

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/VARIANCE CASE 25-018**

**APPLICATION:** Application of Sophia Wood and Jamon Wanker to partition a 4.14-acre parcel into two parcels of 2.0-acres and 2.14-acres, and to take a variance to MCC 17.110.800 to allow eight dwellings to be served off a private easement in an AR (Acreage Residential) zone located at 231 Schooley Ln, Silverton (T7S; R1W; Section 2DB: Tax Lot 800).

**DECISION:** On January 6<sup>th</sup>, 2026, the Marion County Planning Commission **APPROVED** the proposal subject to the conditions identified in the following conditions of approval.

**EXPIRATION DATE:** This decision is valid only when exercised by **January 23, 2028**, unless an extension is granted. The effective period may be extended for one year terms, subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

**WARNING:** A decision approving the proposal is for land use purposes only. Due to septic, well and drain field replacement areas, this parcel may not be able to support the proposal. 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**

1. Per the Marion County Surveyor's Office:
  - Parcels 10 acres or less must be surveyed and monumented.
  - 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.
2. Per Marion County Septic; a site evaluation shall be required on both proposed lots prior to approval of the partition plat. (For the awareness of the applicants, a site evaluation was approved for the property in 2024 under permit # 555-24-003923. Due to the partition, this site evaluation will be nullified and new site evaluations will be required prior to septic approval of the partition.)
3. The resultant parcels shall be assigned the following addresses:  
  
Parcel #1: 235 Schooley Ln  
Parcel #2: 231 Schooley Ln
4. All resultant parcels shall be at least 2-acres in size.
5. Both resultant parcels shall have sufficient buildable area for a dwelling outside of the identified geologically hazardous area overlay. If such a configuration is not obtainable, then the applicants shall submit a geologic assessment to Marion County Planning for peer review to comply with the provisions outlined under MCC 17.182.

6. All parcels shall be required to submit a Sensitive Groundwater Overlay declaratory statement prior to issuance of building permits. This statement shall be recorded by the applicants with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director.
7. A static water level measurement shall be taken for any existing wells on the subject property prior to plat approval.
8. Prior to the issuance of building permits on the resultant parcels, a static water level measurement for any new or existing wells intended as the water supply for the lot. Static water level measurement forms can be obtained from the Marion County Planning Department.
9. Any use of the parcels for non-residential purposes, such as a church, may require a new road maintenance agreement.
10. The proposal shall be subject to the following:
  - a. Prior to partition plat approval, the property owner shall sign and notarize a Road Maintenance Agreement to be recorded concurrently with the partition plat for collective maintenance of the proposed private access easement
  - b. Prior to issuance of building permits on the newly created parcel using Schooley Ln for access, the property owner of that property shall provide evidence they have signed and entered into the road maintenance agreement.
11. 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)
12. The applicants should contact the Silverton Fire District 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 following regarding these standards are conditions of approval:
  - a. Prior to plat approval the applicants shall contact the Silverton Fire District and provide evidence of meeting the following standards:
    - i. An Oregon registered civil or structural engineer shall inspect the bridge for structural stability and soundness and verify vehicle load limits as per Oregon Fire Code.
    - ii. Vehicle load limits shall be posted at both sides of the bridge on a minimum 18"x 24" metal white reflective sign with a minimum 3" black letters. Signs shall be installed with a clear space above grade at a level of at least 5' feet and no more than 7' feet. The bridge weight limit as determined by a State of Oregon registered civil or structural engineer, shall appear above the word "TONS". (OFC 503.2.6 & D.102.1)
  - b. Prior to issuance of building permits the applicants shall contact the Silverton Fire District and provide evidence of meeting the following standards:
    - i. Future development of the property shall comply with Oregon Fire Code regarding access and water supply.
    - ii. Fire access roads and turnarounds shall be evaluated and upgraded as needed for compliance with Oregon Fire Code.
13. The bridge on Schooley Ln crossing the Silver Creek is located within the identified FEMA floodway of the Silver Creek. The applicants are advised that any necessary improvements to the easement within the floodway may require floodplain development permits through Marion County Planning.
14. Applicants are advised of the Silverton Fire Departments comments relating to potential upgrades to the easement and evaluation of the bridge. Additionally, applicants are advised to contact ODOT regarding any access permits that may be required for HWY 214.

**APPEAL PROCEDURE:** This decision may be appealed to the Marion County Board of Commissioners by submitting a written appeal explaining wherein the Marion County Planning Commission decision is in error, along with a fee of \$500.00. The appeal must be received in the Marion County Clerk's Office, 555 Court St. NE, Salem, by 5:00 p.m. on **January 23, 2026**. If an appeal is received it will be reviewed by the Board of Commissioners to determine if it merits further hearing and consideration by the Board. Questions regarding this decision or the appeal procedure should be directed to the Marion County Planning Division, 5155 Silverton Road NE, Salem, (503) 588-5038.

