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MEMORANDUM

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Bradford
SUBJECT: Partition Case 22-012
DATE: December 12, 2022

The Marion County Planning Division has reviewed the above-referenced application and offers the following comments:

FACTS:

1. Application of Keith Whisenhunt on behalf of Walter Shinen to partition a 0.66-acre parcel into 2 parcels consisting of 0.21 acres and 0.24 acres in an Urban Transition – 5 Acres Minimum (UT-5) zone located at 1325 South Water Street, Silverton. (T7S, R1W, Section 1C, Tax Lot 2500). The property is designated Single Family Residential in the City of Silverton Comprehensive Plan and zoned Urban Transition – Five Acres Lot Minimum in the Marion County Code. The major purpose of this designation and the corresponding Urban Transition zone is to provide areas for future residential development.

2. The property is located approximately 550 feet northeast of the intersection of Pioneer Drive and South Water Street in the City of Silverton. The property contains one residence. The parcel has never been the subject of any previous land use cases. However, a deed dating March 13, 1975, matches the description of the most current deed. Therefore, this parcel is legal for land use purposes.

3. Surrounding uses are residential in all directions and consist of mostly single-family residential uses. The applicant proposes to divide a 0.66-acre parcel into two parcels at 14,000 square feet and 10,000 square feet.

4. Comments received:

Public Works Land Development and Engineering Permits (LDEP) commented:

Engineering Conditions

Condition A – *On the partition plat dedicate a 30-foot-wide right-of-way (R/W) half-width to the public for roadway purposes.*

Dedication is authorized under MCC 16.33.260.

Condition B – *On the partition plat dedicate an 8-foot-wide public utility easement behind the expanded R/W.*

Condition C – *Prior to plat approval, design, obtain a permit from ODOT, and construct a quarter-street urban frontage improvement to county and ODOT standards. Improvements shall consist of:*

- *Quarter-street pavement widening to ODOT cross-section*
- *PCC curblin sidewalk*
- *PCC driveway approach*
- *Utility service extensions for rear developable parcel*

Frontage improvements are authorized for partitions under MCC 16.33.160 and 16.33.320.

Engineering Requirements

- D. Access shall be shared from South Water Street.
- E. Depict any necessary access and utility easements on the partition plat.
- F. Transportation System Development and Parks Charges will be assessed upon application for building permits.

Engineering Advisory

- G. ODOT has jurisdiction over South Water Street with respect to road improvements and utility work.

Marion County Surveyor’s Office 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.

Silverton Fire District commented:

Future development of the two parcels at 1325 South Water Street will have to comply with Oregon Fire Code regarding access and water supply.

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

STAFF FINDINGS AND ANALYSIS:

- 5. In order to partition land in UT zone the standards and criteria in Chapter 16.13.310 of the Marion County Code (MCC) apply:

A. A series partition, subdivision, residential planned development or other residential development of a lot, as the lot existed upon application of the UT zone, that results in the division of land into four or more lots intended to be occupied by dwellings or mobile homes, is not permitted in the UT zone.

The proposal is to divide the parcel into 2 parcels. The criterion is met.

B. The following regulations shall apply when property line adjustments and partitioning of land regulated by Chapter 16.33 MCC, Subdivision and Partition Requirements, are proposed:

1. Additional street right-of-way required by adopted county standards shall be dedicated along the street frontage of any lot 10 acres or less in area that is part of a partition or lot line adjustment. Street and drainage improvements within the dedicated right-of-way shall be deferred until otherwise required by the county, or by the city following annexation. A no remonstrance agreement for future road or drainage improvements within the right-of-way abutting the lot may be required.

This will be made a condition of approval. The criterion is met.

2. The location of lot lines shall not significantly reduce feasible options for the future location of urban streets or utility services, or preclude development options on the property or adjacent properties.

