



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Robert Wheeldon, Director

Room 114, Linn County Courthouse
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Phone 541-967-3816 Fax 541-926-2060
www.co.linn.or.us

NOTICE OF PENDING LAND USE ACTION

The following request has been submitted for review by this Department. Any comments you wish to provide must be received by 5:00 p.m. October 30, 2020. All comments will be appreciated; however, Oregon law requires that written comments specify which application criteria apply to submitted testimony.

APPLICANT NAME: Lynn & Nichol Merrill/Richard & Denise Rose

LANDOWNER: Same

FILE NUMBER/TYPE OF REQUEST: PD20-0204; combined applications for a partition, variance, access review, and conditional use permits for three dwellings on property located within an urban growth area, pursuant to LCC 930.720(B)(1).

LOCATION OF PROPERTY: The property is located northeast of Linnwood Drive, approximately 0.31 miles northeast of the intersection of Linnwood Drive and Scrael Hill Road, and approximately 1.00 mile northeast of the city limits of Albany. (T10S, R03W, Section 35, Tax Lot 101)

PLAN DESIGNATION/ZONE DESIGNATION: Urban Residential Reserve/Urban Growth Area-Urban Growth Management-20 (UGA-UGM-20)

URBAN GROWTH AREA/PLANNING AREA: City of Albany Urban Growth Area

SUMMARY OF REQUEST: The applicant is proposing to partition a 16.05-acre property into one, 5.30-acre parcel, one, 5.50-acre parcel, and one, 5.00-acre parcel. The applicant is requesting a variance to the property size standard of 20 acres and a variance to the minimum width standard of 500 feet to create the proposed parcels. The applicant has submitted a conditional use permit to place a dwelling on each proposed parcel. Also, an easement review application to modify an existing 30-foot access easement to provide access to the proposed parcels. The purpose of this notice is to solicit comments and input from surrounding property owners and affected agencies regarding the applicable decision criteria (attached) so that the Department may make a final land use decision.

COMMENTS: [Blank lines for comments]

BY [Blank] AGENCY (IF ANY) [Blank] DATE [Blank]

STAFF CONTACT PERSON: Alyssa Boles; (541) 967-3816, ext. 2360 or aboles@co.linn.or.us

Table with 3 main columns: Linn County, State of Oregon, and Other. Rows include various departments like Sheriff, Assessor, GIS, DEQ, ODOT/OSHD, etc.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

1. Oregon law [ORS 215.416(5)] requires that local governments make copies of applicable decision criteria available to any participant in a land use hearing. This application will be reviewed, and a decision made, using the decision criteria listed below.

All testimony and evidence must be directed toward the criteria described above or other criteria in the plan or land use regulations, which you believe, apply to the decision. Failure to raise an issue before the close of the record during the comment period/final evidentiary hearing, by letter or in person, or failure to provide statements or evidence sufficient to afford the decision maker(s) and the parties an adequate opportunity to respond to each issue raised precludes an appeal based on that issue.

Sections 924.200(B), 924.210, 933.260, 935.150, 938.300(B), 938.300(B)(2-3) and 938.340 of the Linn County Land Development Code contain the decision criteria specified for use with this application.

**924.200 - Decision criteria for partitions; generally**

(B) *Decision criteria.*

- (1) Absent a variance, the partitioning of land must meet established minimum parcel sizes, established setbacks and other applicable property development standards in the Development Code.
- (2) If the proposal complies with all of the applicable criteria specified in this section and in LCC 924.210 or 924.250, the Director shall grant tentative approval to the partition.
- (3) If the size of a parcel was the basis for a dwelling having been allowed outright, the parcel shall not be reduced in size below the qualifying minimum for that dwelling unless that dwelling is subsequently authorized under a different dwelling test.
- (4) If the size of a parcel and the farm use of that parcel were the justification for a dwelling allowed conditionally, any reduction of the parcel size shall be allowed only if the resulting farm use continues to meet a current farm dwelling test. Such is an action is Type IIA. For example, the conditional use for a dwelling once justified by a 200-acre cow-calf operation, may or may not be justified if the parcel is allowed to be partitioned or adjusted downward to an 80-acre parcel.
- (5) If the property is split-zoned and the split-zoning was not initiated by the landowner, the property may be partitioned in accordance with this Chapter along the zoning district or jurisdictional boundary if:
  - (a) A property is transected by an urban growth boundary, city limits, county line or a boundary between a non-resource zone and a zoning district in the RRZ;
  - (b) The property is transected by a boundary between two resource zoning districts and the resulting parcels would either conform to the minimum parcel size in the applicable zoning districts or have otherwise been authorized under the provisions of LCC 924.500 to LCC 924.800;
  - (c) The resulting parcels have sufficient on-site area to provide an approved septic system; and
  - (d) The proposed development on the resulting parcels can either meet the property-line and riparian setbacks or has been approved for a variance.
- (6) The proposed parcels meet the minimum size, width and depth standards of the zoning district in which they are located and conform to the standards of LCC Chapter 923 (Lot and Parcel Design Standards Code). In the RR and RCT zoning districts, properties containing more than one lawfully-established, habitable dwelling may be partitioned into substandard-sized parcels if consistent with Plan Policy 14 or 9, respectively. Where more than one dwelling exists, no parcel may be created that does not contain a dwelling and the size of each parcel shall be balanced as much as practical, given the location of dwellings, outbuildings, septic systems, setbacks and driveways.
- (7) The partition of land will not create more than three authorized units of land within one calendar year.
- (8) Except as provided in paragraph (9) of this subsection, each proposed parcel shall have an approved septic system located within the boundaries of the proposed parcels.

