

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

2
3 ORDER

4
5 **IN THE MATTER OF THE APPLICATION OF**
6 **MICHAEL AND SUSIE LE FOR A PARTITION**
7 **AND MAJOR VARIANCE ON PROPERTY**
8 **LOCATED AT 527 DEARBORN AVENUE N,**
9 **KEIZER, OREGON (CASE NO. 2023-12)**

10
11 The City of Keizer orders as follows:

12 Section 1. THE APPLICATION. This matter came before the Keizer City
13 Council on the appeal of Wendell Weckert of the Keizer Planning Commission's
14 approval of the application of Michael and Susie Le to divide an existing parcel totaling
15 approximately 16,160 square feet into two parcels comprised of approximately 7,000
16 square feet and approximately 6,600 square feet. The proposal also includes a major
17 variance request to reduce the minimum required setback from the existing home to
18 the private access easement. The property is identified on the Marion County Tax
19 Assessor's Map as Township 7 South, Range 3 West, Section 03AD, Tax Lot 02700.
20 On September 18, 2023, the Planning Director approved the requested partition and
21 major variance request. The Planning Director's decision was appealed to the Planning
22 Commission. The Planning Commission upheld the decision on November 8, 2023.
23 Mr. Weckert appealed the Planning Commission's decision because he feels the
24 application does not comply with the following eight errors: 1. 3.105.05 Exhibit 1,
25 errors/omission- setback variances (trees+health+) OAR 690.210, KZR 2.309; 2.

1 3.107.07.A rationality to grant yourself easement on – rental + home+ADU; 3.
2 Partition proposal based on unproven housing need, and; 4. Inconsistent with Keizer
3 blight policy.; 5. Disgorgement of ill gotten gains thru socializing gains from criminal
4 acts.; 6. ORS 105.810 City becomes accessory to criminal and civil damage claims,
5 suites.; 7. ORS 368.256 Creation of public hazards.; and 8. 5th Amendment
6 Constitutional property and other rights to due process.

7 Section 2. JURISDICTION. The land in question in this Order is within the
8 city limits of the City of Keizer. The City Council is the governing body for the City
9 of Keizer. As the governing body, the City Council has the authority to make final
10 land use decisions concerning land within the city limits of the City of Keizer.

11 Section 3. PUBLIC HEARING. A public hearing was held on this matter
12 before the Keizer City Council on February 5, 2024. The following persons either
13 appeared at the City Council hearing or provided written testimony on the application:

- 14 1. Shane Witham, Planning Director
- 15 2. Michael Le, Applicant
- 16 3. Wendell Weckert, Appellant

17 Section 4. EVIDENCE. Evidence before the City Council in this matter is
18 summarized in Exhibit “A” attached.

19 Section 5. OBJECTIONS. No objections have been raised as to notice,
20 jurisdiction, alleged conflicts of interest, evidence presented or testimony taken at the
21 hearing.

1 Section 6. CRITERIA AND STANDARDS. The criteria and standards
2 relevant to this decision in this matter are set forth in Exhibit "B" attached.

3 Section 7. FACTS. The facts before the City Council in this matter are set forth
4 in Exhibit "C" attached.

5 Section 8. JUSTIFICATION. Justification for the City Council's decision in
6 this matter is explained in Exhibit "D" attached.

7 Section 9. ACTION. The decision of the City Council is set forth in Exhibit
8 "E" attached.

9 Section 10. FINAL DETERMINATION. This Order is the final determination
10 in this matter.

11 Section 11. EFFECTIVE DATE. This Order shall become effective thirty (30)
12 days after its passage.

13 Section 12. APPEAL. A party aggrieved by the final determination in a
14 proceeding may have it reviewed under ORS 197.830 to ORS 197.860.

15 PASSED this 20th day of February, 2024.

16
17 SIGNED this 20th day of February, 2024.

18
19
20 

21 ~~Mayor~~ Council President Starr

22
23 
24 City Recorder

25

EXHIBIT "A"

Evidence

Official notice has been taken of the Planning Department files and reports in this matter, including the application and exhibits contained therein.

The minutes of the City Council meeting of February 5, 2024 are incorporated herein as if fully set forth.

EXHIBIT "B"

Criteria and Standards

The criteria and standards relevant to this application are found in the Keizer Development Code (KDC). The specific criteria are set forth below:

1. KDC 2.301 (General Provisions)
2. KDC 2.302 (Street Standards)
3. KDC 2.303 (Off-Street Parking and Loading)
4. KDC 2.305 (Transit Facilities)
5. KDC 2.306 (Stormwater Management)
6. KDC 2.307 (Utility Lines and Facilities)
7. KDC 2.309 (Site and Landscaping Design)
8. KDC 2.310 (Development Standards for Land Divisions)
9. KDC 3.105 (Variances – Minor and Major)
10. KDC 3.107 (Partitions)

No other specific criteria and standards were identified at the hearing.