The proposed partition would almost split the parcel in half with one parcel being 9,340 square feet and the second parcel being 10,460 square feet. The applicant is proposing to keep the current residence in place, located at the southern end of the parcel, while the remaining portion of the parcel would be developed with a single-family dwelling. This proposed partition is unlikely to preclude development options or future location of urban streets or utility services on the adjacent properties because the property to the north is in the City of Silverton and has been developed to their Single-Family Residential standards while the property to the southeast is a larger parcel that could still accommodate future development once annexed into the City of Silverton.

Regarding not significantly reducing feasible options for future location of urban street or utility services or precluding development options, the potential partition is unlikely to have this affect. As noted above, the subject parcel is designed Single Family Residential in the City of Silverton's Comprehensive Plan. Once this property has been annexed into the city, it will be zoned for residential use.

The development trend in the immediate area is mixed with single family and multifamily uses. Specifically, the majority of the zoning in the immediate area is zoned either Single Family Residential or Low Density Residential – 5 with some multi-Family – 10 and Multi-Family – 20 located on Pioneer Drive and South Water Street. If the zoning trends continue, the subject parcel is likely to be zoned Single Family Residential or Low Density Residential – 5. This would mean a minimum parcel size of 21,780 square feet for Single Family Residential and a minimum parcel size of 8,712 for Low Density Residential – 5. In other words, the proposed lot sizes, 9,340 square feet and 10,460 square feet, would meet the minimum lot size for the Single-Family Residential zoning, but exceed the minimum lot size for the Low Density Residential – 5. If the partition were to be approved, this has the potential to reduce the number of homes on the parcel from six to two. However, in considering the other potential development in other parts of the city and the potential annexation of bigger parcels, the proposed partition does not significantly reduce options for future location of urban street or utility services or preclude development options. Therefore, this criterion is met.

3. When a lot occupied by a residence is reduced, or a lot is created to accommodate a new residence allowed in MCC 16.13.320, the lot should be as small as possible and should not be larger than one acre. If a lot of one acre or less is not feasible, the lot should either contain all of the undeveloped land or be large enough that the urban development potential will be a significant incentive for the owner to develop to planned urban uses when the lot is annexed.

The proposed partition would result in both lots being smaller than one acre. Specifically, one lot is proposed to be 9,340 square feet while the other lot is proposed to be 10,460 square feet. This criterion is met.

4. *When a new or adjusted lot located in a residential plan designation is smaller than five acres and larger than one acre, a redevelopment plan shall be required demonstrating that the lot can accommodate future subdivision development at the median density proposed in the Comprehensive Plan. The zoning administrator shall review and approve the redevelopment plan.*

The redevelopment plan is only for the purposes of identifying a feasible means to subdivide the property and to identify an appropriate location for residences and does not limit consideration of other development options when urban services are available.

The parcels being created are not larger than one acre. Therefore, this criterion is not applicable.

5. *New lots shall have no dimension less than 80 feet.*

According to the applicant, the proposed parcels will be no less than 80 feet in width; the submitted site plan confirms this statement. Therefore, the criterion is met.

6. *When a lot located in a residential plan designation and occupied by a nonresidential use is created or altered, the lot should include as little undeveloped land suitable for residential uses as possible, unless evidence is presented that undeveloped land needs to be included in the lot to accommodate allowable expansion of the subject use.*

The lot is in residential plan designation and is not occupied by a nonresidential use. Therefore, this criterion is not applicable.

7. *The minimum lot size, in acres, for lots in nonresidential plan designations is the numerical suffix added to the UT zone (i.e., one acre, three acres, five acres, 10 acres or 20 acres), or if no suffix is added, five acres.*

The subject parcel is in a residential plan designation. Therefore, this criterion does not apply.

6. The proposed partition must also conform to the development limitations and requirements found in Marion County Code 16.13.320:

A. *Mobile Home Development. No new mobile homes are permitted unless the property is designated for residential development in the Comprehensive Plan and the most restrictive county zone used in the plan designation would permit a mobile home on a lot as an outright permitted use or a conditional use. Approval of a mobile home shall be subject to the standards in MCC 16.26.030.*

The applicant is not proposing to build a mobile home. Therefore, this criterion is not applicable.