- (9) Within the Rural Resource Zone.
  - (a) For a parcel in the RRZ created solely for resource management purposes, such parcel may not be required to have an approved septic system.
  - (b) For a parcel in the RRZ not created solely for resource management purposes, such parcel is required to have an approved septic system unless the use does not require such system.
  - (c) For a parcel in the RRZ created for a non-resource management purpose, such parcel is required to have an approved septic system unless the use does not require such system. Written certification from an irrigation district, drainage district, water control district, water improvement district or district improvement company within whose boundaries the proposed partition is located as to whether or not the property is within the district and is subject to district fees. (See ORS 92.090)
- (10) When property proposed for partitioning is within a city's urban growth area (UGA), appropriate time shall be given for a city's review and comment pursuant to the urban growth boundary management agreement. Partitions within an urban growth area may require an urban conversion plan approved by the city.

**Section 924.210 - Decision criteria for partitions with recognized access**

- (A) A partition plan having recognized access may be tentatively approved if, on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that all of the criteria in LCC 924.200 and subsection (B) of this section have been met.
- (B) All parcels created shall have an existing, recognized, vehicular access pursuant to LCC 935.015 and other applicable provisions of LCC Chapter 935 (Access Improvement Standards Code).

**Section 933.260 - UGAZ Decision Criteria**

- (A) The location of any use described as a conditional use within the UGAZ may be permitted if, on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that all the criteria in subsection (B) have been met.
- (B) *Decision criteria.*
  - (1) The proposed development is permitted and is consistent with the affected city's comprehensive plan map designations and the future city zoning.
  - (2) The location, size, design and operating characteristics of the proposed development are compatible with future development allowed by the affected city's comprehensive plan map designation.
  - (3) The affected city has reviewed the proposal and has not identified any substantial conflicts with its *Comprehensive Plan*, Facilities Plans or development standards.
  - (4) The location, design and site planning of the proposed development does not:
    - (a) preclude future urban development on the subject property or adjacent properties; or
    - (b) conflict with future location and placement of streets and services.
  - (5) If the proposed development has the potential to generate conflicts which have been determined to be detrimental to the public health, safety and general welfare or to the overall livability of the neighborhood, then the development shall not be permitted without mitigations. The mitigations will be determined by the decision maker. Potential conflicts include, but are not limited to noise, vibration, smoke, dust, odor, fumes, heat, glare or electromagnetic interference.
  - (6) The proposed site
    - (a) can support an on-site, subsurface sewage disposal system, and
    - (b) has an adequate supply of potable water.
  - (7) Traffic generated from the site can be adequately served by the road system servicing the site.
  - (8) Road access meets County standards as found in section 3.2 of the Linn County Transportation Element of the *Comprehensive Plan*.

- (9) The proposed development site is located outside of a mapped geologic hazard area or of a 100-year flood plain unless it is demonstrated that the use can be designed and engineered to comply with accepted hazard-mitigation requirements.

