

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 CASE NO. 24-016**

APPLICATION: Application of Shawn and Monica Boland to partition a 12,619 square-foot parcel into two parcels consisting of 6,308-square feet and 6,311-square feet in a UD (Urban Development) zone located at 4240 45th AVE NE, Salem (T7S; R2W; Section 7AA, Tax lot 7400).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Partition, subject to certain conditions. **PLEASE READ ALL CONDITIONS.**

EXPIRATION DATE: This approval is valid only when the final partitioning plat is recorded by **December 26th, 2026** (two years), unless an extension is granted. The effective period may be extended for an additional year 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). **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 use is for land use purposes only. Due to other requirements, such as well requirements, septic requirements, and drain field replacement areas, this parcel may not be able to support the proposed use. To ensure 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:

1. Properties 10 acres or less 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).” **This shall be accomplished prior to the issuance of any building permit(s) on the resulting parcels.**
2. After the recording of the final partition plat, the resulting parcel's zone shall be changed from UD to RS (Single Family Residential).
3. The preexisting dwelling south of the proposed Parcel 2 shall remain addressed **4240 45th Ave NE**. The proposed “Parcel 1” (vacant) shall be addressed **4260 45th Ave NE**, and the proposed “Parcel 2” (vacant) shall be addressed **4250 45th Ave NE**. These addresses are not final. Addresses will be finalized at the time that building permit applications are reviewed and may change if alterations are made to the property or nearby properties.
4. Pursuant to City of Salem Council Policy X-4A/B, any future connections within these districts will require an annexation agreement to be filed with the City of Salem prior to permit issuance.

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

5. After the final survey 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 another 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:

6. The applicants 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. Paula Smith, the district's Fire Marshal, can be reached at (503) 588-6513.
7. Prior to recording the plat, all taxes due must be paid to the Marion County Tax Office. The Tax Office may be contacted at (503) 588-5215 for more information.
8. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #7 below, that may be required.

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 \$250) 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 **December 26th, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 27th, 2024**, unless further consideration is requested.

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

1. The subject property is located within the City of Salem's Urban Growth Boundary (UGB). The City of Salem Comprehensive Plan designates the property as Single Family Residential. Marion County correspondingly has zoned the property as Urban Development (UD). The intent of this zone is to provide for urban development consistent with the land use designation in the applicable city comprehensive plan where sanitary services are, or can be, made available.
2. The property is located on the east side of 45th Ave NE near the intersection with Satter Dr NE. The property contains a legal dwelling built in 1950 and at least four accessory structures and two driveways with curb cuts. The tract consists of approximately 0.58 acres. The applicant claims that the property is actually two separate legal parcels with the northern portion being approximately 0.289 acres (12,589 square feet). It is the 0.289 acres that the applicant proposes to partition into two parcels consisting of 6,311 square feet (Parcel 1) and the other 6,308 square feet (Parcel 2).

The subject parcel has been described in its current configuration since at least 1962, Volume 565, Page 692. Until the end of 1991, the subject parcel was designated as tax lot 7500. Tax lot 7500 was consolidated into a single tax lot with the southern adjacent tax lot, 7400. While the tax lots were combined into a single tax account, the parcels were not. The subject parcel, and the southern adjacent parcel have continued to be described as separate parcels, on one deed, sharing a tax lot since at least 2007. The subject parcel consists of approximately the northern half of tax lot 7400. Having existed in its current configuration since prior to September 1st, 1977, the subject parcel is legal for land use purposes.

The parcel immediately to the south of the subject parcel (Tax lot 7400) currently has a three and one half foot (3.5) property line setback from the subject parcel property line (referred to as Parcel 2 in the application). This is a pre-existing nonconforming property line setback.

3. Properties to the north, east, and south are zoned UD (Urban Development). The western properties adjacent to 45th Ave NE are zoned RS (Single Family Residential) within unincorporated Marion County. All surrounding properties are in use for homesites.
4. The applicant is proposing to partition the subject property into two parcels consisting of 6,308-square feet and 6,311-square feet.
5. Various agencies were contacted about the proposal and given an opportunity to comment.

City of Salem Community Planning and Development submitted the following:

The subject property is located within the Jan Ree Water Service District and East Salem Sewer Service District. Water and sewer mains are available in 45th Avenue NE to serve the proposed partition. Any new connections to these districts will require an annexation agreement to be filed with the City of Salem where one has not already been done to, pursuant to Salem City Council Policy X-4A/B. City of Salem permits are required for new connections to these for development on the resultant lots. Please contact developmentservices@cityofsalem.net in order to obtain permits for connections to these mains.

Proposal appears to meet minimum lot dimensions for Single Family Residential (RS) zone. Please note that the existing accessory on independent lots from a primary use would be considered a non-conforming upon annexation.

Marion County Fire District #1 provided information about fire department water access, building identifications and other aspects of the fire code. These comments are included in the case file.

The Marion County Tax Assessor provided comments about the taxes on the property.

