



# **Marion County**

## **OREGON**

### **PUBLIC WORKS**

#### **MEMORANDUM**

(503) 588-5036

#### **BOARD OF COMMISSIONERS**

Kevin Cameron  
Danielle Bethell  
Colm Willis

#### **DIRECTOR**

Brian Nicholas, P.E.

#### **ADMINISTRATION**

#### **BUILDING INSPECTION**

#### **EMERGENCY MANAGEMENT**

#### **ENGINEERING**

#### **ENVIRONMENTAL SERVICES**

#### **OPERATIONS**

#### **PARKS**

#### **PLANNING**

#### **SURVEY**

**TO:** Marion County Hearings Officer  
**FROM:** Marion County Planning Division/Dyar  
**SUBJECT:** Comprehensive Plan Change/Zone Change/Partition/Adjustment  
21-009/Roberts and Stickler  
**DATE:** October 27, 2021

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

#### **FACTS:**

1. The subject parcels are within the Salem Urban Growth Boundary (UGB) and designated Single Family Residential in the Salem Area Comprehensive Plan (SACP). The parcels' current RS (Single-Family Residential) is under the jurisdiction of Marion County.
2. The properties were lawfully created as lots 14 and 15 on November 28, 1938 through the Meadowlawn Tracts Subdivision. The lots are contiguous and rectangular in shape. Both are approximately 101 feet wide and between 351 and 382 feet in length, with frontage on MacLeay Road to the south. According to the Marion County Assessor records, Lot 14 is 0.86 acres and Lot 15 is 0.83 acres, which combine to a total of 1.69 acres. Each lot currently contains one single-family home, each of which is located on the southern portion of the property near MacLeay Road. The rear portion of both lots remains undeveloped.  
  
The property is within the horizontal surface of the Salem Municipal Airport. However, no structure is proposed to exceed 35 feet in height, which appears to meet the standards in the county's Airport Overlay Zone, Marion County Code 16.21.
3. Adjacent properties to the north, east, and west are zoned Single-Family Residential, designated Single-Family Residential in the City of Salem's Comprehensive Plan and are developed with single-family homes. Properties to the south, across MacLeay Road, are zoned Commercial Retail, Commercial Office, or Single-Family Residential. The commercial properties are designated Commercial in the City of Salem's Comprehensive Plan and developed with a mix of commercial uses. The residential properties are designated Single-Family Residential and developed with single-family homes.
4. The applicant proposes to partition the subject property into three lots. Upon recordation of the partition plat, two of the lots will contain the existing single-family homes and will remain zoned for single-family use. The applicant proposes changing the existing Single-Family Residential Comprehensive Plan Map Designation and Single-Family Residential zoning on the third lot to a Multi-Family Residential Comprehensive Plan Map Designation with Multiple-Family Residential zoning. The applicant envisions eventually developing this property with a 23-unit townhome style development with both common and private open spaces and

amenities. The applicant is requesting an adjustment to the side-yard setbacks in the Residential Single-Family zone and an adjustment to the play-area dimensions in the Multiple-Family Residential Zone.

### **COMMENTS:**

5. Marion County Building Division commented that Building permits are required for any future development on private property. Proposed property lines appear ok for existing homes, as it appears 3 ft. or more setbacks will be achieved from the exterior walls for the purposes of fire separation distance.

Marion County Fire District #1 provided comments about fire code requirements for any future development on the property. These relate to fire-flow requirements, fire safety during construction, road width and vertical clearance, turning radius, no-parking signs, premise identification, gates, and fire extinguishers.

Marion County Land Development and Engineering requested that the following comments be included in the decision:

### **ENGINEERING CONDITION**

**Condition A** – Prior to partition plat approval, enter into a Development Deferral Agreement with MCPW Engineering stipulating the following main points:

- Prior to issuance of building permits on the developable parcel, design and permit Macleay Road urban frontage improvements to the City of Salem Collector ‘A’ standard.
- Prior to issuance of building permits on the developable parcel, and if the pending RM zone change is fully-approved, design and permit a contiguous offsite urban pedestrian safety improvement along the north side of Macleay Road for an approximate distance of 160 feet, extending from the subject property west property line to the east curb return sidewalk in front of the Chevron fuel station. The offsite improvement shall consist of curb/gutter, curb line sidewalk, ancillary closed-system drainage SDCB retrofitting/tie-ins and miscellaneous pavement tie-in work as a Qualified Public Improvement, eligible for county TSDC credits upon application for building permits.
- Prior to issuance of building permits on the developable parcel, complete all county and city utility permitting necessary to extend services to the development.
- Prior to issuance of building permits on the developable parcel, provide a Performance & One-Year Warranty Surety Bond based on a county-approved engineering cost opinion for the public improvements to be inspected by MCPW Engineering [MCC 16.33.290].
- Prior to issuance of a Certificate of Occupancy on the developable parcel, acquire inspection approval for constructed Macleay Road urban frontage and contiguous offsite improvements, including utility work in the public right-of-way.

Nexus for the road-related improvements, including offsite improvement, are justified by an anticipated increase in pedestrian and vehicular traffic brought about by the proposed development. Public improvement requirements for partitions are in accordance with MCC 16.33.160 and 16.33.320.

### **ENGINEERING REQUIREMENTS**

- B. Consolidate access to TL 6200 and the secondary access to TL 6300 into a single, shared easement serving TL 6200 and the developable parcel.
- C. Onsite stormwater attenuation & water quality treatment will be triggered.

- D. A Large Development Erosion CN Permit from MCPW Engineering will be required in lieu of DEQ permitting.
- E. Utility work may require separate permitting.
- F. County Transportation System Development & Parks charges (TSDCs) for Building Permits apply, which are creditable by completion of the Macleay Road offsite Qualified Public Improvement.

**ENGINEERING ADVISORIES**

- G. MCPW has no formal ‘Site Plan Review’ land use planning step. Therefore, civil site plan design concurrence including verification of any emergency-fire access requirements is strongly recommended prior to application for building permits.
- H. Applicant is proposing 23 units to be built on the developable parcel. The estimated TSDCs would be approximately \$29,900. It is estimated that TSDC dollar amount would slightly exceed the cost of the reimbursable offsite improvement; meaning that the entire cost of the offsite Qualified Public Improvement is anticipated to be TSDC-creditable.

Salem-Keizer Public School District provided comments about the expected impact the proposed future development would have on the district’s school facilities.

All other agencies notified either had no comments or no response.

**STAFF FINDINGS AND ANALYSIS:**

**Comprehensive Plan Amendment**

- 6. The subject property is in the Salem UGB and subject to the SACP. Under SACP III(B)(4), Marion County has exclusive jurisdiction over land use actions within the Salem UGB. Marion County Code (MCC) 16.43.020 provides the criteria for a non-legislative plan amendment as follows:
  - A. *Conformance with the comprehensive plan goals, policies, and intent, and any plan map amendment criteria in the plan, or intergovernmental planning coordination agreement, pertaining to unincorporated lands.*
  - B. *The addition of the subject property to the inventory of lands in the proposed map designation and the corresponding inventory reduction in the current designation are consistent with the projected needs for such lands in the Comprehensive Plan.*
  - C. *Uses allowed in the proposed designation will not adversely affect planned uses on adjacent lands.*
  - D. *Public facilities and services necessary to support uses allowed in the proposed designation are available or are likely to be available in the near future.*
- 7. Under SACP II(A)(1), the SACP is intended to project the most desirable pattern of land use in the Salem area. Under SACP II(A)(3)(a), designated Multi Family Residential designation applies to the portion of the Salem urban area that is currently developed with housing or served by public facilities and suitable for residential development at urban densities. This designation is characterized by a mixture of housing types, for example, single-family detached, single-family attached dwellings, manufactured homes, garden apartments. The location, density, and style of housing are governed by the zoning code of each local jurisdiction. Changes in use designation to permit higher residential densities are governed by the goals and policies of the SACP and the local rezoning process.

The intent of the residential designation is, in part, to provide for the systematic conversion of sites to more intensive residential uses in accord with development policies and standards: to ensure a compatible transition between various types of housing; to encourage locating residential development where full urban services, public facilities, and routes of public transportation are available; and to permit multifamily housing developments which are consistent with development standards and growth policies to blend into the overall

fabric of the Salem urban area.