EXHIBIT "C"

Facts

FINDINGS: GENERAL

1. The applicants/property owners are Michael and Susie Le.
2. The subject property is located at 527 Dearborn Av N, Keizer, Oregon and is identified on the Marion County Tax Assessor's as Township 7 South, Range 3 West, Section 03AD Tax Lot 02700.
3. The subject property contains approximately 16,160 square feet in area.
4. The subject property is currently developed with a single-family home and accessory dwelling unit. The property is currently served by both public water and public sewer.
5. The subject property zoned RS (Single Family Residential) and designated Low Density Residential (LDR) in the Comprehensive Plan.
6. Surrounding properties are zoned RS and developed with single family dwellings.
7. The proposal is to divide an existing parcel totaling approximately 16,160 square feet into two parcels comprised of approximately 7,000 square feet and approximately 6,600 square feet. The proposal also includes a major variance request to reduce the minimum required setback from the existing home to the private access easement.
8. The Keizer Public Works Department submitted comments regarding requirements for public facilities and improvements necessary to serve the subject property.
9. The Marion County Surveyor's office submitted comments regarding the process for platting the partition.
10. The Keizer Fire District submitted comments regarding the major variance request.

11. The City of Salem Public Works Department submitted comments stating the process for the sewer connection.
12. The Salem-Keizer Public Schools submitted comments noting the school capacities, current enrollments and expected impact of development.
13. The City of Keizer Police Department and the West Keizer Neighborhood Association submitted that they have reviewed the proposal and have no comments.
14. A letter requesting comments was sent to the surrounding property owners within 250 feet of the subject property. Comments were received from the following:
 - a. Wendell Weckert - 557 Dearborn Av N
 - b. Sharla Hill - 497 Dearborn Av N
 - c. John Hill - 497 Dearborn Av N
 - d. Stephen Kalb - 4880 Delight St N
 - e. Patsy Ozenna-LeMay - 507 Dearborn Av N
 - f. Arthur Mauer - 4860 Delights St N
15. The Planning Director's decision was appealed to the Planning Commission.
16. The Planning Commission held a public hearing on this application on November 8, 2023.
17. On November 28, 2023, the applicant requested to extend the statutory deadline by sixty (60) days.
18. The City Council held a public hearing on the appeal of this application on February 5, 2024.

FACTS: PARTITION AND RELATED FINDINGS.

19. The Review Criteria for a Partition are listed in Section 3.107.07 of the Keizer Development Code (KDC). The criteria for the applicable sections of the Keizer Development Code are listed below:

A. SECTION 3.107.07.A - EACH PARCEL SHALL MEET THE ACCESS REQUIREMENTS OF SECTION 2.310.03.D.

All lots and parcels created after the effective date of this Ordinance shall provide a minimum frontage, on an existing or proposed public street, equal to the minimum width required by the underlying zone. Exceptions apply for Lots or parcels that are accessed via an access easement and flag lots.

EXHIBIT "C"

Page 2 of 15

FINDINGS: The intent of this provision is to ensure that all lots have a minimum frontage along a public street so that development may occur in compliance with city standards and building setback requirements. An exception applies for lots or parcels that are accessed via an access easement.

The existing home has frontage along Dearborn Avenue of approximately 80' which exceeds the minimum lot width requirement of 40'. The applicant is proposing the existing driveway on Dearborn Av N be removed and that both lots obtain vehicular access from the proposed access easement. Both parcels will exceed the minimum requirement of 20' of frontage along the access easement. This will be placed as a condition of approval and will be confirmed through the process of platting the partition. As conditioned, this proposal can comply with this criterion.

B. SECTION 3.107.07.B - EACH PARCEL SHALL SATISFY THE DIMENSIONAL STANDARDS OF THE APPLICABLE ZONING DISTRICT, UNLESS A VARIANCE FROM THESE STANDARDS IS REQUESTED AND APPROVED.

FINDINGS: The subject property is located in the RS zone. The RS zone requires new lots to have a minimum width of 40' and a minimum depth of 70' for a single-family home. The applicant's proposed plan and written statement indicate both lots exceed the minimum width requirement and the minimum depth requirement of the RS zone.

The RS zone also regulates setback requirements in the dimensional standards section of the development code. The minimum rear-yard setback required for a one-story home is 14'. The existing one-story home will need to demonstrate the minimum rear-yard setbacks will be met with the new created Parcel. A site plan, prepared by a licensed engineer or surveyor and submitted to the City of Keizer Planning Department demonstrating the existing dwelling meets the minimum rear setback requirement of the RS zone for a one-story dwelling and is placed as a condition of approval. With this condition, this request can satisfy this criterion.

C. SECTION 3.107.07.C - EACH PARCEL SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 2.310.

1. *Section 2.310.03.A. Minimum lot area shall conform to the requirements of the zoning district in which the parcel is located.*

FINDINGS: The minimum lot size for development in the RS zone is 4,000 square feet for a single-family dwelling or duplex, 5,000 square feet for a triplex, and 7,000 square feet for a quadplex or cottage cluster. In no case can the proposed parcels be less than the minimum required by the RS zone without variance approval. Comments were received from neighbors expressing concern over the submitted site plan and questioning the accuracy of the proposal. As a condition of partition approval, all requirements of the Marion County Surveyor's Office must be met. This includes surveying the property and showing both gross and net area of the proposed parcels which will ensure that minimum lot sizes and dimensions are adhered to.