**FINDINGS AND CONCLUSIONS:** The Planning Commission decision is based on the following findings and conclusions.

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR (Acreage Residential). The property is not within any UGB (Urban Growth Boundary).
2. The property is located at 231 Schooley Ln on the southwest side of HWY 214 (known locally in Silverton as S Water St) across Silver Creek from HWY 214. The parcel has two sections which are physically distinct. The northeastern portion of the property closest to the creek is gently sloped and is mostly open grass. The southwestern portion of the parcel contains the lower portion of a steep bluff, increasing in elevation roughly 170 feet over a 400-foot stretch. This hillside is mostly forested and appears to contain an intermittent stream that ultimately drains into the creek below. The private road Schooley Ln provides access for the parcel via a private access bridge over Silver Creek. At present, a total of 7 dwellings are permitted access by Schooley Ln, with 5 dwellings currently built and 2 yet to be developed. The parcel is currently vacant and does not contain a dwelling or accessory structures. Prior to this case, the parcel was the subject of a previous land use case, a variance V22-004, which approved 7 dwellings to take access off Schooley Ln. In that case, the subject parcel (referred to as tax lot 800) was determined to have been legally created. The parcel has not changed its configuration since and is therefore still legal for land use purposes.
3. Adjacent parcels in all directions are primarily residential in use, though the degree the parcels are committed to such uses varies significantly. All immediately adjacent parcels on the southern side of Silver Creek in Marion County jurisdiction are zoned AR and are developed with at least one residence. All parcels north of Silver Creek within the low valley are annexed into the City of Silverton, as the creek forms the urban growth boundary (UGB) for the city. All parcels within this annexed area are developed with residential uses (with the exception of a small market on one parcel).

**AGENCY COMMENTS:**

4. Various agencies were contacted with a request for comments.

Public Works Land Development and Engineering (LDEP) stated that they had no comment specific to the partition and variance.

Silverton Fire District commented the following:

1. Future development of the property needs to comply with Oregon Fire Code regarding access and water supply.
2. Fire access roads and turnarounds will need to be evaluated and upgraded as needed for compliance with Oregon Fire Code.
3. An Oregon registered civil or structural engineer will need to inspect the bridge for structural stability and soundness and verify vehicle load limits as per Oregon Fire Code.
4. Vehicle load limits shall be posted at both sides of the bridge on a minimum 18"x 24" metal white reflective sign with a minimum 3" black letters. Signs shall be installed with a clear space above grade at a level of at least 5' feet and no more than 7' feet. The bridge weight limit as determined by a State of Oregon registered civil or structural engineer, shall appear above the word "TONS". (OFC 503.2.6 & D.102.1)

Marion County Septic provided the following comments:

Conditions of Approval: Site Evaluations are required on both proposed lots.

Additional Info: A site evaluation was approved for the property in 2024 under permit # 555-24-003923. Due to the partition, this site evaluation will be nullified and new site evaluations will be required prior to septic approval of the partition.

Marion County Building commented: “No Building Inspection concerns. Permit(s) are required to be obtained prior to development of structures and/or utilities installation on private property. Depending on the proposed location of a dwelling or other structure(s), a geotechnical investigation of the soils and descending slope to the Silver Creek or adjacent ascending slope may be required by 2023 ORSC Section R403.1.9.2 & 403.1.9.3”

Marion County Tax Assessor’s Office commented about the property tax status of the subject parcel. These comments are available in full in the case file.

Marion County Survey commented:

1. Parcels 10 acres or less must be surveyed and monumented.
2. Per ORS 92.050, plat must be submitted for review.
3. Checking fee and recording fees required.
4. 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.

All other commenting agencies either failed to comment or stated no objection.

#### **ANALYSIS AND CONCLUSIONS:**

5. The applicants are proposing to partition a 4.14-acre parcel into two parcels consisting of 2.0-acres and 2.14-acres respectively. Concurrently, the applicants are requesting a variance to MCC 17.110.800 to allow a total of 8 dwellings to take access off a private lane (Schooley Ln).
6. **Partition:** *There are no specific approval criteria for partitions in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres.*

All proposed parcels are at least 2-acres in size. The 2-acre minimum shall be made a condition of approval.

