

Attention Property Owner: A land use proposal has been submitted for property near where you live or property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

NOTICE OF DECISION PARTITION/VARIANCE CASE NO. 24-012

APPLICATION: Application of AC Services LLC to partition two parcels of 2.98-acres and 3.39-acres into three parcels consisting of 2.00-acres, 2.11-acres and 2.35-acres and a variance to allow more than 4 dwellings to access off a private road in an AR (Acreage Residential) zone located at 2342 Delaney Rd SE and 7845 Wildberry Ln SE, Salem (T8S; R3W; Section 26D; Tax lots 1700 & 2300).

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

EXPIRATION DATE: This approval is valid only when the final partition plat is recorded by **October 4th, 2026** (two years). The effective period may be extended for an additional year subject to approval of an extension (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 division is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support a dwelling. 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: The following conditions must be met before a building permit can be obtained or the approved use established:

1. Per the Marion County Surveyor's Office, the parcels must be surveyed and monumented. Per ORS 92.050, the plat must be submitted for review, checking and recording fees will be required, and 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.
2. The applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036) and shall contain the notation that the survey is the result of Partition/Variance Case 24-012. Following plat approval, it shall be recorded with the Marion County Clerk.
3. Prior to submitting the plat for final review, the applicant shall have septic site evaluations done by the Marion County Building Inspection Division on all parcels. **The applicant is strongly encouraged to contact Building Inspection, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
4. Marion County LDEP requested the following be included:

ENGINEERING CONDITION

Condition A – Prior to plat approval, as a matter of traffic safety widen the Wildberry Lane gravel driving surface to 20 feet for a minimum distance of 50 feet plus a 5:1 south taper measured from the Delaney Road R/W to facilitate two-way vehicular passage in the vicinity of the public road connection.

5. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director. All parcels shall be a minimum of two acres in size.

6. The proposed “Parcel 1” shall be re-addressed from 2342 Delany Rd SE to **7805 Wildberry Ln SE**. The proposed “Parcel 2” shall keep the existing address of the parent parcel **7845 Wildberry Ln SE**. The proposed “Parcel 3” shall be addressed **7825 Wildberry Ln SE**. 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.

Prior to issuance of building permits on the resulting parcels:

7. The applicant shall provide a static water level measurement for any new or existing wells intended as the water supply for the lot on the enclosed form.
8. The applicant shall sign and submit a Farm/Forest & Sensitive Groundwater Overlay Zone Declaratory Statement for all new parcels to the Planning Division for each resulting parcel. This statement shall be recorded by the applicant with the Marion County Clerk’s Office after it has been reviewed and signed by the Planning Director.

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

9. After the final Partition plat 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 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 restrictions or conditions. It is recommended that the agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

10. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
11. The applicant should contact the Turner 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.

APPEAL PROCEDURE: The Marion 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 \$200) 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, together with the appeal fee, in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **October 4th, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 7th, 2024**, unless further consideration is requested.

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

1. The property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas.
2. The subject property is located on Wildberry Ln SE, with northern frontage on Delaney Rd SE. The property is currently vacant. The two parcels that constitute the subject property were created by partition in 1979 by MJP79-027 and are therefore both legal for land use purposes.

3. Surrounding uses to the north, and south consist of AR parcels ranging in size from 1-acre to 3-acres in size and vary in stages of development. The parcels to the east, across Wildberry Ln SE, are zoned ID (Interchange District). A storage facility is currently being developed on several of these parcels. The parcels to the west are outside of the Turner Interchange community and zoned SA (Special Agriculture. The immediately adjacent SA parcel produces shiitake mushrooms, and several parcels nearby are producing wine grapes.
4. The applicant proposes to divide a 5.37-acres consisting of two contiguous parcels into three parcels consisting of 2.00-acres, 2.11-acres and 2.35 acres. The applicant also requests a variance to allow more than four dwellings to be served by a private road.
5. Various agencies were contacted with requests for comment.

Marion County LDEP requested the following be included:

ENGINEERING CONDITION

***Condition A** – Prior to plat approval, as a matter of traffic safety widen the Wildberry Lane gravel driving surface to 20 feet for a minimum distance of 50 feet plus a 5:1 south taper measured from the Delaney Road R/W to facilitate two-way vehicular passage in the vicinity of the public road connection.*

ENGINEERING REQUIREMENT

B. Utility connection and extension work in the public R/W requires permits from PW Engineering.

ENGINEERING ADVISORY

C. The local fire department may impose additional emergency access requirements such as a turnout and/or turnaround either prior to plat approval or as a stipulation for issuance of building certificates of occupancy.

Marion County Surveyor's Office commented:

Partition:

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: "No Building Inspection concerns. Permit(s) are required to be obtained prior to development and/or utilities installation on private property."

