

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 VARIANCE CASE NO. 23-001

APPLICATION: Application of Jaime and Michelle Guzman for a variance to reduce the required setbacks of a dwelling from 20 feet to 14 feet on an approximate 1.85-acre parcel in an EFU (Exclusive Farm Use) zone located at 4766 Poinsettia Street NE, Salem (T6S; R2W; Section 20CB; Tax Lot 3300).

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 **March 3, 2025**. 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 applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. A major septic alteration permit will be required prior to building permit issuance in this scenario.
3. Should the owner prefer to continue using the existing system, an authorization notice approval is required prior to building permit issuance for the increase from 3 to 4 bedrooms per OAR 340-071-0205(1).
4. Per MCC 17.114.040(B)(6), the applicant cannot change or intensify the use of the dwelling or other building.
5. 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.
6. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.

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 Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

APPEAL PROCEDURE: The Marion County Zone Code provides that Variance 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 **March 3, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 4, 2023**, unless appealed.

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

1. The subject properties are designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use) The primary intent of the designation is to provide for commercial farm uses and agriculture.
2. The property is located on the eastern side of Poinsettia Street NE, approximately 1,110 feet east of its intersection with Portland Road NE (99E). The property contains a dwelling built in 1978 and three accessory structures. The parcel has not been the subject of any previous land use case. Additionally, the applicant did not produce a deed that is dated prior to September 1, 1977, that describes the subject parcel as it is described by the current deed. However, MCC 17.114.040(B)(6) allows the subject parcel, now a nonconforming lot of record, to be legal for land use purposes. Proof that the subject dwelling was approved to be built can be found in an address card that was issued on February 10, 1978. As a result of using this provision, the applicant and future applicants will be limited on how the property can be developed. Specifically, the applicant cannot change or intensify the use of the dwelling or other building; this will be made a condition of approval. Furthermore, it is still in the applicant's interest to find a deed dated prior to September 1, 1977, that describes it in its current configuration to be on better legal standing. This parcel is legal for land use purposes.
3. Surrounding properties in every direction consist of EFU zoned properties developed with dwellings. Most are smaller parcels and have some land in active farm use. To the east of the subject parcel, exist large-scale farming operations.
4. The applicant is proposing to reduce a eastern side setback from 20 feet to 14 feet for an addition to their home.
5. Soil survey for Marion County indicates that approximately 97.3% of the soil is high value.
6. Comments regarding this case are below:

Marion County Land Development Engineering & Permits (LDEP) commented:

It is Marion County Septic's understanding that the owner wishes to replace the existing system at the property in a manner that will meet required setbacks to the addition and account for the increase from 3 to 4 bedrooms. No application has been accepted by this office as of 1/27/2023, however a major alteration permit will be required prior to building permit issuance in this scenario. Should the owner prefer to continue using the existing system, an authorization notice approval is required prior to building permit issuance for the increase from 3 to 4 bedrooms per OAR 340-071-0205(1). The location of the septic system on the applicant's site plan does not match county records, it appears there may be a conflict with the required 10' setback from the drainfield to the proposed addition.

Marion County Building Division commented: that permit(s) are required prior to any future construction and utilities on private property.

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

7. 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*

According to the applicant, they are proposing to add approximately 964 square feet of living space to the northeast portion of their existing home. Specifically, they are proposing to add a master bedroom with a bathroom and a separate laundry room. This addition would not meet the required setback from the property line of a minimum of 20 feet. Instead, the applicant is asking for a variance that would allow them a 14-foot setback to accommodate the proposed addition.

The applicant has stated that are three reasons for requesting the variance. One reason is that the proposed addition would keep consistent with the current truss layout. Second is the location of the existing septic tank and drain field. If the addition were moved south any further, it would interfere with the septic tank and drain field. Third, the garage is already located on the southwest corner of the existing dwelling. These reasons present practical difficulties that can only be relieved by modifying the required property line setback. Therefore, 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 stated previously, the applicant is proposing to add a master bedroom, a bathroom, and a laundry room to an existing dwelling. The existing dwelling sits in the northwest corner of the property on a 1.85-acre parcel, which is well below the minimum parcel size of 80 acres for EFU zoning. Additionally, the garage is on the southwest part of the existing dwelling while the existing septic tank and drain field are directly southeast of the dwelling. As a result of the location of the existing dwelling, garage, septic tank, and drain field and the relatively small parcel size for the zoning, this has created an unusual condition applying to the land and building which an allow for 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 to accommodate the proposed addition. 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 unlikely to have any adverse effect on neighboring properties or improvements to the subject property by the proposed addition. The criterion is met.

- (e) *The variance will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and*

The proposed use is a residential use and is a typical use in this zoning. The setback reduction is unlikely to create adverse impacts. Therefore, the criterion is met.

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

The proposed addition to the existing dwelling will still be required to maintain a minimum setback of 14 feet. The criterion is met.

8. Based on the above findings, the applicant's request meets all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: February 16, 2023

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173.

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.