The following SACP policies are relevant to this proposal:

*SACP General Development policy 7: Structures and their siting in all residential, commercial, and industrial developments shall optimize the use of land. The cumulative effect of all new residential development in the Salem urban area should average 6.5 dwelling units per gross acre of residential development. Development should minimize adverse alteration of the natural terrain and watercourses, the potential for erosion and adverse effects upon the existing topography and soil conditions.*

The applicants are proposing a density of development in the multifamily zone of approximately 14.79 dwelling units per acre, which exceeds the recommended dwelling units per gross acre referenced in this policy. The residential nature of the development is not expected to cause adverse alteration of the natural terrain and watercourses or to increase the potential for erosion and adverse effects upon the existing topography and soil conditions. Any stormwater detention required can be made a condition of approval. This policy appears to be met.

*SACP Urban growth policy 4: Development of land with existing urban services shall be encouraged before the conversion of urbanizable lands to urban uses.*

The subject property has access to urban services and constitutes infill development. This policy is satisfied.

*SACP Growth management policy 6: New developments shall make maximum use of available land areas with minimal environmental disturbance and be located and designed to minimize such public costs as extension of sewer and water services, schools, parks and transportation facilities.*

The proposed comprehensive plan amendment to Multifamily Residential constitutes infill development, or increasing residential density on underutilized urbanized land. The subject property is currently served by the East Salem Service District, which provides stormwater management services, law-enforcement services, and right-of-way improvements. The City of Salem provides sewer services in the area and the Suburban East Salem Water District provides drinking water services. Fire protection is provided by Marion County Fire District #1. Suburban Garbage Haulers provide garbage service and Cherriots provides bus service. The area is served by Santana Village Park and is relatively close to Four Corner's Elementary School, which has open space and playground amenities. Additionally, Cascades Gateway City Park, categorized as a large Urban Park within the City of Salem's Park Comprehensive Park System Master Plan (2013), is relatively close to the subject property. The property is served by Salem-Keizer School District. The District provided comments discussing the projected impact of new development on existing school facilities. The comments noted that facility projections with the increased residential density will put school capacity at or near full capacity. Ultimately, future development on the property is expected to increase density in the area, which should maximize the value of existing urban services while imposing a minimal impact on nearby environmental and public service amenities. The policy appears to be met.

*SACP Growth management policy 7: Within the Salem urban area, residential subdivisions, mobile home parks, multi-family residential, commercial and industrial development shall be permitted only within the County service districts or within the City of Salem where public sewer and water services are available and other urban facilities are scheduled pursuant to an adopted growth management program. Exceptions to this policy may only be permitted if mutually agreed to by the City and the appropriate County.*

The property is located in the urban growth area and, based on the above discussion, adequate services appear to be in place; this policy appears to be met.

*SACP Growth management policy 9: New development shall be encouraged to locate in areas where facilities are already available and in areas which require the least public costs to provide needed facilities and services.*

The property is located in the urban growth area and, based on the above discussion, adequate services appear to be in place. Any expansion of services or providing services in an area where services are already in place is typically less expensive than providing services newly to a previously unserved area. This policy appears to be met.

*SACP Growth management policy 11: Where development creates a demand for new or expanded facilities and services, a share of the costs of new or expanded facilities and services should be borne by the new development itself.*

The applicant states that new or expanded services will not be required for increased sewer or water service because there is adequate capacity within the existing services to serve the proposed development. This policy appears to be met. The applicant acknowledges that they expect to help construct new site-specific improvements when applying for building permits.

*SACP Residential development policy 1: The location and density of residential uses shall be determined after consideration of the following factors;*

- a. *The type and distribution of housing units required to meet expected population growth within the Salem urban growth boundary.*
- b. *The capacity of land resources given slope, elevation, wetlands, flood plains, geologic hazards and soil characteristics.*
- c. *The capacity of public facilities, utilities and services. Public facilities, utilities and services include, but are not limited to municipal services such as water, sanitary and storm sewer, fire, police protection and transportation facilities.*
- d. *Proximity to services. Such services include, but are not limited to, shopping, employment and entertainment opportunities, parks, religious institutions, schools and municipal services. Relative proximity shall be determined by distance, access, and ability to provide services to the site.*
- e. *The character of existing neighborhoods based on height, bulk and scale of existing and proposed development in the neighborhood.*
- f. *Policies contained in facility plans, urban renewal plans, residential infill studies and neighborhood and specific development plans.*
- g. *The density goal of General Development Policy 7.*