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

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

6. There are no specific approval criteria for partitioning property in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres. Each of the parcels resulting from the proposed partition would meet this standard. The criterion is met.
7. Marion County Code 17.110.800 limits the number of dwellings served by a private road. The applicant is requesting that one additional dwelling be served by View Top Ln SE. The director may permit and authorize a variance to allow more than four dwellings be served by a private road when it appears from the application and facts presented that the proposal satisfies the variance criteria listed in MCC 17.122.020:

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

The only access to the subject property is off Wildberry Ln SE. There is no existing LDEP approved option for direct access off Delaney Rd SE. Creating a new access easement over neighboring properties, if possible, would be extremely difficult and costly. Without a variance of MCC 17.110.800 to grant access for one additional dwelling on View Top Ln SE the applicant would not be able to partition and develop the land to the maximum density allowed by the AR zone. The criterion is met.

B. There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and

The subject property is on the western edge of the Turner Interchange district, a small unincorporated area south of Salem, primarily composed of vacant ID zoned parcels. This community surrounds an interchange of Interstate highway 5 (I-5), bisected by Delany Rd SE which provides access to the on and off ramps. The subject property is adjacent to an active farm operation to the west. Access via easement across either the adjacent farm, or east adjacent across a storage facility are not realistic options. These parcels have frontage on Delaney Road, and one parcel could theoretically apply for an access permit to create a driveway rather than utilize Wildberry. This hypothetical access would be the 5th access point in a 700-foot span of a very busy road used by vehicles entering and exiting I-5. The unusual circumstances surrounding the Turner Interchange district create a situation where the proposed variance to MCC17.110.800 to allow another dwelling accessed off Wildberry is the most reasonable option for development of the subject property. The criterion is met.

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

The proposed use is to allow the creation of three lots, maximizing the rural residential capacity in the AR zone which requires a 2-acre minimum. This degree of variance is the minimum to permit the proposed development. The criterion is met.

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

The roadway currently serves five lots, three with dwellings, in an unincorporated community. The Turner Interchange district is a small unincorporated area south of Salem, primarily composed of vacant ID zoned parcels. This community surrounds an interchange of Interstate highway 5 (I-5), bisected by Delany Rd SE. Approval of this variance reduces the amount of access points onto a busy section of Delany Rd SE. This concentration of traffic benefits the nearby parcels not served by Wildberry. The increase in traffic on Wildberry itself will be mitigated by the required improvements. The criterion is met.

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

Requests for Comments were sent out to various agencies regarding the proposed partition and variance. The Turner Fire District did not respond with any access or safety concerns. Any requirements for fire turnarounds may be placed by the fire district at the time building permits are applied for. It appears that the proposed variance to allow six dwellings to be served by Wildberry Ln SE would not adversely affect public health or safety. The criterion is met.

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

Allowing Wildberry Ln SE to serve one additional dwelling in its current condition would not exceed its capacity. The condition of approval regarding improvements to Wildberry Ln SE will ensure this private road can handle the increased traffic. The criterion is met.

8. Chapter 17.181 MCC establishes provisions for partitioning property in an SGO zone. In the SGO-5 zone, creating a parcel less than five acres in size requires the applicants to submit a “Hydrology Review” meeting the provisions listed in MCC 17.181.

The applicant has submitted a hydrology study to Marion County Planning for peer review and the results of this review indicates that there is a sustainable long-term supply of ground water for the proposed development. This satisfies the requirements in chapter 17.181 of the Marion County Rural Code pertaining to a Sensitive Groundwater Overlay.

However, the County requires a Declaratory Statement be recorded with the property deed. This notifies the applicant and subsequent owners that there may be long term groundwater supply problems and that the County is not responsible for deepening or replacing wells. The County also requires submission of static water level measurements prior to recording the plat for all existing wells; and prior to building permits for all undeveloped parcels.

Therefore, prior to gaining final plat approval, static water level measurements shall be recorded and submitted to Marion County for the existing well(s), and the filing of a declaratory statement for the SGO overlay zone with the Clerk’s Office shall be conditions of approval. The criteria is met.

9. Chapter 17.128.050 MCC establishes special siting standards for dwellings near resource zones:

- (a) *Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones when necessary to minimize potential conflicts with farm or forest uses. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses.*
- (b) *The owner of a proposed dwelling to be located within 500 feet of the EFU, SA, FT, TC zones shall be required to concur in the filing of the Declaratory Statement prescribed in the respective resource zone.*

The subject property borders SA land in farm use to the west. The actual farm operation on this adjacent property occurs indoors and is itself 250-feet from the subject property. Potential conflicts are already minimized therefore the 100-foot special setback need not apply to the proposed home site, but the filing of a declaratory statement for Farm/Forest use will and shall be made a condition of approval. The criterion is met.

10. Based on the above findings, the proposed partitioning complies with the above criteria and is therefore **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: September 19, 2024

If you have any questions, please 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.