The applicant's proposed site plan shows Parcel 1 as approximately 7,000 square feet in area with an existing single-family dwelling. The applicant's site plan indicates the existing house will remain. Currently, an ADU is located on the new proposed Parcel 2. ADU's are only allowed in conjunction with a single-family dwelling. Even though Parcel 2 is proposed to be approximately 6,600 square feet in area, future development will be limited to a single-family home, unless the existing ADU were to be removed. Due to the ADU's current location, the ADU cannot qualify as a primary dwelling as it does not meet the setback requirements of a primary dwelling. As a condition of partition approval, a new dwelling is required to be built on Parcel 2 within one-year of the recording of this partition, or the ADU must be removed. To ensure this requirement is met, an Improvement Agreement (or other instrument acceptable to the City) will be required to be recorded with Marion County Clerk's office. Cost for recording will be the responsibility of the applicant.

All parcels exceed the minimum 4,000 square feet required. With the above-mentioned conditions of approval, this request can satisfy this criterion.

2. ***Section 2.310.03.C. Lot width and depth. The depth of a lot or parcel shall not be more than 3 times the width of the parcel.***

FINDINGS: The intent of this provision is to prevent the creation of parcels unusually deep and narrow which can be difficult to serve and develop, and to promote an orderly and efficient development pattern and use of property. The submitted site plan shows the proposed parcels comply with this standard. Neither of the two parcels will have a length three times its width and therefore meets the minimum lot width and depth ratio

requirements as outlined in the KDC. This proposal complies with this criterion.

3. ***Section 2.310.03.D. Access. All lots and parcels shall provide a minimum frontage, on an existing or proposed public street, equal to the minimum lot width required by the underlying zone. The following exceptions shall apply - lots accessed via an access easement, lots in townhouse or Planned Unit Developments, cul-de-sac lots and flag lots.***

FINDINGS: The applicant's site plan indicates Parcel 1 complies with this standard. Both lots will obtain vehicular access from the proposed private access easement and exceed the minimum frontage requirement of 20' on the easement. Therefore, this request satisfies this criterion.

4. ***Section 2.310.03.E. Flag Lots. Flag lots shall only be permitted if it is the only reasonable method by which the rear portion of a lot being unusually deep or having an unusual configuration maybe accessed.***

FINDINGS: The applicant's site plan indicates Parcel 2 will be accessed via an access easement and will not be developed as a flag lot, therefore this criterion does not apply.

5. ***Section 2.310.03.G. The side lines of lots, as far as practicable, shall run at right angles to the right-of-way line of the adjacent street. The rear lot line shall be no less than ½ the dimension of the front lot line.***

FINDINGS: The intent of this provision is to allow the division of property that will result in uniform shaped lots thereby avoiding difficult to develop lots. The subject property is a rectangular shaped property that will result in dividing the lot into 2 rectangular shaped lots. The proposed lot lines run at right angles and the rear lot lines are all uniform with each front line not less than ½ the dimension of the front lot line. This development proposal will allow the property to be developed consistent with the provisions of the KDC. Therefore, this request satisfies this criterion.

6. ***Section 2.310.03.H. Utility easements shall be provided on lot area where necessary to accommodate public facilities. Such easements shall have a minimum total width as specified in Section 2.302.04 of the Keizer Development Code.***

FINDINGS: Both the City of Keizer and City of Salem Public Works Department's submitted comments pertaining to utility easements and facilities which have been included as conditions for the partition approval. This is a development requirement and shall be placed as a condition of approval of this partition application. Therefore, this request can comply with this criterion.

7. ***Section 2.310.05.A. Private Access. Private driveways serving flag lots, or private streets and access easements, shall be surfaced per the requirements of this Code.***

FINDINGS: The applicant is proposing a 20' wide access easement to serve the newly created lots with a turnaround located on Parcel 2. The standards governing access easements will be further addressed later. As a condition of partition approval, the proposed access easement will be required to be paved a minimum of 16' wide. This request can comply with this criterion.

8. ***Section 2.310.05.C. Street Frontage Improvements.***

FINDINGS: The City has a legitimate governmental interest in assuring the development does not cause a public problem of inadequate, unsafe and inefficient public transportation facilities. This is done by ensuring that adequate street improvements are provided. If the street frontage of the subject property exceeds 100' or is located along a collector or arterial street, as designated by the City's Transportation System Plan (TSP), or extends an existing dedicated right of way, the applicant shall improve the public street to current public standards. Dearborn Av N is designated in the City's TSP as a collector street. Collector streets are designed to be an intermediate street classification that distributes traffic from local streets onto arterial streets. They are designed to function with between 1,600 and 10,000 average daily trips.

The Public Works Department submitted comments pertaining to the street improvement requirements. Dearborn Avenue is proposed to be widened according to Collector Street Standards. The exact design and construction of improvements will be regulated through the public improvement permit review and approval process, and will be required to comply with the City of Keizer Design Standards. With these

requirements placed as conditions of approval, this proposal will comply with this criterion.

