Reel 1334, Page 649 in the Deed Records of Marion County were meant to be a single unit of land. Parcel 1 is a lawfully established parcel. Parcel 2 is not a lawfully established separate parcel. To meet code requirements, Parcel 1 and Parcel 2 must be consolidated as a single parcel by recording a new deed describing the perimeter of both parcels together.**

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 **June 22, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 23, 2022**, 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 Multi-Family Residential in the City of Salem Comprehensive Plan and correspondingly zoned RM (Multiple-Family Residential). The purpose of both the designation and zone is to provide for multiple-family dwellings at residential densities greater than other zones.
2. The parcel abuts land which has been annexed into the City of Salem, along with other land that is within the Salem Urban Growth Boundary but not yet annexed. Adjacent properties to north and east are zoned RS (Single Family Residential). Adjacent properties to the south are zoned RM (Multiple-Family Residential). Adjacent properties to the west are zoned CR (Commercial Retail) or are annexed into the City of Salem.
3. The property is located approximately one-tenth mile east of the intersection between Lancaster Drive NE and Monroe Avenue NE, in the 4000 block of Monroe Avenue NE. The property is approximately 4.41 acres in size. Currently, the property is occupied by a multi-family residential apartment complex.

4. The applicant is requesting a review to determine whether Parcel 1 and Parcel 2 as described in the bargain & sale deed recorded in Reel 1334, Page 649 in the Deed Records of Marion County, Oregon are lawful units of land. Together, these parcels match tax lot 7100, which is 4.41 acres in size. A determination regarding the legality of the two parcels could potentially affect the conformity of the development on the property.
5. Marion County Code 17.110.427 defines a legal parcel as:

“Parcel” means a unit of land created by a partitioning as defined in ORS 92.010 in compliance with all applicable zoning and partitioning code provisions contained in Chapter 17.172 MCC, or created by deed or land sales contract prior to September 1, 1977, excluding units of land created solely to establish a separate tax account. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008. RZ Ord. § 110.427.]
6. The applicant provided the following information for review: Parcel 1 was created initially by Minor Partition case 79-167 in 1979. Therefore, Parcel 1 meets the definition of MCC 17.110.427 and is a lawfully created parcel. Parcel 2, as it is currently described, was first conveyed in a warranty deed recorded on January 12, 1995, in Reel 1215, Page 579 of the Deed Records of Marion County. Prior to 1995, Parcel 2 was part of a larger parent parcel that extended to the west. That parent parcel is described in a deed recorded on March 6, 1952, in Volume 437, Page 406 of the Deed Records of Marion County. Thus, that larger parent parcel is confirmed to meet the definition of MCC 17.110.427. However, Parcel 2 as it exists now appears to not be a lawfully created parcel because it does not meet the definition of MCC 17.110.427.
7. With regards to Parcel 2, further research into the deed records found no additional evidence that the parcel existed prior to January 12, 1995. In addition, no evidence was found of a land use case that approved either a partition to create Parcel 2 or a property line adjustment. Based on these facts, it can be concluded that Parcel 2 was indeed created by the deed recorded on January 12, 1995, in Reel 1215, Page 579.
8. Prior to being created by deed, Parcel 2 was a portion of a larger parcel which was split-zoned Commercial Retail (CR) and Urban Development (UD). Parcel 2 was created by deed by splitting the parent parcel along the zone boundary. The remainder of the parent parcel currently consists of tax lot 8401.
9. Based on a review of the Marion County Subdivision Ordinance adopted as amended by Ordinance Number 643 on October 27, 1982, the creation of Parcel 2 by deed would not have been considered lawful on January 12, 1995. A partition application would have been required because Parcel 2 was zoned Urban Development. Alternatively, a property line adjustment between Parcel 1 and the parent parcel of Parcel 2 would have also required a land use application because of both the zoning and because the adjustment would have been greater than 10 percent of the smaller parcel. Both options (property line adjustment and partition) could have met the required criteria such as minimum parcel size, but neither was completed. Therefore, Parcel 2 was indeed unlawfully created.
10. In the January 12, 1995, deed, the area known as Parcel 2 was deeded to the owner of Parcel 1, Steven Campbell. Parcel 1 was also zoned as Urban Development at that time. Mr. Campbell then proceeded on February 23, 1995, to apply for a Zone Change and Comprehensive Plan amendment to change from Urban Development (UD) to Multi-Family Residential (RM). This application became case ZC/CP95-5. The zone change application proposed to change Parcel 1 and Parcel 2 together. In the application, the staff report, and the subsequent decisions on that case, the property was continuously recognized as a single “4.40-acre parcel.” Despite the deeds being submitted with the application, it appears no further review of the legality or history of the parcels was performed. Throughout the application process, the property was treated as if it were a single parcel.
11. Afterwards, beginning in February 1996, building permit applications were submitted to begin construction of the Fountain Valley Apartment Complex. Site plans for the building permits do not show the parcel boundary between Parcel 1 and Parcel 2. It appears that permits were issued on the basis or assumption that tax lot 7100 was a single legal parcel.

12. Despite that Parcel 2 was created unlawfully in 1995, the parcel could have been lawfully partitioned or included with Parcel 1 via property line adjustment. Furthermore, if the zone change had occurred first, it is likely that a land use case for partition or property line adjustment would not have been necessary according to the criteria set forth in MCC 16.33.600 and 16.33.140:

16.33.600 Partitioning application and initial decision.

When an area or tract of land is to be partitioned an application shall be filed with the planning division; provided, that this section shall not apply to partitioning where all lots maintain a minimum of 20 feet of frontage on a public street in the RL, RM, CO, CR, CG, IC, IP, HC, IG, or IH zones. This administrative decision shall be final unless an appeal is taken as provided in MCC 16.33.720. When a partitioning application is to be considered concurrently with an additional land use application, the initial decision may be made by the director or hearings officer. The director shall determine if annexation to a sewer or water district or a city is required for any partition proposed inside an urban growth boundary. If the director determines that annexation is required, annexation or a nonremonstrance agreement must be filed with the appropriate agency. [Ord. 1170 § 4, 2002. UZ Ord. § 33.60.]

Based on the evidence shown by the zone change site plans and building permits, Parcel 2 was always intended to be integrated with Parcel 1. It is also clear that the two parcels were meant to be treated as a single parcel since setbacks were not applied to the common boundary between Parcel 1 and Parcel 2. Therefore, while the proper order of operations was not followed, the requirements of the code were still met.

13. Marion County Building Division commented:
14. Marion County Assessor's Office provided information regarding taxes on the subject properties.
15. Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies failed to comment.
16. Based on the above findings, it has been determined that Parcel 1 and 2 as described in Reel 1334, Page 649 in the Deed Records of Marion County were meant to be a single unit of land. Parcel 1 is a lawfully established parcel. Parcel 2 is not a lawfully established separate parcel. To meet code requirements, Parcel 1 and Parcel 2 must be consolidated as a single parcel.

Brandon Reich
Planning Director/Zoning Administrator

Date: June 7, 2022

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.