

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

**NOTICE OF DECISION
ADMINISTRATIVE REVIEW CASE NO. 22-039**

APPLICATION: Application of Carole Warner and Osiel Bonfirm for an administrative review to place a primary farm dwelling and a variance to the standards in MCC 17.139.070 2 (c) to allow a dwelling to be located more than 300 feet from the driveway entrance of the property on a 100.6 acre parcel in a FT (Farm/Timber) zone located in the 2000 block of Silver Falls HWY (HWY 214), Silverton, (T8S; R1E; Section 02; Tax lots 1600 & 1700).

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

EXPIRATION DATE: This decision is valid only when exercised by **February 11, 2027**, unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS:

1. The applicant shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. The primary farm dwelling occupant shall be the person or persons who produced the commodities which generated the income of the current farm operation.
3. The dwelling shall use the address of **2170 Silver Falls Dr SE, Silverton OR.**
4. Prior to issuance of any building permit for the primary single-family farm dwelling, the applicants shall sign a "Use of Agriculture Land for Dwelling Qualification" declaratory statement. The applicants shall record the statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director. The property will be considered one unit of land for land use purposes as a condition of approval. The declaratory statement recognizes that the parcels cannot be used to qualify for a farm dwelling on a different tract.
5. The applicants shall sign and submit a Farm/Forest Declaratory Statement, acknowledging the presence of farm and forest operations present around the subject parcel. The applicants shall record the Statement with the Marion County Clerk after it has been reviewed and signed 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 thereon. It is recommended that the agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

6. The applicants should contact the Drakes Crossing 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.
7. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 below, that may be required.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) on the basis of new information subject to signing an extension of the 150-day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **February 13, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 12, 2023**, unless appealed.

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

1. The subject property is designated Farm/Timber in the Marion County Comprehensive Plan and zoned Farm/Timber. The FT (farm/timber) zone is intended to be applied in areas where the soils are suitable for farm or forest uses as defined in the Forest Lands Goal, and where the existing land use pattern is a mixture of agricultural ownerships, forest management units and some acreage homesites.
2. The subject property is located on both sides of Silver Falls Dr SE (HWY 214), directly north of the intersection of Desantis Ln and Silver Falls Dr. There is a smaller triangular piece comprising 2.81 acres on the western side of the road, tax lot 1600. The main portion of the property, tax lot 1700, that contains all the structures, and 97.88 acres of land is east of the road. Tax lot 1700 contains two farm structures. Both tax lot 1600 and 1700 comprise one legal lot based on AR09-035. It is described by deed in June 1971, volume 704, reel 267 and is therefore considered legal for land use purposes.
3. Surrounding uses are a mix of farm or forest in all directions. The majority of the parcels to the northeast and east are forested and contain mature timber stands. To the south across the highway is a nursery and land cleared of timber.
4. The applicants are proposing place a primary farm dwelling and a variance to the standards in MCC 17.139.070 2 (c) to allow a dwelling to be located more than 300 feet from the driveway entrance of the property on a 100.6-acre parcel.
5. Soil Survey of Marion County Oregon indicates that approximately 16.7% of the subject property soils are high value.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING REQUIREMENT

- A. Transportation & Parks System Development Charges (SDCs) will be assessed upon application for building permits.

ENGINEERING ADVISORY

- B. Silver Falls Drive SE (SR 214) is under the jurisdiction of ODOT with regard to access and utility service extension work.

Marion County Building Department commented:

“Permits are required for development and/or utilities on private property.

Marion County Septic Inspection commented:

“A soils site evaluation will be required to evaluate each parcel for an onsite septic system. Contact building division to apply. Drainfields do not go in drainage area and will require a space of 70 feet by 150 feet, so when thinking through where to dig your soils pits required for the site evaluation process, please take this into consideration.”

All other commenting agencies stated no objection to the proposal.

7. Primary farm dwellings in an FT zone can be permitted through the options provided in MCC 17.139.030. The applicant has chosen to qualify under MCC 17.139.030 (E) (2).

E. Primary Farm Dwellings. A single-family dwelling, subject to the special use and siting requirements in MCC 17.139.070, customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

2. It is not located on high-value farmland, as defined in MCC 17.139.130(E), on a lot or parcel predominantly devoted to farm use on January 1, 1993, and satisfies the following standards:

a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term “farm operation” means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.

The applicants own no other lands with dwellings on them in agriculture zones. The criterion is met.

b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least \$40,000 in gross annual income from the sale of farm products, not including marijuana. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted.

The applicants have grown and harvested tree boughs from Noble Firs, Port Offord Cedar, White Pine, and Douglas Firs to sell as a farm product. Applicant has submitted copies of checks in the amount of \$12,610.00 and \$29,660.00 for earnings for the year of 2021 from Mt. Hood Wreaths LLC and Greenway Floral Inc, for tree boughs. Applicant has submitted a copy of a check for the amount off \$43,275.15 from Greenway Floral INC for tree boughs bought in 2022. Based on the evidence provided the applicant has met the burden of proof for the income standard in the FT zone for a primary farm dwelling. The criterion is met.

c. The subject tract is currently employed for the farm use that produced the income required in subsection (E)(1)(b) of this section.

Based on the aerial images and applicant photos and site plan, the parcel is currently planted with various species of trees that generated the income identified above. The criterion is met.

d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income required in subsection (E)(1)(b) of this section; or

The dwelling will be occupied by Osiel Bonfirm and Carole Warner, who have principally managed the farm operation, sold the boughs and own the parcel. The criterion is met.

8. In order to obtain a variance, the proposal must meet the criteria in found in Section 17.122.020 of the Marion County Rural Zone 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

The applicant would have to build over the small amount of high value soil on their property and remove tree stands to accommodate the dwelling if it were to be not more than 300 feet from the roadway. The applicant has submitted maps and diagrams to support this finding in their exhibits. Applicants are also bound by a pre-approved ODOT access and wetlands that limit the buildable area of the property. 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*

As explained above, the location of wetlands and already planted tree stands greatly influence where a dwelling could be placed. This in conjunction with a pre-approved ODOT access constitute unusual circumstances on the lands that require a variance. 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*

This variance is the minimum necessary as the applicants have made a finding that they will be placing the home in the first area possible that does not have Class 2 soils. This has been shown on their site plan. The criterion is met.

- (d) *The variance will not have a significant adverse affect on property or improvements in the neighborhood of the subject property; and*

This variance is not expected to have any effect on persons or property in the neighborhood as it will move the house further away from neighbors, which limits conflicts, noise pollution and adverse effects. 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*

As explained above, the house will now be further away from any persons working or living in the area, controlling for adverse effects. The criterion is met.

- (f) *The variance will maintain the intent and purpose of the provision being varied.*

The dwelling will still meet all other siting standards and will be required to obtain building permits, insuring its compliance with Marion County Planning and Building. This variance still maintains the intent of the code by having all other standards met and by varying this one, it will not adversely affect adjacent properties. The criterion is met.

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

Brandon Reich
Planning Director/Zoning Administrator

Date: January 27, 2023

If you have any questions regarding this decision contact Austin Barnes 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.