D. SECTION 3.107.07.D - IMPROVEMENTS OR DEDICATIONS THAT ARE REQUIRED AS A CONDITION OF DEVELOPMENT APPROVAL, IF NOT VOLUNTARILY ACCEPTED BY THE APPLICANT, SHALL BE ROUGHLY PROPORTIONAL TO THE IMPACT OF THE DEVELOPMENT.

FINDINGS: The City has a legitimate governmental interest in assuring the development does not cause a public problem of inadequate, unsafe and inefficient public transportation facilities. This is done by ensuring that adequate streets are provided in order to avoid traffic generation that exceeds the street system's carrying capacity. The Keizer Development Code requires that all new development make road improvements to bring their road classification up to the road classification and construction standards. The legislative adoption of the street standards requires road improvements and road construction to be provided by the development as it occurs in proportion to its impacts. The functional classification of Dearborn Avenue is based upon the cumulative traffic impacts from the development of properties in the area which will use the streets, and in this case, the TSP designates Dearborn Avenue as a collector street. The existing improvements along the frontage of the subject property are inadequate and substandard. The proposed development will generate additional traffic (vehicle trips, bicycle, pedestrian) which will further strain the already inadequate transportation system in place. Therefore, any increase in vehicle, bicycle, or pedestrian traffic would cause dangerous and/or hazardous traffic conditions. Failure to provide the appropriate improvements as outlined in the Keizer Development Code would be grounds for denial of the partition. The Keizer Public Works Department submitted requirements which have been made conditions of approval regarding the improvements necessary. The exact design will be regulated through the public construction permit process, as required by the Public Works Department. Therefore, the required improvements are roughly proportional to the impact of the development.

E. SECTION 3.107.07.E - EACH PARCEL SHALL COMPLY WITH THE APPLICABLE REQUIREMENTS WITHIN SECTIONS 2.301 (General Provisions); 2.302 (Street Standards); 2.303 (Off-Street Parking and Loading); 2.305 (Transit Facilities); 2.306 (Stormwater Management); 2.307 (Utility Lines and Facilities); and 2.309 (Site and Landscaping Design).

1. ***Section 2.301 General Provisions.***

FINDINGS: The intent of this provision is to ensure that new development is served by adequate public facilities and avoid having the situation where the public facilities are inadequate. The Keizer Development Code requires that appropriate public facilities be provided and the Public Works Department submitted comments which specifically outline the requirements for the provision of public facilities to the proposed development of the lots. The City of Salem also submitted comments specific to sanitary sewer utilities which will be required to be followed at the time of development. The installation of appropriate public facilities will be ensured through the Public Works construction permit and building permit approval processes and will be placed as a condition of partition approval; therefore, this proposal satisfies this criterion.

2. ***Section 2.302 Street Standards.***

FINDINGS: The intent of this provision is to assure parcels are created in a manner consistent with city standards thereby avoiding the creation of a substandard access that might be unusable for vehicular traffic. No new public streets are proposed with this development, but as was addressed elsewhere in this report, street frontage improvements along Dearborn Avenue are proposed and will be required with this application. A private access easement is proposed to serve the development, providing access to both parcels. This request can comply with this criterion.

3. ***Section 2.302.08. Private Access Easements. A. Width; B. Maintenance; C. Turn-around; D. Parking; E. Trees Along Access Easements; F. Screening:***

FINDINGS: The intent of this provision is to assure private access easements are constructed in a manner consistent with city standards thereby avoiding the creation of a substandard access that might be unusable for vehicular traffic and emergency personnel. In addition, the City requests comments from the Keizer Fire District where the Fire Code may differ from the City's Development Code. The Fire District has submitted comments pertaining to the access easement that are incorporated into this decision. The proposed plan can satisfy this criterion.

Width: A 20' wide easement, not to exceed 300' in length, with paved width of 16' is required for private access easements serving two or more dwelling units. In addition, the RS zone requires a 5' setback from the edge of an access easement to a structure. The applicant has submitted an application for a major variance to this setback requirement reducing the setback to 2'. No modification to the access width is requested. This variance request will be reviewed later.

The improvement of the access easement shall be completed prior to approval of the final plat. In lieu of this, the applicant may obtain a performance bond, improvement agreement or other instrument acceptable to the City as outlined in Section 3.202.02.E.3 and 3.202.05.B of the Keizer Development Code. The applicant shows a 20' wide easement that does not exceed 300' in length, and therefore can comply with these standards. As a condition of partition approval, the access easement area and location must be shown on the partition plat ensuring all standards are met.

Maintenance: Provisions for the maintenance of the access easement, fencing/hedge along the access easement, address display signage and "no parking" signs shall be provided in the form of a maintenance agreement, homeowners association, or other instrument acceptable to the City and shall be recorded with the Marion County Clerk. The agreement shall include language stipulating the agreement cannot be extinguished without written approval from the City of Keizer. The City of Keizer Planning Department will review and approve the agreement before recording. The applicant is required to record the Maintenance Agreement immediately after the recording of the Plat and provide a copy to the City. Prior to issuance of a building permit for the new dwellings, submission of proof of recording to the City is required. This will be a condition of partition approval.