The City of Salem accepted a Housing Needs Analysis (HNA) in 2015 which includes a Buildable Land Inventory identifying a surplus of roughly 1,975 acres of land zoned for single-family use and a deficit of land available for multifamily use within the Salem-Keizer Urban Growth Boundary. As of December of 2020, the City has added 40 acres of land zoned for multifamily use since accepting the HNA. This proposal would convert roughly 0.44 acres from Single-Family to Multifamily, lessening the deficit of property for multifamily housing within the Salem-Keizer Urban Growth Boundary. The site characteristics appear amenable to new residential development. The site is relatively flat and there are no known unique environmental hazards on the subject property. As discussed at length above, the site is currently serviced by a combination of services from the City of Salem, Marion County, the private sector, and special districts. As discussed above, the property is in close proximity to various public schools, parks, and has access to various public services, including utilities, policing, and fire services. The property is also located at the intersection of MacLeay Road and Lancaster Drive. As previously discussed, properties at this intersection are zoned Commercial Retail and Commercial Office and are developed with commercial uses. Lancaster Drive more generally is the location of various entertainment options, retail establishments, and religious institutions. Consequently, it is also the location of various employment opportunities. The existing neighborhood is primarily comprised of single-family homes. The applicant discusses in the narrative that they plan to introduce the first multifamily development within the immediate area. The applicant envisions developing a townhome style development with articulation, open space, and landscaped areas. While it is true that there is no land zoned for multifamily use in the immediate vicinity and no townhome style development in the immediate area, there are some duplexes within a quarter mile of the property. Additionally, as the applicant notes, the Multiple Family Design Guidelines and Standards in the Marion County Code require landscaped areas, screening, and buffers to ensure consistency in terms of

building bulk, height, and scale. The applicant did not identify, and staff is not aware of any facility plans, urban renewal plans, residential infill studies and neighborhood and specific development plan that would apply to the property. As described above, the proposal exceeds the density goal of General Development Policy 7. This policy appears to be met.

SACP Residential development policy 2: *Residential uses and neighborhood facilities and services shall be located to:*

- a. *Accommodate pedestrian, bicycle and vehicle access;*
- b. *Accommodate population growth;*
- c. *Avoid unnecessary duplication of utilities, facilities and services; and*
- d. *Avoid existing nuisances and hazards to residents.*

The applicant expects to provide access to the property from both MacLeay Road. As a requirement of development, additional sidewalks will be installed, improving pedestrian connectivity with the surrounding network. The proposal accommodates population growth both by providing multi-family housing units which exceed the density goal General Development Policy 7. Increasing residential housing options and density in existing urbanized, but underdeveloped, locations avoids the unnecessary duplication of utilities, facilities, and services. Moreover, utilities, facilities and services are all available to the site, as described above. There are no known existing nuisances and hazards to area residents. This policy appears to be met.

SACP Residential development policy 6: *Multi-family housing shall be located in areas proximate to existing or planned transportation corridors, public facilities and services:*

- a. *To encourage the efficient use of residential land and public facilities, development regulations shall require minimum densities for multiple family development zones;*
- b. *Development regulations shall promote a range of densities that encourage a variety of housing types;*
- c. *Multiple family developments should be located in areas that provide walking, auto or transit connections to:*
  - (1) *Employment centers;*
  - (2) *Shopping areas;*
  - (3) *Transit service;*
  - (4) *Parks;*
  - (5) *Public buildings.*

Marion County Code does not establish minimum development densities. However, the densities proposed exceed the minimum density requirements in the City of Salem's RM-I and RM-II zones. The applicant describes and it has been previously discussed that the property is proximity to employment centers, shopping areas, transit service, parks, and public buildings. This policy appears to be met.