B. *Dwelling Development. No new dwellings are permitted unless the area is designated for residential development and the most restrictive county zone used in the plan designation would permit the dwelling as an outright permitted use or a conditional use.*

The applicant is proposing to partition the subject parcel to develop the second parcel with a dwelling. Under the City of Silverton's Comprehensive Plan, the subject parcel is designated for residential use. Therefore, the criterion is met.

C. *Residential Density. On lots designated for residential development, no more than one dwelling unit or mobile home shall be allowed per five acres unless a numerical suffix is added to the zone altering the allowable density to no more than one dwelling unit or mobile home per one, three, 10*

or 20 acres. The number of dwellings allowed shall be based on the size of the lot at the time the UT zone first applied to the property.

The applicant is proposing to partition the 0.66-acre subject parcel into two lots at 9,340 square feet and 10,460 square feet. The parcel is zoned Urban Transition – 5 acres lot minimum. The proposed partition will not meet the minimum lot. Therefore, this criterion is not met.

D. Siting of Dwellings. If a new dwelling is allowed on a lot of more than one acre and less than five acres, and the lot is designated for residential development, the dwelling shall be located in conformance with a redevelopment plan. The redevelopment plan shall demonstrate that the lot can accommodate future subdivision development at the median density proposed in the Comprehensive Plan. The zoning administrator shall review and approve the redevelopment plan.

The proposed partition would reduce the parcel size from 0.66 acres to 9,340 square feet and 10,460 square feet. This will be below one acre. Therefore, this criterion does not apply.

E. On-Site Sewage Disposal. The following conditions shall be met prior to the approval of a use or residence relying on an on-site system for wastewater disposal:

1. The property shall not lie within the boundary of a sewer service district unless allowed in writing by the city.

According to the applicant, the property does not lie within the boundary of a sewer service district. Therefore, this criterion is met.

2. The property must lie more than 300 feet in a straight line from any existing sewer line that can be extended to the property to provide gravity sewer service, unless the city agrees in writing to allow on-site sewage disposal.

The subject parcel lies within 300 feet in a straight line from an existing sewer line. However, the City of Silverton has not agreed to provide sewer services or allow on on-site sewage disposal system. Therefore, this criterion is not met.

3. The property shall not be served by a city or district water system.

The subject parcel is not currently being served by a city or district water system. Therefore, this criterion is met.

4. Applicant shall have obtained from the county sanitarian a favorable site evaluation to install an on-site sewage disposal system or DEQ approval for another type of sewage disposal.

According to the applicant, Lone Pine Septic and Redmond Geotechnical performed percolation testing and site evaluation for a septic system and drainfield on each proposed parcel. As a result, the applicant, as seen on their submitted site plan, the applicant would be proposing to place a septic system and drainfield in the back of each parcel. However, the applicant did not provide a favorable site evaluation from the Marion County sanitarian or obtained DEQ approval for another type of sewage disposal. Therefore, this criterion is not met.

5. If the city requires, the applicant shall sign an agreement with the city agreeing to connect the subject development to the public sewer system when the system comes to within 300 feet of the property and can provide gravity service.

Per a phone conversation with the City of Silverton, this would only be required once the applicant applies for annexation. Therefore, this criterion does not apply.

6. If the city requires, the property owner shall provide a signed nonremonstrance agreement with the city for future annexation and sewer or water service by the city.

Per a phone conversation with the City of Silverton, this would only be required once the applicant applies for annexation. Therefore, this criterion does not apply.

F. Residences on Pre-Existing Lots. Notwithstanding subsection (C) of this section, a single-family dwelling or mobile home is permitted on a lot legally created prior to the date the city comprehensive plan was originally acknowledged by LCDC, or in the case of the Salem/Keizer urban growth area before August 1, 1981, provided the lot and development complies with all other requirements of this section.