7. **Sensitive Groundwater Overlay (SGO) Zone:** *MCC Chapter 17.181 provides standards for development within an SGO zone, specifically section 17.181.070 (A) provides water supply study requirements for partitions in SGO zones:*
  1. *Applications to partition a parcel of land shall be subject to the following requirements:*
    - a. *If the minimum parcel size proposed in the application is equal to or greater than five acres, no demonstration of water supply is required;*
    - b. *If the minimum parcel size proposed in the application is less than five acres, the application shall be accompanied by a hydrogeology review pursuant to MCC 17.181.100.*

A hydrogeology review was submitted to Marion County Planning prior to the application submission and passed an independent peer review. The hydrogeology review indicates that there is a sustainable long-term supply of groundwater for the proposed development by showing that none of the following circumstances listed under MCC 17.181.100 (C) exist:

1. *More than 90 percent of the recharge in the area of concern will be used after the proposed development is completed;*
2. *The proposed use will adversely affect the long-term water supply of existing uses or potential new uses on existing vacant parcels in the area of concern;*

3. *The additional proposed use will deplete the groundwater resource over the long or short term; and*
4. *Existing information is inadequate to determine whether any of the circumstances described in subsections (C)(1) through (3) of this section exist.*

*Staff has considered MCC 17.181.140 and recommends the following conditions be included for approval:*

- 1) *A deed covenant/restriction, in the form of a Sensitive Groundwater Overlay Zone declaratory statement, be recorded to the resultant property deeds.*
- 2) *Well monitoring and water level reporting in the form of a static water level measurement taken for any existing wells on the property prior to submitting the final partition plat and a subsequent static water level measurement for any new or existing wells at the time of building permit application for dwellings on both resultant parcels.*

8. **Variance:** Standards for this section are found in MCC 17.122.020 and include:

1. *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and*

The applicants propose a variance to MCC 17.110.800 (Dwellings and all other buildings to be accessible to public street) which limits the number of dwellings served by a private road to four (without frontage on a public right-of-way) unless they were created prior to May 1<sup>st</sup>, 1977. The subject parcel, and more specifically the buildable portion of the property, is isolated from access to public roads by geographical features and other developed properties. The Silver Creek and its surrounding floodway separate the parcel from access to Hwy 214 while the steep bluff to the southwest makes access to Victor Point Rd NE both unrealistic and potentially dangerous. While there are other access bridges that connect the land southwest of Silver Creek to Hwy 214, the Schooley Ln access bridge crosses Silver Creek at the location of the subject parcel. It would be unreasonable to require access from a different bridge when the existing bridge is in the best position to serve the need. The criterion is met.

2. *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*

As stated under the previous section, the subject parcel is isolated from access to public roads by geographical features. The steep bluff to the southwest and Silver Creek to the northeast make creating new access points to public roads challenging from both an engineering and financial perspective. It is not unusual, and indeed is the intent, of AR zoned lands to be divided and developed for residential uses, but most parcels are not isolated from public roads by two significant terrain features to the level of the subject parcel. After consideration, the circumstances and conditions applying to the land which prompted the variance are indeed unusual. The criterion is met.

3. *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*

The Schooley Ln access easement is currently approved to serve 7 residences as a result of case V22-004. The applicants are requesting to allow one additional dwelling to be served by Schooley Ln, which is the minimum amount necessary to accomplish the proposed development. The criterion is met.

4. *The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and*

In their application statement, the applicants argue that the development will not have a significant adverse effect on property or improvements in the neighborhood because the proposed development of the parcel would be an

additional single-family dwelling. Single-family dwellings do not produce—under reasonably assumed conditions—the amount of traffic required to have a significant adverse impact on the private road improvements. If maintenance agreements are in place and the new lots with dwellings are included in the maintenance agreement, the private road infrastructure should not be adversely impacted in a significant way. The rest of the development will need to comply with all building code, fire code, and sanitation standards for dwellings, meaning the development will be done in a way that does not impact neighboring properties in a significant adverse way. The compliance with all requirements of Marion County Building, Marion County Septic, and the Silverton Fire District shall all be made conditions of approval, as well as the inclusion of the new lots into any existing maintenance agreements for Schooley Ln.

While the proposed use of an additional single-family dwelling does not fully reflect the potential uses within the AR zone, most uses that are more impactful than residential uses are possible only via conditional use permits (with an exception to be discussed later).