Turn-around: The KDC requires a turn-around for access easements serving two or more dwelling units. The access easement is proposed to serve both lots, therefore a turn-around is required. The applicant has submitted a site plan that shows a turn-around located on Parcel 2. This will be reviewed by the City Engineer at the time of plat review to ensure dimensions and turning radius requirements are met.

Parking: No parking is allowed within the 20' required access easement width or turn-around areas allowing emergency vehicles to be

able to access the new parcels. Installation of "No Parking" signage is required to be installed when the access easement is constructed.

Trees Along Access Easements: In certain cases, streetscape trees are required along access easements. When required, trees shall comply with the provisions of Section 2.309 of the KDC. Lots measuring along the access easement less than 60 feet shall plant one streetscape tree and lots measuring more than 60 feet along the access easement shall be required to plant two streetscape trees. Streetscape trees are selected from a list of approved trees and planted within 10 feet of the access improvements within the boundaries of each lot. Both lots measure more than 60 feet along the access easement and will be required to plant two streetscape trees along the access easement. Planting of streetscape trees is a condition of Certificate of Occupancy for each new dwelling.

Screening: Unless waived in writing by the adjacent property owners, a 6' tall sight-obscuring fence, wall, or hedge is required along the exterior side of an access easement to provide screening to any adjacent properties. This requirement is placed as a condition of partition plat approval.

Based upon the submitted site plan, the proposed private access easement can comply with Section 2.302.08, and with the above-mentioned conditions, this request satisfies this criterion.

4. Section 2.303 Off-Street Parking and Loading:

FINDINGS: Oregon Administrative Rule (OAR) 660-012-0440 eliminates off-street parking requirements for properties within ½ mile of frequent transit corridors. The subject property is located approximately .30 miles from the Cherriot's bus route on River Road. However, the applicant's site plan indicates parking will be provided. Parcel 1 will relocate the parking area to the rear of the existing house and parking areas are shown for both the new single-family dwelling and the existing ADU on Parcel 2. When parking spaces are provided, they are required to be a minimum 9' x 18'. This request can comply with this criterion.

5. ***Section 2.305 Transit Facilities:***

FINDINGS: No transit facilities are proposed with this development, and are not necessary. Therefore, this criterion is not applicable to this proposal.

6. ***Section 2.306 Provide for the management and control of stormwater runoff from all new development.***

FINDINGS: The intent of this provision is to ensure adequate storm drainage is provided, and avoid having runoff from properties becoming a nuisance or hindrance to other properties. The Public Works Department has submitted comments regarding the requirements for storm drainage facilities. Specifically, all impervious surfaces on the site are to be designed to keep all storm water runoff on-site. No storm water runoff, from the new development, shall be directed to Dearborn Av N.

Prior to final plat approval, plans consistent with Section 2.306 of the KDC, for on-site drainage including storm water quality and detention shall be submitted to the Public Works Department for review and approval. Before any soil disturbance on the subject property, an Erosion Control Permit must be obtained from the City of Keizer. As a condition of approval, a final grading and drainage plan will be required for the proposed development and all lot corners shall have finished grade elevations indicated on the plan prior to the recording of the partition plat. With this placed as a condition of approval, this request can satisfy this criterion.

7. ***Section 2.307 – Utility Lines and Facilities: Adequate public facilities shall be available to serve the existing and newly created parcels.***

FINDINGS: The intent of this provision is to allow new development to be served by public facilities thereby avoiding the need to connect into private systems and avoid any potential groundwater contamination issues. Public water and sewer are available to serve the development. The Public Works Department submitted written requirements that are conditions of this partition approval addressing the specific public facility requirements relating to sanitary sewer, water, and street and drainage improvements necessary to accommodate the development. The existing ADU is connected to public water through a shared water meter with the existing house on Parcel 1. As a condition of approval, a new water meter will be required to be installed for Parcel 2 prior to recording of the partition

EXHIBIT "C"

Page 11 of 15

plat. With these conditions of approval, this request complies with this criterion.

8. ***Section 2.309 Site and landscaping design.***

FINDING: The City recognizes that factors such as disease, safety concerns, and site development requirements may require removal of mature/significant trees. Significant trees defined in Section 2.309.04.C of the KDC as having a height of more than 50' and/or having a trunk diameter more than 12" at breast height.

The applicant has indicated on the site plan submitted that no trees are planned to be removed and no other trees have been removed in the last 2 years. However, if it is determined later that a tree or trees need to be removed, replanting will be required at the City's 2:1 replacement ratio. Two trees are to be planted to replace each tree that is removed. Trees must be a minimum 2" caliper and planted prior to final building permit approval. If trees are removed, a *Tree Replacement Plan* will be required to be submitted and approved by the Planning Department. Development of the property in conformance with an approved *Tree Removal and Replacement Plan* will be a condition of Certificate of Occupancy of any new dwellings. With the above-mentioned conditions; this request will comply with this criterion.