The subject parcel has been developed with a single-family dwelling. Therefore, this criterion is not applicable.

7. In addition to the above criteria for a Partition in the Urban Transition Zone, the proposed partition shall conform to applicable regulations contained in Chapter 16.33.180 through 16.33.660 of the Marion County Code:

16.33.180 Deeding of right-of-way.

No person shall dedicate for public use, or deed to Marion County, a parcel of land which is used or proposed to be used as access without first obtaining the approval of the board or its designee and delivering the deed to the board for its endorsement. No dedication is effective unless the property is accepted by the board or its designee and recorded with the Marion County clerk's office.

The applicant is not proposing to dedicate a parcel of land to Marion County. Therefore, this criterion does not apply.

16.33.190 Connectivity.

Applicants submitting preliminary development plans shall provide for local streets oriented to or connecting with existing or planned streets, existing or planned schools, parks, shopping areas, transit stops, and employment centers located within one-half mile of the development. Applicants shall also provide for extension of local streets to adjoining major undeveloped properties and eventual connection with the existing street system. Connections to existing or planned streets and undeveloped properties along the border of the parcel shall be provided at no greater than 600-foot intervals, unless the planning director, or designee, determines that one or more of the following conditions exist:

A. Physical or topographic conditions make a street or accessway connection impractical. Such conditions include, but are not limited to, freeways, railroads, steep slopes, wetlands or other bodies of water where a connection could not reasonably be provided; or

B. Buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment.

The applicant is proposing to build a driveway that connects South Water Street to the proposed second lot. According to the submitted site plan, the driveway is 300 feet in length. Therefore, this criterion is not applicable.

16.33.200 Dead-end streets.

When it appears necessary to continue streets to an adjacent acreage, the streets shall be platted to the boundary or property line of the proposed subdivision without a turnaround. In all other cases, dead-end streets shall have a turnaround with a configuration approved by the Marion County department of public works.

This criterion will be a condition of approval upon approval of the proposed partition. This criterion is met.

16.33.220 Radius at street intersections.

The property line radius at street intersections shall be to Marion County department of public works' standards.

This criterion will be a condition of approval upon approval of the proposed partition. This criterion is met.

16.33.240 Street grades.

No street grade shall be in excess of 12 percent unless the commission or hearings officer finds that, because of topographic conditions, a steeper grade is necessary. The commission or hearings officer shall require a written statement from the director of public works indicating approval of any street grade that exceeds 12 percent.

This criterion will be a condition of approval upon approval of the proposed partition. This criterion is met.

16.33.260 Dedication of right-of-way.

If land to be subdivided or partitioned will cause the termination of a right-of-way of less than standard width, the applicant shall dedicate sufficient land to provide for a cul-de-sac or to increase the half (or halves) of right-of-way bordering the subject parcel to one-half of the standard width. Unless otherwise specified for an individual street in this title, standard right-of-way widths are subject to the standards of the Marion County department of public works.

The applicant is not proposing to terminate any right-of-way. Additionally, the standard right-of-way widths will be a condition of approval upon approval of the proposed partition. This criterion is met.

16.33.280 Additional right-of-way widths.

Where topographical requirements necessitate either cuts or fills for the proper grading of the streets, additional right-of-way or slope easement may be required to accommodate the cut and fill.

This criterion will be a condition of approval upon approval of the proposed partition. This criterion is met.

16.33.300 Utility easements.

Utility easements meeting the approval to the standards of the affected utilities shall be provided to all newly created lots.

This criterion will be a condition of approval upon approval of the proposed partition. This criterion is met.

16.33.340 Private streets.

In the event the subdivider or developer elects to provide private streets or thoroughfares, they shall be maintained by the homeowners' association and a maintenance agreement shall be submitted to Marion County for review and approval prior to recording the final plat.

This criterion will be a condition of approval upon approval of the proposed partition. This criterion is met.