Marion County Land Development Engineering and Permits (LDEP) commented:

ENGINEERING REQUIREMENTS

- A. *Access permits will be required for each new dwelling. Proposed Parcel 1 driveway approach was installed as part of a 2021 County Capital Improvement Project (CIP) to urbanize 45th Avenue. Proposed parcel 2 driveway approach will need to be installed at the time of building permitting. Partitioned properties are typically required to share a common access, where feasible; however, deference in favor of separate access is justifiable in order to maximize onsite parking area in light of on-street marked bicycle lanes within which vehicle parking is precluded. Addition of a driveway will not meet access management spacing standards, yet 45th Avenue is primarily residential in character with a posted 25 mph speed limit that mitigates reduced spacing. Based on proposed parcel frontage widths of 40 feet, somewhat reduced width driveway approaches may be required so as not to exceed a maximum 40% coverage in accordance with PWDS; meeting this standard could also entail retrofitting the existing north approach.*
- B. *Transportation System Development & Parks charges will be assessed upon application for building permits for new dwellings.*
- C. *Utility extension work in the public right-of-way requires permits from PW Engineering. With regard to extending utilities from the public right-of-way to serve the proposed developable lots, the County has a 5-year moratorium on the cutting of pavement from date of placement per Transportation System Plan Section 10.2.1. Policy 7(b). Note that 45th Avenue was paved during June 2021 as part of a county urbanization CIP. Any pavement cutting prior to June 2026 would require approval of a discretionary exception request by the County Public Works Director.*

Marion County Surveyor's Office commented:

1. Parcels ten acres and 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 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 Building Inspection commented:

“Establishing a new property line through an existing greenhouse may initiate additional fire-resistant construction be added, however, according to the application and statement, under Section 16.15.300 1a, the greenhouse is to be removed. Thus, no Building Inspection concerns. Permit(s) are required to be obtained prior to development of structures, alterations to existing structures, and/or utilities installation on private property.”

Marion County Tax Office provided information regarding property taxes on the subject parcel.

All other contacted agencies either failed to comment or stated no concern with/objection to the proposal.

6. Partitions within an Urban Growth Boundary (UGB) have requirements set forth in Marion County Code 16.33. Other requirements are set forth in the Urban Development chapter 16.15. Additional general requirements can be found in chapters 16.24 through 16.32.
7. The partition proposal was reviewed following the standards set forth in MCC 16.15.300:
 - A. This subsection discusses the criteria for divisions of land into four or more lots. The applicant is proposing two parcels. The criteria in this subsection do not apply.
 - B. *The following regulations shall apply when property line adjustments and partitionings of land within the UD zone as regulated by Chapter 16.33 MCC:*
 1. *Existing Lots with Dwellings. The dwelling and immediately surrounding area may be separated from the remaining property provided:*
 - a. *The location of lot lines shall not significantly reduce feasible options for the future location of urban roads or services, or preclude basic development options on the property or adjacent properties. If the applicable comprehensive plan designates the property for single-family residential uses, a development plan may be required which demonstrates that the proposed division will not preclude future subdivision achieving the median density proposed in the Comprehensive Plan.*

The proposed partition creates two new parcels with frontage on 45th Ave NE that are in an area that the comprehensive plan designates as single family residential. At the time of the partition, there are no dwellings on either proposed parcel. The applicant did not submit a development plan showing how the two new lots would be developed in the future. However, the creation of two additional lots meeting the minimum lot dimensions and lot area would achieve the density standards as listed in MCC 16.27.050(A). The criterion is met.

- b. *Any additional street right-of-way required by adopted standards is dedicated along the lot's street frontage.*

The subject parcels have street frontage and an established right of way along 45th Ave NE. Marion County LDEP did not require any additional street right-of-way along 45th Ave NE. The criterion is met.

- c. *If the dwelling is within 300 feet of a sewer line capable of serving the dwelling, the dwelling shall be connected to the sewer.*

The northern portion of the subject parcel is already served by the East Salem Sewer District. Any new or upgraded sewer connections will be through an annexation agreement with the City of Salem, and any new connections will require permitting through the City. The criterion is met.

- d. *Street and drainage improvements applicable to any street abutting the dwelling lot shall be required at the time the remnant parcel is developed through an improvement agreement.*

At the time of the application, there are no dwellings on the subject parcel. The applicant states there is existing stormwater management on 45th Ave NE. Marion County LDEP did not condition any street or drainage improvements for approval of this land use case. The criterion is met.

2. *The minimum lot size for partitionings and property line adjustments shall be 6,000 square feet for the dwelling lot. If the dwelling lot is proposed to be larger than 15,000 square feet, a redevelopment plan shall be required demonstrating that the proposed dwelling lot meets subsection (B)(1)(a) of this section. The location of lot lines on the dwelling lot shall conform to the yard requirements of the RS zone.*

The two new parcels will both be over 6,000 square feet (Parcel 1, 6,308 square ft, & Parcel 2, 6,311 square ft). The applicant did not provide a development plan for the two new parcels. Property line setbacks as set out in MCC 16.02.130 through 16.02.150. The criterion is met.