F. SECTION 3.107.07.F - ADEQUATE PUBLIC FACILITIES SHALL BE AVAILABLE TO SERVE THE EXISTING AND NEWLY CREATED PARCELS:

FINDINGS: The applicant has indicated that public water and sewer are available or can be extended to serve the subject property. As a condition of partition approval, the requirements of the Public Works Department regarding public facilities must be adhered to. This request satisfies this criterion.

FACTS: MAJOR VARIANCE AND RELATED FINDINGS.

20. The criteria for a Major Variance are contained in Section 3.105.05 of the Keizer Development Code. The criteria and findings are listed below:
 1. ***The degree of variance from the standard is the minimum necessary to permit development of the property for uses allowed in the applicable zone.***

EXHIBIT "C"

Page 12 of 15

FINDINGS: The subject property is zoned RS and is intended for residential development. Partitions are listed as a special permitted use in the RS zone subject to provisions including but not limited to such things as minimum lot size, dimensions, access, and utilities. The Comprehensive Plan and Buildable Lands Inventory assume the possibility of redevelopment and infill development in residential areas. The subject property is approximately 0.37 acres in area, which is more than 3x larger than the minimum lot size of the RS zone, and the applicant is proposing to Partition the property into two separate parcels.

The applicant is requesting this variance due to the location of the existing home in relation to the proposed access easement. The minimum setback required is 5' from the edge of an access easement to the exterior wall of a building. A portion of the existing home is located only 2' from where the edge of the proposed access easement will be, therefore, a variance is being requested in order to allow for the establishment of the access easement.

It should be noted, the applicant had conversations with City Staff and the Keizer Fire District regarding this issue, and originally proposed a Minor Variance request to reduce the access easement width from 20' to 17'. This would not have necessitated the need for a variance to the setback, however, based upon input from the Fire District related to fire, life, and safety concerns, the applicant is requesting a Major Variance to the setback provision instead. The Fire District submitted comments which indicate support for this variance request to ensure the access easement width is maintained.

As a condition of variance approval, the applicant will be limited to variance approval only for that which is proposed. With this condition, this request satisfies this criterion.

2. ***The applicant in good faith is unable to comply with the standard without undue burden. The applicant must demonstrate that the burden is substantially greater than the potential adverse impacts caused by the proposed variance.***

FINDINGS: The applicant is requesting variance approval to the 5-foot setback requirement so they can provide a 20-foot wide access easement to the proposed partitioned lot. While the applicant could remove a portion of the existing home, it would entail a significant expense and

process and would also displace existing residents creating a significant burden. If the applicant were to remove 3' from a portion of the existing home, the setback provision could be met and no variance would be needed, however, because it only affects the existing property, there are no real potential adverse impacts caused by this proposed variance request to adjacent property owners. By locating the easement closer to the existing home than the required 5', there could, theoretically, be greater potential for property damage due to a vehicle striking the existing home. In order to address this possibility, the applicant proposes to install bollards to provide protection to the existing home. This will be placed as a condition of approval.

Therefore, the burden of this particular development code provision is substantially greater than any potential adverse impact. Therefore, this request satisfies this criterion.

3. ***The variance will not be unreasonably detrimental to property or improvements in the neighborhood of the subject property.***

FINDINGS: The variance request in itself will not be detrimental to property or improvements in the neighborhood of the subject property. The request only affects the subject property and will not locate the development closer to any adjacent property. Comments were received from multiple neighbors who are opposed to both the partition and variance request and concerns were expressed regarding the variance request that the existing home is not "up to code" and shouldn't be rented out. However, the requested variance is only for reducing the setback to the proposed access easement and has nothing to do with other "code" provisions. Due to the fact that this request has no impact on adjacent properties, this request satisfies this criterion.

4. ***There has not been a previous land use action approved on the basis that variances would not be allowed.***

FINDINGS: There are no other previous land use actions that would not allow this particular variance. Therefore, this request satisfies this criterion.

5. ***The variance will not significantly affect the health or safety of persons working or residing in the vicinity.***

FINDINGS: The requested variance will not affect the health or safety of persons in the vicinity. The variance request is not adjacent to another property, but rather is a request for a smaller setback from the existing home to the private access easement located on the subject property. The reduction in setback only impacts the subject property. The existing home has no doors that open towards the easement and the applicant proposes to install bollards which will provide protections for the existing home. The variance is being requested to allow for the access easement to be 20' in width which will ensure fire, life, and safety needs will be met.

6. ***The variance will be consistent with the intent and purpose of the provision being varied.***

FINDINGS: The intent and purpose of the access easement setback requirement is to provide adequate separation between the travel lane and existing and proposed structures for safety. This also results in aesthetic benefits of landscaping and providing open space for protection against property damage. The setback requested to be varied is for the distance between the proposed private access easement and a portion of the existing home. Currently, there is an existing gravel driveway (located in the same area as the proposed access easement) which is used for access to the existing ADU. The existing gravel driveway is proposed to be paved and enlarged to comply with City standards for access easements and to allow for the division of the existing parcel into 2 separate parcels.