16.33.380 Midblock pedestrian access.

Where topographic or other conditions make necessary a block of unusual length, the commission may require midblock pedestrian walks with a right-of-way at least 10 feet in width which shall be hard surfaced through the block and extending from street curb to street curb.

This criterion will be a condition of approval upon approval of the proposed partition. This criterion is met.

16.33.400 Lot size.

All lots approved under this chapter shall have sufficient area to be consistent with the intent of the Comprehensive Plan and to provide adequate area for the intended structures and uses, all setbacks, access and spacing required for water supply and wastewater disposal. Lots to be served by public or privately owned sewage collection and disposal system must meet the requirements and have approval of the Oregon State Department of Environmental Quality before being recorded or sold. State regulations, soil types, drainage, terrain, and location may be included as part of the criteria used by the state or county in determining appropriate lot sizes for lots using subsurface disposal of sewage. Lot size and dimensions shall be as prescribed in the corresponding zone.

According to the applicant, the partition will result in two parcels that can be provided adequate services to serve two dwellings. Specifically, the applicant is proposing that both parcels share a well which would be located in the front of the parcel that is located directly on South Water Street. Both parcels would have their own septic systems and drainfields. Both parcel's septic systems and drainfields would be located toward the back of each parcel. Therefore, the criterion is not met.

16.33.420 Curved front lot lines.

When front lot lines are on a curve or arc, the front line distance shall be indicated on the final plat by bearing and chord distance.

The subject parcel's front lot lines are not located on a curve or an arc. Therefore, this condition does not apply.

16.33.440 Lot line.

Side lot lines shall be as close to right angles to the front street line as practicable. Unless otherwise approved, rear lot lines shall be not less than one-half the width of the front lot lines.

This criterion will be a condition of approval upon approval of the proposed partition. This criterion is met.

16.33.460 Sewage disposal.

All lots or parcels shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the Department of Environmental Quality (DEQ) and the Marion County building inspection division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by the Department of Environmental Quality (DEQ) via the Marion County building inspection division. Installation and maintenance shall be in accordance with the Department of Environmental Quality's

regulations and requirements. The commission, director, or hearings officer may require connection to an existing sewage collection and treatment system regardless of lot suitability for subsurface disposal if the commission, director or hearings officer deems it necessary and provided the connection is available.

As stated previously, both parcels would have their septic systems and drainfields, located in the back part of each parcel. Therefore, this criterion is met.

16.33.480 Water supply.

All lots or parcels shall be served by an authorized public or private water supply system.

- A. Public or Private Systems. Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity, storage, and distribution system requirements of the State Health Division and the operator of the water system.*

As stated previously, the applicant is proposing to provide water via a well located in the front of the parcel located on South Water Street. The well will serve the back parcel through a water line located underneath the proposed driveway. Additionally, the applicant submitted a geotechnical study that stated the proposed well could serve both properties. Therefore, this criterion is met.

16.33.620 Required application information.

The following application information is required:

- A. The application form filled out completely in ink.*

- B. Copy of the officially recorded title transfer instrument (deed, warranty deed, or contract) that shows the legal description for the parent parcel.*

- C. Plot Plan. The plot plan should be on a separate sheet of paper eight and one-half inches by 11 inches and must be drawn in ink, showing the location of the proposed property lines and adjustments, and distances to structures, property lines, roads, drainage, access, and other features. The plot plan must be reviewed and initialed as accepted by a plans examiner from the building inspection division.*

- D. If the property is within the geologically hazardous overlay zone, any study required by Chapter 16.24 MCC shall accompany the application. If the chapter requires peer review of the study, this must also be submitted with the partition application.*

- E. A written statement which explains your reasons for dividing the land and how the division conforms to Marion County land use policies and regulations of the applicable zone.*

- F. If the partitioning includes the creation of a private roadway the applicant must include four proposed road names in the order of preference.*

- G. Filing fee.*

The applicant's representative has submitted all the required documents. Therefore, this criterion is met.

CONCLUSION:

11. Based on the above findings staff recommends ***denial*** of the proposal.