

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
ADJUSTMENT CASE NO. 22-007**

APPLICATION: Application of Ronald Fink and Keely Picard for an adjustment of the special setbacks for a non-farm dwelling from 200 feet to 50 feet on a 11.52-acre property in an EFU (Exclusive Farm Use) zone located at 1569 Silver Falls Dr. NE, Silverton. (T7W, R1E, Section 21B, Tax Lot 501).

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

EXPIRATION DATE: This decision is valid only when exercised by **May 31, 2024**. 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 proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed use. To ensure 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: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.
2. The proposed accessory structure shall maintain a 50-foot setback from the northern property line. All other special setbacks shall be as approved in Conditional Use Case 17-001 and Adjustment Case 21-002.
3. The proposed dwelling, approved by Conditional Use Case 17-001, will be addressed 1569 Silver Falls Drive NE, Silverton.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or another 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in the Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. The applicants should contact the Drake's 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.

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 condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) based on 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. Requests for reconsideration, or consideration by a hearings officer, 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 **May 31, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 1, 2022**, unless further consideration is requested.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned Exclusive Farm Use (EFU). The intent of both this designation and zone is to promote and protect commercial agricultural operations. Surrounding properties are also zoned EFU and consist of a variety of small to large parcels. Most parcels are developed with dwellings.
2. The property is located on the west side of Silver Falls Drive NE at its intersection with Silver Springs Lane NE near the city of Silverton. Currently, the parcel is vacant, but a single-family dwelling is approved to be placed on the parcel per Conditional Use Case 17-001 (CU17-001).
3. Soil Survey of Marion County Oregon indicates 22.6% of the subject property is high-value farm soils.
4. The applicant is proposing to reduce the northern setback required in CU17-001, from 200 feet to 50 feet in order to avoid building on the large rock formations to the south and the slopes located on the east and west sides of the proposed building site.
5. The parcel on which the dwelling will be placed was the subject of land use cases CU17-001 and Adjustment Case 21-002 (ADJ21-002). Because both cases were approved, which legalized the subject parcel. Therefore, the parcel is considered legal for land use purposes.
6. Marion County Building Division commented that permits are required for any development on private property.
7. All other contacted agencies either failed to comment or had no objection to the proposal.
8. According to Marion County Code (MCC) 17.116.020, to approve an adjustment to the special setback standards for non-farm dwellings, the adjustment application need only address the criteria found under MCC 17.136.070(A). These include:

(a) The site will have the least impact on nearby or adjoining forest or agricultural lands.

The applicant states that adjusting the northern property setback from 200 feet to 50 feet will not have an impact on the nearby and adjoining forest or agricultural lands. Based on the applicant statement and aerial images of the parcel north of the subject parcel, the property is a Christmas tree farm. The site plan submitted indicates that the applicant is proposing to build a garage that would encroach on the current 200-foot setback of the northern property line. The proposed dwelling and use of the property are not inconsistent with the surrounding parcels. The surrounding parcels have a mixture of agricultural and residential uses. Furthermore, the proposed dwelling will not encroach on the existing perennial stream; the applicant has stated that the northern portion of the dwelling will be about 115 feet away from the stream. There is no clear evidence that any other location on the property with the identical proposed use would yield a lesser impact to the nearby or adjoining forest or agricultural land. Therefore, the criterion is met.

(b) The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.

According to the applicant's statement, the western half of the property is currently planted with a clover oat mix for hay and will be planted with Christmas trees and hay in the future. This also includes an area that has been cleared to make more room for planting Christmas trees and hay in the future. The eastern half of the property consists of a pond, perennial stream, and a sloped hill. Based on pictures provided by the applicant and aerial images from the Marion County GIS software, it does not appear that the eastern half of the property has been used for farming or foresting purposes. As a result of CU17-001, the proposed building site, which was cleared of trees sometime between 2016 and 2019, has already impacted potential forest operations and farming practices and moving the proposed building site to another location will further impact potential forest operations and farming practices on the tract. Therefore, the criterion is met.

(c) The amount of agricultural and forestlands used to site access roads, service corridors, the dwelling, and structures is minimized.

According to the site plan submitted by the applicant, the site access appears to follow a 35-foot gravel utility easement that accesses Silver Falls Drive NE from the applicant's adjacent property to the east. The site access eventually ends at a circular driveway on the proposed building site. Most of the utility easement appears to follow an established access road and does not appear to use more of the agricultural or forestlands. Therefore, the criterion is met.

(d) The risks associated with wildfire are minimized.

According to the applicant's statement, a spark arrester will be placed on the chimney of the proposed dwelling. Additionally, they have stated that a primary and secondary fuel break will be created and when the proposed building site is landscaped, they will comply with the fuel breaks. Additionally, the proposed home site is near enough to the existing the pond which could provide water in case of a fire. The criterion is met.

9. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for adjustment of the special non-farm setbacks and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: May 16, 2022

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.