**935.150 - Decision Criteria: easement of road access**

- (A) A request for easement of road access recognition may be approved if, on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that all of the following decision criteria can be met:
- (1) The proposed placement of the easement of road access shall not pose a traffic hazard, taking into consideration the number of nearby access points and geographic conditions of the property; and
  - (2) The easement of road access is the only reasonable method of providing access to the parcel;
- (B) An exception to LCC 935.110 (B) may be taken if, on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that all of the following exist:
- (1) That exceptional and extraordinary circumstances or conditions exist;
  - (2) That an unnecessary and severe hardship would result from a strict interpretation and enforcement of the specified regulations if the easement of road access is not recognized and;
  - (3) That recognition of the easement of road access, at the substandard width, would not be detrimental to the public health, safety or welfare nor materially injurious to properties or improvements in the vicinity.
- (C) If findings can be made based upon all of the criteria, recognition of the easement of road access may be granted. If findings cannot be made based upon all the criteria, recognition of the easement of road access shall not be granted.
- (D) Except as provided in subsection (E) of this section, easements granted pursuant to this Chapter shall be perpetual and non-exclusive.
- (E) An easement may be granted for temporary access.

**Section 938.300 – Decision criteria [938.300(B)(1) applicable to width standard variance only]**

- (B) A variance may be granted to the standards regulating property development if on the basis of the application, investigation, testimony, and evidence submitted; findings and conclusions show that all of the following conditions exist:
- (1) A variance from a development standard as set forth in LCC 934 (Development Standards Code) is needed because conditions or circumstances or both exist on the land or structure involved that renders development impractical or impossible;
  - (2) Granting the variance would not be detrimental to the public health, safety, or welfare nor materially injurious to properties or improvements in the vicinity; and
  - (3) Approval of the variance is limited to the minimum necessary to permit otherwise normal development of the property for the proposed use.

**Section 938.340 - Decision criteria for UGA–UGM minimum property size**

The Director may approve a variance to the minimum property size of an authorized unit of land in the UGA–UGM zoning district if:

- (A) the criteria of LCC 938.300(B)(2) and (3) are met; and
- (B) the proposal is consistent with the affected city's comprehensive plan.

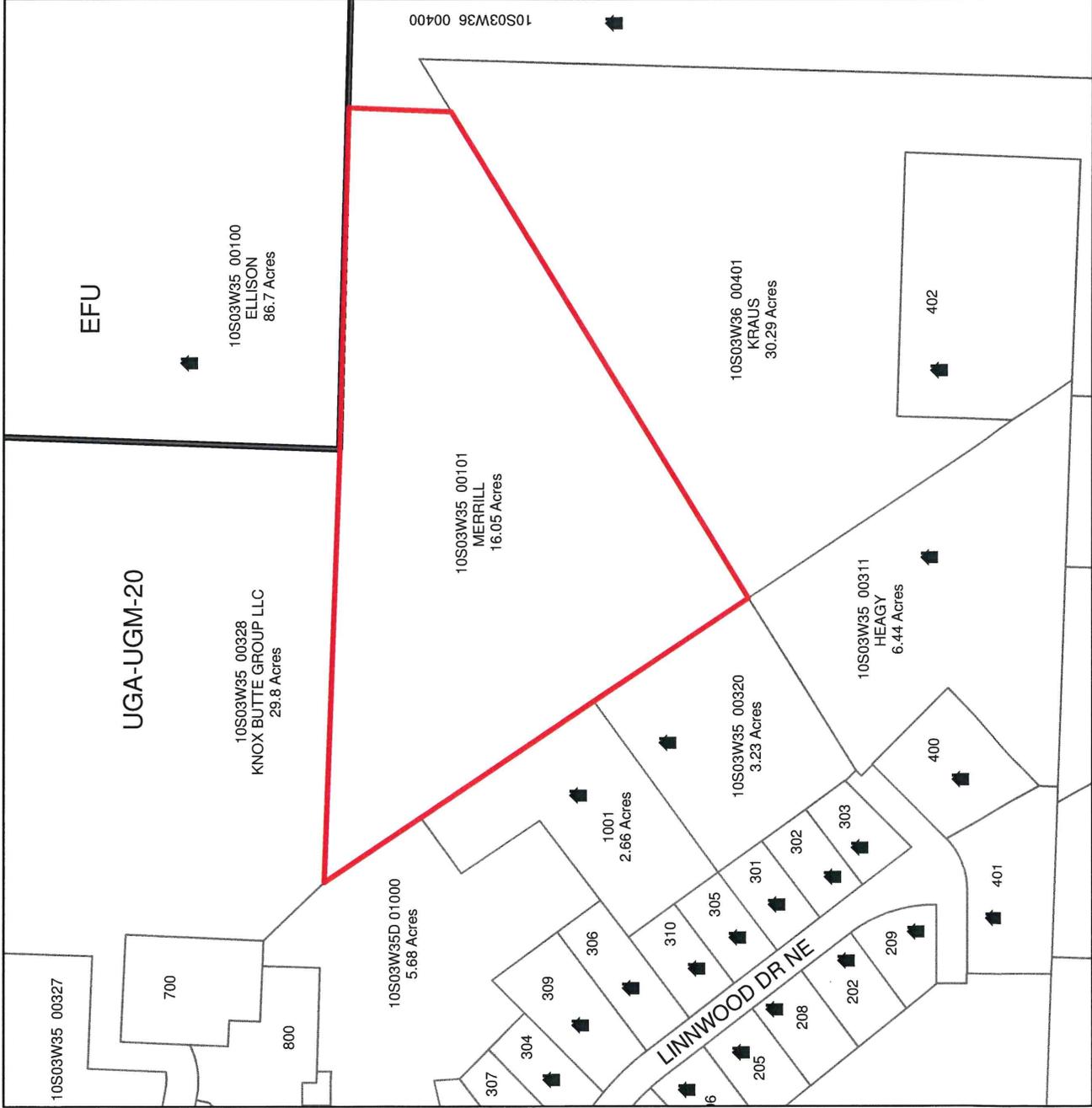
3. Please note the deadline stated in the accompanying notice for submitting your written comments for decisions to be made by the Planning and Building Department.
4. If a public hearing is scheduled before either the Planning Commission or the Board of County Commissioners, written and/or oral comments may be submitted either before and/or during that hearing. Please note the time and date of the hearing in the accompanying notice.
5. A map(s) depicting the parcel under review and surrounding lands is attached to the notice.