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

As discussed under the previous criterion, if the proposed use case of an additional single-family dwelling taking access off a private easement (with two new being developed in total on the resultant lots) is the actual development that takes place, the proposal is unlikely to have a significant adverse effect on health and safety of persons working and living in the area. The applicants were required to obtain a hydrogeology review showing that there is ample groundwater supply for the new uses in addition to the existing development. Additionally, the development of the dwellings must meet all applicable building standards, including proper septic system construction and geohazard engineering (if necessary). The applicants also mention in their statement that fire access and turnarounds will also need to be evaluated and upgraded to comply with applicable fire department standards. This assertion by the applicants matches the comments provided by the Silverton Fire District for the previous variance application (V22-004), and the Silverton Fire District provided comments confirming that these requirements are still applicable. Meeting any required fire department standards, including for access and turnarounds, is a standard condition of approval for partitions, and it shall be made a condition of approval that the development complies with all standards required by the Silverton Fire District. Additional conditions of approval using the specific requirements provided by the Silverton Fire District can also be assigned if it is deemed that verification of their completion is necessary for meeting the variance criteria.

Addressing the other potential uses possible in the AR zone, staff finds that none of the outright permitted uses would have the potential to adversely effect the health and safety of persons in a significant way as long as the development is done in compliance with all applicable building and sanitation standards. Therefore, the criterion is met.

*6. The variance will maintain the intent and purpose of the provision being varied.*

The purpose of MCC 17.110.800 is to ensure that access to dwellings is safe and capable of accommodating emergency vehicles. Often private roads are smaller than public roads and limiting the number of dwellings accessed off them is necessary to maintain safety of the residents. The applicants propose using an existing private road to serve the new parcels, taking advantage of the existing bridge infrastructure. The bridge was previously found suitable for the proposal in a previous variance to this standard in case V22-004, the private easement and bridge are required to be inspected and brought into compliance with the standards of the Silverton Fire District, and maintenance agreements are in place with the parcels currently using Schooley Ln. The new proposal will still be able to maintain safe access to the dwellings utilizing Schooley Ln as long as the Silverton Fire Districts requirements are met and there are binding agreements to sufficiently maintain the road infrastructure. As previously recommended under criterion #4, a condition of approval should be made requiring the new lot created by the partition be included in the maintenance agreement.

With these measures in place, there is sufficient evidence that the proposed development will still ensure access to the dwellings is safe and capable of accommodating emergency vehicles. Therefore, the criterion is met.

## **DELIBERATION:**

On December 16<sup>th</sup>, 2025, the Planning Commission held a public hearing about the proposed partition of the 4.14-acre lot into 2 lots of 2.0-acres and 2.14-acres in an AR zone, with a variance to the limitation in MCC 17.110.800 to the number of lots without frontage on a public road that may be served by a private road. The staff summary and staff response to comments submitted prior to the hearing were heard. The applicants provided testimony. Testimony from a representative of a neighboring party was heard voicing concerns about the proposal and requesting modifications to the conditions of approval such that they would be conditioned to occur prior to approval of the partition plat. The neighboring party stated that they felt there was no current maintenance agreement in place sufficient to meet the criteria and requested that the record be held open to allow the parties to draft a new road maintenance agreement prior to approval of the application that they felt met their standards. Staff supported the proposed modification to proposed conditions of approval #10 and #12 and stated that modified conditions would be provided to the Planning Commission, applicants, and interested party during the open record period following the hearing. The applicants provided rebuttal to comments from the interested party, but voiced support for the effort to create a new maintenance agreement. The Planning Commission asked questions of the applicants, Marion County Staff, and the representative of the interested neighbor. Deliberations were held regarding the proposal and whether this application met all standards for the proposed variance.

Following this first deliberation, the request of the interested neighbor to keep the record open to allow the applicants and the neighbor to create a new road maintenance agreement was granted. Oral arguments were closed, but the written record was held open until the next scheduled hearing of the Planning Commission on January 6<sup>th</sup>, 2026, so that the road maintenance agreement could be negotiated. On January 5<sup>th</sup>, 2026, the representative of the neighboring party submitted a letter with additional comments and a copy of the framework for a new road maintenance agreement that was worked out between the interested neighbor, the applicants, and a 3<sup>rd</sup> neighbor that also uses Schooley Ln for access. Also on January 5<sup>th</sup>, Staff provided the revised language for conditions of approval #10 and #12 to the Planning Commission, applicants, and interested neighbor. On January 6<sup>th</sup>, 2026, the Planning Commission held a public hearing for deliberation about the proposal with the new maintenance agreement and modified conditions. The Commission indicated that the application meets the required criteria and approved the request subject to the revised conditions of approval.

## **DECISION:**

At the January 6<sup>th</sup>, 2026, meeting, after reviewing testimony in the record and presented at the previous hearing, including new submission during the open record period, a motion was made and seconded to **APPROVE** the proposal with the modified conditions #10 and #12 as presented by Staff. The motion passed unanimously.

**SIGNED AND FINALIZED THIS 8th day of January, 2026.**

By      Brandon Reich  
         Planning Commission Secretary

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.