

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 ADJUSTMENT CASE NO. 24-002

APPLICATION: Application of George R. Duda and Joan K. Duda (Joan K. Duda Trust) to adjust the density standard to 1.5 dwelling units per 5 acres on a parcel sized 7.68-acres when the zone was applied in a UT-5 (Urban Transition, 5 acre) located in the 14,400 Block of Evans Valley Road NE, Silverton (T6S; R1W; Section 35D; Tax lot 102).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Adjustment subject to certain conditions.

EXPIRATION DATE: This decision is valid only when exercised by **September 7, 2026** (two years) unless an extension is granted. The effective period may be extended for one 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).

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield 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. The applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. The site plan for any building permits must significantly conform to the site plan provided for this adjustment application. The proposed homesite must be to the north of, and clustered as closely as possible with, the existing homesite at 14477 Evans Valley Rd NE as depicted on the site plan.
3. The deed restriction prohibiting land division on subject parcel (Tax lot 102) will remain in effect until it is served by sanitary sewer.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, state or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. The applicant is advised of the following:

4. 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.
5. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 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 deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) 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. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **September 9, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective on **September 10, 2024**, unless appealed.

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

1. The subject property is designated Single Family Residential in the City of Silverton Comprehensive Plan and correspondingly zoned UT-5 (Urban Transition 5-Acre Minimum). The primary intent of both the Plan designation and the zone is to retain and protect properties that will be needed to accommodate future urban residential development. The UT zoning is reflective of the fact the property is not served by urban facilities.
2. The subject property is located in the 14000 block of Evans Valley Rd NE. The parcel is vacant and mostly flat. Some of the southern portion is in use for residential accessory purposes, like parking, by the parcel under the same ownership addressed 14477 Evans Valley Rd NE which contains a dwelling. The subject parcel is specially assessed for farm use and appears to be planted with grass seed or a cover crop.

The subject parcel was created by partition in 1999 and is therefore considered a legal lot for land use purposes. The partition case (P99-020) included an adjustment proposal to allow a dwelling to be constructed on the subject parcel. That adjustment was denied.

The subject parcel was also the subject of an Administrative Review this year, AR24-008, to determine whether the parcel was eligible for a dwelling. The Administrative Review was denied due to the density limitation of MCC 16.13.320. The staff decision was appealed to the Hearings Officer, where the unique set of circumstances around the subject parcel were discussed in depth. Staff recommended the potential for this specific property to qualify for an Adjustment to the density limitation. The Administrative Review was withdrawn before the Hearings Officer issued a decision.

3. The subject parcel is within the City of Silverton UGB and not yet annexed. The surrounding uses are primarily residential with small farms to the west and south. The largest nearby farm is to the west of the subject parcel. North of this farm is a single-family residential neighborhood. Adjacent to the north of the subject parcel is a single-family residential neighborhood.
4. The applicant is proposing to adjust the density standard in MCC 16.13.320 from 1-dwelling per five acres to 1.5-dwellings per five acres on a property of 7.1-acres consisting of two parcels in the UT-5 zone. The suffix indicates the density standard of the zone, limiting this property to a single dwelling regardless of having been partitioned. Adjusting the density to 1.5-dwellings per five acres on this property would allow a dwelling to be built on the vacant parcel. The applicants submitted a letter from City of Silverton stating that they take no objection to this proposal.
5. Various agencies were contacted about the proposal and given an opportunity to comment.

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Marion County Building commented: “No Building Inspection concerns. It is recommended new property lines be established at least 3 feet from all existing structures exterior walls and overhangs. If any less, then additional fire resistive materials may be required to be installed on the exterior walls, for which a building permit would be required. Permits are required to be obtained prior to development and/or utilities installation on private property.”

Marion County Septic commented: “A Site Evaluation will be required for the proposed house. The replacement area for the existing system needs to be designated.”

Silverton Fire District commented: “The proposed new road and dwelling will need to comply with Oregon Fire Code regarding access and water supply.”

All other commenting agencies stated no objection to the proposal or failed to provide comments.

6. In order to approve the adjustment, the criteria found in Chapter 16.41.030 of the Marion County Code (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

Adjacent uses are primarily rural residential and urban residential, with some nearby agricultural uses. A single-family dwelling on the 5.9-acre parcel will have no significant adverse impact on the adjacent rural residences or the dense suburban neighborhood to the north.