6. A copy of the application, all documents and evidence submitted by or on behalf of the applicant and the applicable criteria are available for inspection at no cost and will be provided at reasonable cost. For applications scheduled for public hearing, a staff report will be available for inspection at the Department at least seven days prior to the hearing. A copy of the staff report will be provided at reasonable cost.
7. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by the applicant shall result in a corresponding extension of the 150-day time limitations of ORS 215.428.
8. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The decision maker shall grant the request by either (a) continuing the public hearing or (b) leaving the record open for additional written evidence or testimony. If the decision maker grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the initial hearing.
  - (a) At the continued hearing, persons may present and rebut new evidence and testimony. If new written evidence is submitted, any person may request, prior to the close of the continued hearing that the record be left open for at least seven more days to submit additional written evidence or testimony to respond to the new written evidence.
  - (b) If the record is left open, it shall remain open for at least seven days. During the period the record was left open, any participant may file a written request with the local government for an opportunity to respond to new evidence submitted. If the record has been closed and such a request has been timely filed, the record shall be reopened. Unless waived by the applicant, the applicant shall have at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. **If the record is reopened to admit new evidence or testimony, any person may raise new issues, which relate to the new evidence, testimony or decision criteria for the application.** Except when requested or agreed to by the applicant, the extension shall be subject to the 150-day limitations of ORS 215.428.
9. Appeals from Departmental decisions result in a hearing before the Planning Commission; appeals from Commission decisions result in a new hearing before the Board of County Commissioners.
10. Testimony or evidence previously submitted to the Commission must be **resubmitted** by the parties to the Board for the new hearing.
11. If this case is scheduled for a public hearing, the hearing will begin with a declaration of any ex parte contacts (contacts which occurred outside of the public hearing) or any conflict of interest by the decision makers. This will be followed by the staff report from the planning department. Then the applicant (or appellant if case is an appeal) will testify, followed by testimony by other people in support of the application. After the people who are in favor of the application are finished, testimony from opponents will begin. This will be followed by testimony from people who neither favor nor oppose the application. The applicant will then be given the opportunity for rebuttal. The decision makers are free to ask questions of any person who has testified or of staff at any point during the hearing.

If the hearing is continued or the record is left open, the chairperson will announce the date, time, and place for resumption of the hearing and/or what limitations exist on further testimony or submittal of written materials. If a site visit is warranted, the chairperson will announce the time and date of such a visit. If the hearing and record are closed, the decision makers will begin deliberations and/or will announce the time, date and place when the decision will be made.

# Linn County Planning & Building Department

# Notice Map



Legend:

- Subject Property
- taxlots
- Zoning

**PD20-0204**  
**10S03W35 00101**  
**MERRILL**  
**16.05 acres**



10/09/2020

# Site Plan