SACP Residential development policy 7: *Residential neighborhoods shall be served by a transportation system that provides access for pedestrian, bicycles, and vehicles while recognizing the neighborhoods physical constraints and transportation service needs:*

- a. *The transportation system shall promote all modes of transportation and dispersal rather than concentration of through traffic;*
- b. *Through traffic shall be addressed by siting street improvements and road networks that serve new development so that short trips can be made without driving;*
- c. *The transportation system shall provide for a network of streets fitted to the terrain with due consideration for safety, drainage, views, and vegetation.*

The applicant describes how the existing transportation network is adequate for the proposed future development. The intersection of Lancaster Drive and MacLeay Road is developed with bicycle and pedestrian infrastructure and is served by Cherriots' Lancaster/Verda route, which runs every 15 minutes. Moreover,

improvements imposed through this project will enhance connectivity between the development and pedestrian improvements on Lancaster Drive so that more short trips can be made without driving. This policy appears to be met.

*SACP Residential development policy 9: Alternative Residential Development Patterns. Subdivision and zoning regulations shall provide opportunities for increased housing densities, alternative housing patterns, and reduced development costs. Development regulations shall promote residential development patterns that encourage:*

- a. *The use of all modes of transportation;*
- b. *Reduction in vehicle miles traveled and length of auto trips; and*
- c. *Efficiency in providing public services.*

Since the proposal is for infill development, the site will have access to the existing transportation network and existing public services. Infill development promotes efficiency in the delivery of public services. Close proximity of businesses and personal services will permit residents access via pedestrian, bicycle, and transit service. Generally speaking, a more dense development pattern offers residents the opportunity to reduce the number of miles they travel to obtain goods and services. This policy appears to be met.

8. In addition, the criteria for a comprehensive plan change in MCC 16.43.020(A)-(D) apply:
  - A. *Conformance with the comprehensive plan goals, policies, and intent, and any plan map amendment criteria in the plan, or intergovernmental planning coordination agreement, pertaining to unincorporated lands.*
  - B. *The addition of the subject property to the inventory of lands in the proposed map designation and the corresponding inventory reduction in the current designation are consistent with the projected needs for such lands in the Comprehensive Plan.*
  - C. *Uses allowed in the proposed designation will not adversely affect planned uses on adjacent lands.*
  - D. *Public facilities and services necessary to support uses allowed in the proposed designation are available or are likely to be available in the near future.*

As discussed above, the proposal appears to meet the applicable goals, and policies in the Salem Area Comprehensive Plan. Additionally, the applicant describes in the application how the proposal is consistent with the various applicable statewide planning goals. As described above, the City has identified a need for additional multifamily zoned land and a diversification of housing options. The discussion above regarding bulk, height, and other development standards under SACP Residential Development Policy #1 describes how the proposed use is intended to be consistent with the surrounding residential uses and developments in the area. It also appears that public facilities and services necessary to support uses are available to the site. These criteria appear to be met by the proposal.

## **Zone Change**

9. The requirements for a zone change are found in MCC (Marion County Code) Section 16.39.050:
  - A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.*
  - B. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.*
  - C. *The request shall be consistent with the purpose statement for the proposed zone.*
  - D. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

As discussed, the applicant is requesting to partition the two contiguous properties into three parcels, and change the Comprehensive Plan designation to Multi-family Residential and apply the Multiple-Family Residential zone on one of the newly created parcels. RM (Multiple-Family Residential) zone is one of two zones which implement the Multi-Family Residential Comprehensive Plan land use designation. The zoning is applied in areas where the Comprehensive Plan designation is Multi-Family Residential and existing services are available to serve the multi-family density of development. As described above, there appear to be adequate public facilities, services, and transportation networks in place to serve the proposed use. Moreover, the envisioned development is consistent with the proposed Multiple-Family Residential Zone, which anticipates multi-family housing at densities greater than those allowed in the RL Zone in areas nearby Commercial Retail and Commercial Office zoned properties and located along arterial right-of-ways; as discussed previously, the subject property is nearby commercial zoned property and approximately 250 feet from the intersection of MacLeay Road with Lancaster Drive, which is categorized as a Major Arterial in the City of Salem's street classification system. The proposal appears to meet the criteria in (A)-(C). The applicant discusses that the use envisioned is residential and therefore compatible with surrounding uses. Although the proposed residential use will be more intensive under the new zoning, there is no evidence to suggest that the envisioned development will significantly adversely affect the ability of neighbors to use their properties in a less intensive manner. The criterion in (D) and therefore MCC 16.39.050 appears to be satisfied.