Considering the driveway area is already in existence, the built environment will not be adversely affected by this request, and the reduction in setback will only impact the existing home. The applicant has indicated their intent to install bollards to protect the existing home. With these conditions, this request satisfies this criterion.

EXHIBIT "D"

Justification

The applicant has the burden of proving that the application meets relevant standards and criteria to be applied in the particular case.

In this case, the applicant is requesting to divide an existing parcel totaling approximately 16,160 square feet into two parcels comprised of approximately 7,000 square feet (Parcel 1) and approximately 6,600 square feet (Parcel 2). The proposal also includes a major variance request to reduce the minimum required setback from the existing home to the private access easement.

The ~~applicant~~^{appellant} has appealed the Planning Director's decision and the Planning Commission's decision approving the application. The ~~applicant~~^{appellant} believes the Planning Commission erred in approving the application based on the following: (DMW)

1. 3.105.05 Exhibit 1, errors/omission- setback variances (trees+health+) OAR 690.210, KZR 2.309;
2. 3.107.07.A rationality to grant yourself easement on – rental + home+ADU;
3. Partition proposal based on unproven housing need, and;
4. Inconsistent with Keizer blight policy.;
5. Disgorgement of ill gotten gains thru socializing gains from criminal acts.;
6. ORS 105.810 City becomes accessory to criminal and civil damage claims, suites.;
7. ORS 368.256 Creation of public hazards.;
- and
8. 5th Amendment Constitutional property and other rights to due process.

After full review, the City Council finds that the application can meet the criteria required if properly conditioned as set forth herein.

Consequently, the applicant has demonstrated that when the conditions set forth in Exhibit "E" are imposed and complied with, the proposal meets the applicable criteria set forth in the Keizer Development Code. As conditioned, the application should be granted.

EXHIBIT "E"

Action

The City of Keizer hereby ORDERS as follows:

The requested partition and major variance are hereby GRANTED subject to the following conditions and requirements:

General:

1. The Keizer Development Code requires the developer to connect to public utility services. The Development Code also requires all utility services to be placed below ground. These requirements apply to this request. Further, the developer is responsible for all utility connection costs. The City's System Development Charges for park development, water system improvements and transportation improvements shall be the fee in place at the time of building permit application. These Development charges, as well as those involving the extension of sewer, water, and storm drainage, will apply to this request.

Prior to Preliminary Plat Approval:

2. A detailed preliminary plat shall be submitted to the Marion County Surveyor's Office for review. The Marion County Surveyor's Office will then submit the preliminary plat to Keizer for review. The Preliminary Plat must be submitted for review prior to submittal of a final plat.
 - a. Parcels ten acres and less must be surveyed.
 - b. Per ORS 92.050, plat must be submitted for review.
 - c. Checking fee and recording fee is required.
 - d. A current or updated title report must be submitted at the time of review. Title reports shall be no less than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.

The detailed preliminary plat shall include the following provisions:

- e. The preliminary plat shall substantially conform to the proposed partition request.
- f. Lots shall comply with all area and dimension requirements for lots within the Single Family Residential (RS) zone.

EXHIBIT "E"

Page 1 of 6

- g. Both gross and net area calculations must be shown on the preliminary and final plat.
- h. Include all engineering elements as required by the Department of Public Works requirements.
- i. Include a signature line for the City Engineer.

Prior to Final Plat approval (Mylar):

- 3. The applicant shall submit a final partitioning plat prepared by a registered professional surveyor which conforms to the approved preliminary plat. Following plat approval, the final plat and title transfer instruments accomplishing the property adjustments shall be recorded with the Marion County Clerk by February 20, 2026. The plat shall include all engineering elements as required by the Department of Public Works.
- 4. Provisions for the maintenance of the access easement, fencing/hedge along the access easement, address display signage and “no parking” signs shall be provided in the form of a maintenance agreement, homeowners association, or other instrument and provided to the City of Keizer Planning Department for review and approval.
- 5. The access easement, turn around area, address display signage and “no parking” signs must be built or installed prior to approval of the final plat. In lieu of this, the applicant may obtain a performance bond, improvement agreement or other instrument acceptable to the City as outlined in Section 3.202.02.E.3 and 3.202.05.B of the Keizer Development Code. Contact the Planning Department for Improvement Agreements.
- 6. A site plan, prepared by a licensed engineer or surveyor must be submitted to the City of Keizer Planning Department demonstrating the existing dwelling on Parcel 1 meets the minimum rear setback requirement of the RS zone.
- 7. Unless waived in writing by the adjacent property owners, a 6’ sight-obscuring fence, wall, or hedge is required along the east side of the access easement to provide screening to the adjacent property. If waived, documentation must be submitted to the City of Keizer Planning Department.
- 8. Bollards shall be installed to protect the existing home. The location and number of bollards provided shall be reviewed and approved by the City and Keizer Fire District prior to installation.

