

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 the county notify property owners within a certain distance from this property. The proposal and address 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. 19-008**

APPLICATION: Application of Ricardo and Alicia Montero to reduce the required 14 foot rear yard setback to nine feet for a patio cover on a 0.16 acre parcel in an RS (Single Family Residential) zone located at 4736 Pennsylvania Ave. SE, Salem (T7S; R2W; Section 32BC; tax lot 5700).

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 **November 7, 2021** unless an extension is granted. The effective period may be extended one time for two years subject to approval of an extension (form available from the Planning Division). Request for an extension must be submitted to the Planning Division prior to expiration of the approval.

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 check with 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 applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. The patio cover shall maintain a minimum 9 foot setback from the west property line.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect any 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 be contacted to identify restrictions or necessary permits.

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 **November 7, 2019.** If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 8, 2019** unless appealed.

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

1. The subject property is designated Single Family Residential in the Salem Area Comprehensive Plan and zoned RS (SINGLE FAMILY RESIDENTIAL). The primary purpose of this designation and zoning is to allow home sites at a low density that will eventually be annexed into the City of Salem.
2. The subject property is located on the south side of Pennsylvania Avenue SE approximately 2,050 feet west of the intersection with Cordon Road SE. The property contains a dwelling and 100 square foot accessory structure. The property is located in Block 10 of Phase 3 of Lincoln Park Subdivision, and is considered a legal lot for land use purposes.
3. All surrounding properties are in urban residential uses and in a RS zone.
4. The applicant proposes to reduce the required 14 foot rear yard setback to nine feet for a patio cover attached to the dwelling
5. Public Works Land Development and Engineering Permits (LDEP) commented: “According to the Lincoln Park No. 3 Plat, there is a 10-foot wide Telephone Easement paralleling the subject property’s south line.”

City of Salem commented that “property is within the City of Salem UGB and designated Single Family on the Salem Comprehensive Plan. Rear setbacks for detached patios in residential zones allows for 8’ setback for covered patios.”

Marion County Code Enforcement commented that “there may be/are building code violations on the property including changes in the garage to include new window spaces and the addition of a patio cover completed without permits.”

6. Marion County Code Chapter 16.35.060 states that:

No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, except federal laws related to marijuana, or is being used or has been divided in violation of the provisions of this title unless issuance of the permit or land use approval would correct the violation.

All land uses shall be conducted in full compliance with any other county ordinance, code and requirement of state and federal laws. Failure to conform to other applicable laws may be grounds for revocation of any permits and enforcement action including, but not limited to, a citation in accordance with Chapter 1.25 MCC.

In this case, an active code enforcement case is present on the subject parcel. The patio cover and some remodeling of the garage were done without building permits, and the patio cover location does not meet the required rear yard setback for a dwelling. Approval of this adjustment would resolve the planning component of the code enforcement currently in progress on the property. Therefore this criterion is met.

7. In order to approve the adjustment, the criteria found in Section 16.41.030 of the Marion County Code must be satisfied. These include:
 - (a) *The proposed development will not have a significant adverse impact upon adjacent existing or planned uses and development; and*
 - (b) *The adjustment will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and*
 - (c) *The adjustment is the minimum necessary to achieve the purpose of the adjustment and is the minimum necessary to permit development of the property for the proposed use; and*
 - (d) *The intent and purpose of the specific provision to be adjusted is clearly inapplicable under the circumstances; or, the proposed development maintains the intent and purpose of the provision to be adjusted.*

8. There is no evidence that the adjustment will have any significant adverse impact on other property in the area, and it appears that the proposed construction is consistent with existing dwellings in the vicinity. The proposed adjustment would occur along the south property line adjacent to a developed 0.16 acre lot in the RS zone. The subject property is larger than the current 4,000 square foot minimum lot size in the RS zone and the house is located at least 10 feet from the side property line closest to the patio cover. The patio cover covers less than 25 percent of the required rear yard area. The Marion County Code allows uncovered decks and patios attached to a main building to extend to the rear lot line provided they are four feet or less above grade. The patio cover has no sides/walls and is intended to increase use of the backyard by providing shelter from the hot sun and winter rain. There is no indication that the proposal would create health and safety issues in the vicinity. Based on available information the proposal can comply with the criteria listed in #7(A) and (B).

The degree of adjustment requested appears to be the minimum necessary to allow an addition onto the dwelling that has already been built. Building constraints that limit the development area are due mainly to the size of existing dwelling with respect to the size of the lot. The patio cover can meet the intent of the setback provision that provides for open space because it has no walls and allows residents comfortable use of the backyard for outdoor activities. The proposal meets #7(C) and (D).

9. Based on the above findings, it has been determined that the proposed adjustment satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: October 23, 2019

If you have any questions regarding this decision contact Lisa Milliman 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.