

**NOTICE OF DECISION
VARIANCE CASE NO. 18-003**

APPLICATION: Application of Gardner Properties LLC for a variance to reduce the required 70 foot minimum centerline setback to fifty feet and reduce the required 30 foot minimum rear yard setback to ten feet for new building on a 1.26 acre parcel in an CC (Community Commercial) zone located in the 9000 block of Portland Road, Brooks. (T6S; R2W; Section 17D; tax lot 100).

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

EXPIRATION: This Variance is valid only when exercised by **October 4, 2020**. 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 proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposal 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. The structure shall maintain a 20 foot minimum setback from the front (west) property line for an effective centerline setback of 70 feet from the center of the right-of-way of Highway 99E.
2. The structure shall maintain a 10 foot minimum setback from the rear (east) property line.
3. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
4. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by 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 agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

5. The applicant should contact Marion County Fire District #1 and obtain a copy of the District's Recommended Building Access and Identification Guidelines. For personal and property safety it is recommended that the applicant follow these guidelines. Fire District access standards may be more restrictive than County Standards. Contact Paula Smith at Marion County Fire District #1 (503) 588-6513 for more information.
6. Obtain all necessary permits from the Oregon Department of Transportation.
7. Before establishing the use, the applicant shall ensure that any necessary easements are in place to adequately serve the property.

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 fee of \$200.00)

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 **October 4, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 5, 2018** unless appealed.

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

1. The subject property is designated Commercial in the Marion County Comprehensive Plan and zoned CC (Community Commercial). The property is within the Urban Unincorporated Community of Brooks-Hopmere. The CC is applied to land intended for commercial uses within urban unincorporated communities.
2. The property is located on the east side of Highway 99E in the 9000 block. The property previously had approved a Zone Change/Comprehensive Plan Amendment in 1991 (ZC/CP 91-4) and is therefore a legal parcel for land use purposes.
3. Surrounding properties to the north, west and south are zoned CC and developed with commercial uses. Property to the northeast is zoned AR (Acreage Residential) and developed with rural homesites. Property to the east is zoned EFU (Exclusive Farm Use) and is in farm use.
4. The applicant is proposing to reduce the required 70 foot minimum centerline setback to 50 feet and reduce the required 30 foot minimum rear yard setback to 10 feet for new building.
5. Marion County Onsite Wastewater commented that a site evaluation is required if plumbing is included in the building.

ODOT commented that an highway approval upgrade application would be required.

6. In order to obtain a variance the proposal must meet the criteria in found in Section 17.122.020 of the Marion County Code (MCC). These criteria are:
 - (a) *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; and*
 - (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*
 - (c) *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*
 - (d) *The variance will not have a significant adverse affect on property or improvements in the neighborhood of the subject property; and*
 - (e) *The variance will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and*
 - (f) *The variance will maintain the intent and purpose of the provision being varied.*
7. The applicant states that a zone change is sought for the property to Unincorporated Community Industrial by a separate land use action. The rear setback in the IUC zone is 10 feet, which is the setback being requested in this case. Because of the lead time on ordering the building, the applicant must have certainly of the building location and setbacks ahead of time; therefore, this variance is requested now. ODOT provided information that a 70 foot centerline setback is no longer desired; a 50 foot centerline setback is appropriate. The size and dimension of the parcel leaves little room for development if the original setbacks were applied. Properties to the south and west are developed with commercial uses. Property to the north is buffered from any building placement by an existing access easement. Property to the east is in farm production for blueberries and, since the use would be

industrial in nature and similar in intensity to farming (unlike many commercial uses) no impact to the farming is expected from locating the proposed building 10 feet instead of 30 feet from the property line. The reduction in setback still leaves ample room for any future expansion of Portland Road and adequate buffering from surrounding uses and maintain the intent and purpose of the setbacks. The proposal meets the criteria above.

8. Based on the above findings, the applicants' request meets all applicable criteria for a variance and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: September 19, 2018

If you have any questions please contact Brandon Reich 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.