9. An improvement agreement or other instrument acceptable to the City shall be executed ensuring the construction of a new home on Parcel 2 or removal of the ADU within one year of recording the partition plat. All recording fees shall be the responsibility of the applicant.
10. A new water service shall be provided to Parcel 2 to serve the ADU and future home consistent with the requirements of the Public Works Department.
11. The following applicable requirements/conditions of the Public Works Department must be met as outlined below:

GENERAL CONDITIONS

The application is for creating 2 Parcels where 1 Parcel currently exists. The subject property is approximately 16,160 square feet in area. Proposed Parcel 1 will be 7,000 square feet and Proposed Parcel 2 will be 6,600 square feet. The existing Parcel has an existing access easement to Dearborn Avenue along the East property line as well as an additional driveway access on the West property line. The applicant is proposing to utilize the existing access easement along the East property line for proposed Parcels 1 and 2 and remove the existing driveway along the West property line. The application is also for a Major Variance to reduce the required 5-foot setback to a 2-foot setback along a portion of an existing structure adjacent to the existing access easement.

SANITARY SEWERS:

It is the developer's responsibility to connect the proposed development to the appropriate master plan sewer lines designed to serve the area.

- a.) City of Salem approval for local sewer permits will need to be issued prior to construction. Street opening permits will be required for any construction within a public street.
- b.) Connecting to existing sewers that serve the general area will be the responsibility of the developer of the property. Each parcel will be required to have its own sanitary sewer service and will be required to connect to an approved public sanitary sewer line. Plans for connection to the sanitary sewer system shall be submitted to the City of Keizer and the City of Salem for proposed parcel 2 and shall be permitted by the City of Salem prior to approval of the proposed partition plat.

- c.) Appropriate easements will be required for any public sewer mains located within the subject property if located outside platted right of ways. Easements will be required for all private sewer lines that cross private properties.
- d.) The property is within the original Keizer Sewer District and is therefore not subject to an acreage fee for sanitary sewer.

WATER SYSTEM:

- a.) The application indicates where a new water service meter will be located to serve Proposed Parcel 2. All new services shall be connected to an existing Public water main. The Keizer Fire District shall determine if a new hydrant is required to serve the proposed development. An overall plan indicating how water service will be provided to the proposed new parcels shall be submitted to the Public Works Department for approval.
- b.) Each parcel shall have its own water service. Location of water meters shall be submitted for approval to the Public Works Department.

STREET AND DRAINAGE IMPROVEMENTS:

- a.) The Keizer Development Code states that all new development on collector streets will require street improvements at the time of development. The City of Keizer Transportation System Plan classifies Dearborn Avenue as a Collector Street. Dearborn Ave will be required to be widened to Collector Street Standards to include curb, sidewalk and storm drainage. Plans will be required to be prepared by a Professional Engineer registered in the State of Oregon. No development of the subject property will be allowed until the required access easement has been platted and improved per the conditions of the subject partition. Access easements are required to be 20 feet in width with a 5-foot setback from existing dwellings. A plan providing adequate turning movements shall be submitted for review and approval by the Public Works Department prior to approval of the partitioning plat.
- b.) The Keizer Development Code requires standards for private access easements. It will be the responsibility of the applicant to provide for adequate maintenance agreements for any existing or proposed access easements.

- c.) All impervious surfaces on the site, including the proposed access easement area shall be designed to keep all storm water runoff on-site. No storm water runoff from the new development shall be directed to Dearborn Avenue. The plans for storm water quality and detention shall be submitted to the City of Keizer Public Works Department for review and approval prior to approval of the partition plat.

OTHER

- a.) Construction permits are required by the Public Works Department prior to any public facility construction.
- b.) A Pre-design meeting with the City of Keizer Public Works Department will be required prior to the Developer's Engineer submitting plans to either the City of Keizer or the City of Salem for review.
- c.) Street opening permits are required for any work within the City Right of Way that is not covered by a Construction Permit.
- d.) A Pre-construction conference shall be required prior to commencement of any construction under permits issued by the city.
- e.) The Partition Plat shall include a signature line for the City Engineer.
- f.) Any existing wells on the subject property shall be abandoned in accordance with the Oregon State Water Resources Department requirements.

Prior To Obtaining Building Permit(s):

- 12. All required public utility services shall be completed to the satisfaction of the Department of Public Works.
- 13. The new dwelling to be built on Parcel 2 is required to be built within one-year of the recording of this partition, or the ADU must be removed.
- 14. The property owner must submit documentation to the City of Keizer Planning Department that the Maintenance Agreement has been recorded with Marion County Recorder's Office.

15. Provided parking must comply with the provisions of the Keizer Development Code. Spaces must be 9' wide and 18' long and must be a hard, durable, dust-free surface built according to public works standards.

Prior to Obtaining Building Permit Final:

16. The residential address requirements found in the Oregon Uniform Fire Code shall be completed as approved by the Keizer Fire District and City of Keizer Planning Department. Address display sign are required at Dearborn Road N identifying addresses on access easement.
17. Two streetscape trees must be planted on each lot along the access easement. The trees must be a minimum 2" caliper when planted.