## **Partition**

The following analysis and conclusion apply if the comprehensive plan amendment and zone change are approved.

10. In order to partition land in an RM (Multiple-Family Residential) zone, the standards and criteria in Chapter 16.04.120 of the Marion County Code apply.
  - A. *Lot Area, Multifamily Dwellings and Other Uses. At least 6,000 square feet. (See Chapter 16.27 MCC for density limitations.)*
  - B. *Lot Dimensions. The width of a lot shall be at least 40 feet, and the depth of a lot shall be at least 70 feet except as provided in MCC 16.26.800 for planned developments.*

The applicant is requesting in a combined application to partition two contiguous properties to create three total lots. The applicant proposes changing the Comprehensive Plan designation from Single-Family Residential to Multi-Family Residential and to apply the Multiple-Family Residential zoning on one of the properties (the rear property). In order to partition property in the Multiple-Family Residential zone (Chapter 16.04) in the Marion County Code, the proposed lot must be at least 6,000 square feet and have minimum dimensions of 40 feet by 70 feet. The applicant proposes to create a property that is approximately 48,000 square feet and has the approximate dimensions of 214 feet by 201 feet. The criteria to partition in the RM zone appear to be met.

11. In order to partition land in an RS (Single-Family Residential) zone, the standards and criteria in Chapter 16.02.120 of the Marion County Code apply.
  - A. *Lot Area. The minimum lot area for a single-family dwelling in a subdivision approved after the effective date of the ordinance codified in this title, is 4,000 square feet when located within the Salem/Keizer area urban growth boundary. In all other cases lots shall be a minimum of 6,000 square feet. (See Chapter 16.27 MCC for density limitations.)*
  - B. *Lot Dimensions. Except as provided in MCC 16.26.800 for planned developments, the width of a lot shall be at least 60 feet; provided, that within the Salem/Keizer urban growth boundary the width of a lot shall be at least 40 feet, and the depth of a lot shall be at least 70 feet.*

As mentioned, the applicant is requesting in a combined application to partition two contiguous properties to create three total lots. Two of those lots will maintain the existing Single-Family Residential Comprehensive Plan Designation and the Single-Family Residential zoning. In order to partition property in the Single-Family Residential zone (Chapter 16.02) in the Marion County Code, the proposed lot must be at least 4,000 square feet and have minimum dimensions of 40 feet by 70 feet within the Salem-Keizer Urban Growth



Boundary. The applicant proposes to create one property that is approximately 14,414 square feet with dimensions of 88 feet and 167 feet; the applicant proposes to create a second lot that is roughly 10,273 square feet with dimensions of 91 feet and approximately 111 feet. The criteria to partition in the RS zone appear to be met.

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

All proposed lots will meet the minimum 20 foot frontage requirement. The parcel is relatively flat and therefore the maximum grade is not expected to exceed 12 percent. The applicant is proposing to serve the (rear) multifamily parcel with a 24 foot driveway. The applicant is notified that the access must be improved with a paved surface and that adequate sight-distances at the intersection with MacLeay Road will need to be maintained. No access easement is being proposed, as each property will have frontage on MacLeay Road. The access standards under MCC 16.33.680 are therefore met.

## **Adjustment**

13. In order to approve the adjustment, the criteria found in 16.41.030 MCC must be satisfied. These include:
- A. *The proposed development will not have a significant adverse impact upon adjacent existing or planned uses and development; and*
  - B. *The adjustment will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and*
  - C. *The adjustment is the minimum necessary to achieve the purpose of the adjustment and is the minimum necessary to permit development of the property for the proposed use; and*
  - D. *The intent and purpose of the specific provision to be adjusted is clearly inapplicable under the circumstances; or, the proposed development maintains the intent and purpose of the provision to be adjusted.*

The applicant is requesting two adjustments to applicable Marion County provisions.