8. In addition, MCC 16.33 contains the following requirements:

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 an identification for emergency vehicles in accordance with Chapter 11.55 MCC, Naming and Addressing Roads/Property.*

The proposed Parcels 1 and 2 have frontage on a public right-of-way along 45th Ave NE and can be accessed over the road's current right-of-way. No easement is being proposed. The site plan notes that Parcel 1 has an existing paved driveway. As a condition of approval, permits shall be obtained to access any future developments. Therefore, these criteria are met.

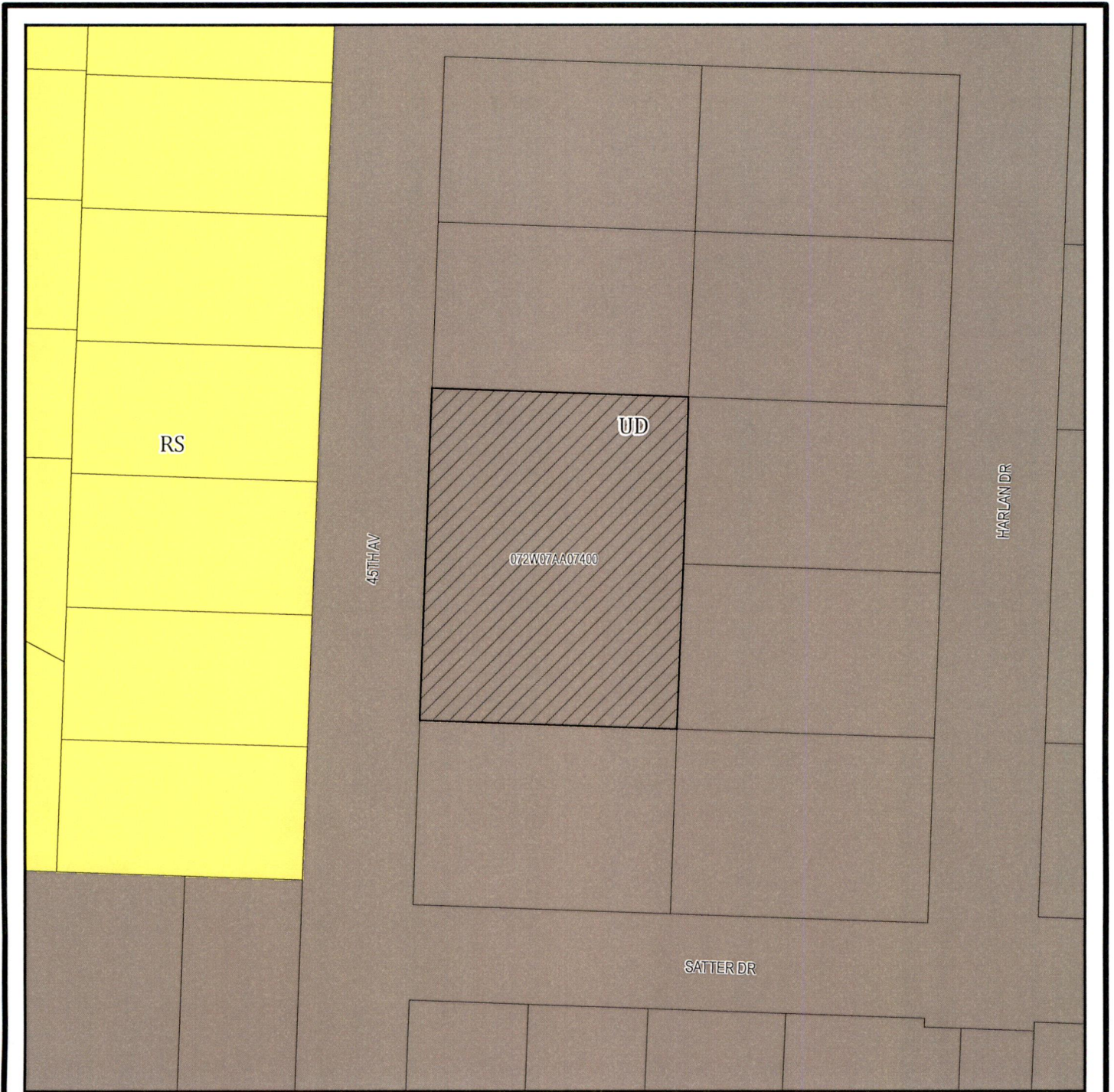
9. Based on the above findings, it has been determined that the proposed partition satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: December 11th, 2024

If you have any questions regarding this decision contact George Brandt at (503) 566-3981.

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.



ZONING MAP

Input Taxlot(s): 072W07AA07400

Owner Name: BOLAND, MONICA & BOLAND, SHAWN

Situs Address: 4240 45TH AVE NE


City/State/Zip: SALEM, OR, 97305

Land Use Zone: UD

School District: SALEM-KEIZER

Fire District: MARION COUNTY NO.1

Legend

 Input Taxlots

 Lakes & Rivers

 Highways

 Cities



scale: 1 in = 77 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.