The intent of the UT zone is to retain land for future urban development that is within the Urban Growth Boundary, but not yet annexed. The subject property was included within the City of Silverton's original UGB, and therefore appears to have been zoned Urban Transition since 1979. The intention of an Urban Growth Boundary is to accommodate for the growth of a city over a time frame of approximately 20-years. It has been 45-years and Silverton has still not annexed the subject parcels. Emails from Silverton's planning department, furnished by the applicant, show that annexation may not be an option until around 2035.

Silverton's comprehensive plan designated the subject parcels as Residential. Eventual annexation will allow for development at urban densities. The proposed site of development would cluster the dwelling on the 5.9-acre parcel near the existing dwelling on the 1.3-acre parcel, leaving approximately 5-acres of vacant land for future development. The applicant included a redevelopment plan with their application, using specifications from the City of Silverton, to show the potential for residential redevelopment at urban density when the property is eventually annexed.

The City of Silverton submitted a letter to the applicant representative confirming that they find the proposal of a dwelling on the 5.9-acre parcel acceptable. The criterion is met.

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

The proposed additional dwelling will be subject to building permits, and Land Development, Engineering, and Permitting standards to ensure that the structures and access will be safe. There is no indication that the proposed additional homesite will cause significant adverse effects on the health or safety of anyone. The criterion is met.

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

When the UT-5 zone was applied to this property it was approximately 7.1-acres (erroneously referred to as 7.68 in P99-020). The property was therefore allowed one dwelling, which exists and is addressed 14477 Evans Valley Rd NE. A partition in 1999 created a 1.3-acre parcel including the homesite, and a 5.9-acre vacant parcel. The 5.9-acre parcel created was not a buildable lot because the density limitation is based on when the zone was applied, not when a lot within that zone is created.

The 1999 denial of an adjustment to allow a second dwelling was based on the idea that annexation and development at urban densities would happen. An Urban Growth Boundary is intended to encompass land necessary for growth over a period of 20 years, and in 1999 the property had been zoned Urban transition for 20 years. Therefore, it is reasonable to theorize with some confidence that in 1999 Marion County Planning expected imminent annexation of this area. It has now been 45 years since Silverton brought this property into its Urban Growth Boundary. It remains vacant, and the proposed adjustment is the minimum necessary to develop it for any immediate residential-use which conforms to the underlying

comprehensive plan designation. Annexation is still required to develop this parcel to its full residential-use potential.

By adjusting the density limitation to 1.5 dwellings per 5 acres, this 7.1-acre property becomes eligible for two dwellings, allowing the vacant 5.9-acre parcel to be developed with a homesite. The criterion is met.

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 intent of density limitation in MCC 16.13.320 is to preserve land for future urban redevelopment. Rural homesites require significantly larger footprints to accommodate septic systems and wells. Clustered rural homesites are less likely to be redeveloped at urban densities and instead become estates in the middle of urban settings. The cost of extending infrastructure such as water and sewer is a limiting factor for the growth of smaller cities relying on relatively small tax bases. Increasing the requisite distance of infrastructure growth, while simultaneously decreasing the density of the new tax base, disincentivizes growth and exacerbates the costs of annexation.

The proposed adjustment to the density limitation, and location of the proposed homesite just north of the 1.3-acre parcel and homesite, minimize the deleterious effects of another development in this area. The vacant 5-acres encompasses an area south-adjacent to the subdivision off Crestview Dr. which was developed between 2008-2018. The vacant eastern portion of the subject property would allow for the future right-of-way and expansion of Pioneer Dr. south to Evan's Valley Rd. The circumstances surrounding the creation of this parcel, and the extraordinary amount of time it has remained in the Urban Transition zone, create a unique and undue hardship for this parcel. The provided redevelopment plan, and consent from the City of Silverton, both show that the proposal maintains the intent and purpose of the density limitation in the UT-5 zone. The criterion is met.

7. Based on the above discussion, it has been determined that the request satisfies all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich
Planning Director

Date: August 23, 2024

If you have any questions regarding this decision contact John Speckman at (503) 588-5038

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.