The first is to reduce the required 5-foot side yard setback on the two lots that will remain zoned Single-Family Residential and contain a single-family dwelling. This adjustment is being requested to accommodate the new driveway that will serve the townhome development on the northern portion of the property. The applicant is requesting a side-yard setback of 3.5-feet between the home and the eastern property line for 4095 MacLeay Road SE, and a side-yard setback of 3-feet setback between the dwelling and the western property line for 4135 MacLeay Road SE. The applicant states that the adjustment should not have any adverse impact on the adjacent planned or existing uses. Staff agrees there is no reason to believe that this reduction will adversely impact existing or proposed uses in the area. There is also no reason to believe that it will have an adverse health or safety impact on people working or living in the area. The applicant has stated that the proposed reductions in side-yard setbacks are the minimum necessary to construct a driveway of adequate width to accommodate a fire apparatus; staff believes this to be true. The purpose of the setback provision is to allow for adequate light and

air between structures to improve livability; beyond the driveway, no new development is proposed in this area, which will allow for adequate light and air to enter the property. This preserves the intent of the provision. The criteria for an adjustment to the side-yard setback requirement are satisfied.

The second request is an adjustment to a standard within the multiple-family development code related to playground design. The standard to be adjusted is Chapter 16.04.200(C), which requires that the average length of a playground or playfield shall not be more than twice the average width. The applicant is proposing a 23-unit multi-family development; each unit will have two-bedrooms. Under 16.04.200(C), the development must have a minimum of 1,150 square feet of playground area. The applicant is proposing two play areas that combined will total to 2,370 square feet. Both are proposed on the southern portion of the multi-family lot and the length of each is at least twice the length of the width. The applicant states that they have provided more playground space than is required to mitigate the narrowness of the proposed areas. For this reason, the proposed development should not have an adverse impact on planned or existing uses. The applicant states that the adjustment is required because of the existing configuration of the property, and because various required elements—such as parking, fire-apparatus turnarounds, landscaped areas, and pedestrian walkways—constrain the developable area for a playground. The applicant states that the proposed configuration is the minimum necessary to accommodate all the required elements. The purpose of the provision is to increase the liability of the multifamily development by providing safe, accessible, and useable space for a playground. Although the provision to be adjusted is still applicable, staff agrees that the nature of infill places constraints on the proposed development. Staff also agrees that the applicant is proposing a variety of play spaces, in excess of what is required, and that these mitigation efforts maintain the intent and purpose of the provision. The criteria for an adjustment to provision that the average length of a playground or playfield shall not be more than twice the average width are satisfied.

## **CONCLUSION:**

14. Based on the above discussion, the comprehensive plan amendment, zone change, partition, and adjustment request are recommended to be approved. The Planning Division recommends the following conditions be applied to any approval:
  - A. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
  - B. All current and future development on the property must satisfy the specific development standards in the RS and RM zones, (Chapter 16.02 and 16.04 MCC) and the general development standards found in Chapters 16.26 through 16.40 of the MCC.
  - C. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition has been satisfied:

Prior to partition plat approval, enter into a Development Deferral Agreement with MCPW Engineering stipulating the following main points:

- Prior to issuance of building permits on the developable parcel, design and permit Macleay Road urban frontage improvements to the City of Salem Collector 'A' standard.
- Prior to issuance of building permits on the developable parcel, and if the pending RM zone change is fully-approved, design and permit a contiguous offsite urban pedestrian safety improvement along the north side of Macleay Road for an approximate distance of 160 feet, extending from the subject property west property line to the east curb return sidewalk in front of the Chevron fuel station. The offsite improvement shall consist of curb/gutter, curb line sidewalk, ancillary closed-system drainage SDCB retrofitting/tie-ins and miscellaneous pavement tie-in work as a Qualified Public Improvement, eligible for county TSDC credits upon application for building permits.
- Prior to issuance of building permits on the developable parcel, complete all county and city utility permitting necessary to extend services to the development.

- Prior to issuance of building permits on the developable parcel, provide a Performance & One-Year Warranty Surety Bond based on a county-approved engineering cost opinion for the public improvements to be inspected by MCPW Engineering [MCC 16.33.290].
- Prior to issuance of a Certificate of Occupancy on the developable parcel, acquire inspection approval for constructed Macleay Road urban frontage and contiguous offsite improvements, including utility work in the public right-of-way.

D. Marion County Survey Division requested the following conditions be included in the case:

- 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.