

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.22-012**

**APPLICATION:** Application of David and Raina Eubanks for an adjustment to reduce the required property line setbacks for a rear-yard Accessory Dwelling Unit (ADU) from 5 feet to 3 feet on a 0.23-acre property in a RS (Single-Family Residential) zone located at 4688 Indiana Avenue NE, Salem (T7S, R2W, Section 17BC, Tax Lot 11700).

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

**EXPIRATION DATE:** This decision is valid only when exercised by **January 27, 2025**, 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 applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. Prior to issuance of any permits, the applicant shall submit a site plan for review and approval by the Planning Manager.
3. 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.
4. The ADU shall maintain a 3-foot setback from all side and rear property lines.

**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 any restrictions or conditions thereon. The applicant is advised of the following:

5. The applicants should contact the Marion County No.1 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. **Paula Smith at MCFD#1/(503) 588-6513.**

**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 disagree 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 **January 27, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective on **January 28, 2023**, unless appealed.

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

1. The property is designated Single Family Residential in the Salem Area Comprehensive Plan. The purpose of this designation and the corresponding Single-Family zone is to promote residential development at low densities.
2. The property is located on the south side of Indiana Ave NE, approximately 80 feet west of its intersection with Randi Ln NE. The property contains a single-family home and was platted as part of the Middle Grove Tracts Subdivision and is therefore considered legal for land use purposes.
3. Surrounding uses are residential in all directions as this area is a developed subdivision with most homes being built in the 60's or 70's. All adjacent lots are a similar size and shape and developed with single family homes.
4. The applicant proposes to reduce the setbacks for an ADU from 5 feet to 3 feet on the sides and rear, for an ADU being located in the rear yard of a single-family parcel.

5. City of Salem commented:

“Per Salem Revised Code Sec. 700.007 (b), ADU’s located in the rear yard are required to have a minimum setbacks of 5 ft. If this property is annexed into the City of Salem in the future, the proposed development would be considered legal nonconforming.”

Marion County Building Department commented:

“No Building Inspection concerns. If provided, new structure overhangs, less than 3 ft. to the property lines, may have to be of fire resistive construction.”

All other commenting agencies stated no objection to the proposal.

6. *In order to approve the adjustment, the criteria found in 16.41.030 MCC 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*

The reduction of this setback is not expected to cause any adverse impacts on uses in the area. The use will that of an ADU, which is permitted in the zone, this parcel will still function as a residential parcel. The criterion is met.

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

A reduction in the setbacks for an ADU will not adversely affect the health or safety of persons in the vicinity as there is no evidence in the record to show an ADU creating adverse health or safety effects. The criterion is met.

- (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*

This adjustment is the minimum necessary to accommodate the use as a gas line has already been piped back to the location and the adjustment still maintains a setbacks of adequate size to buffer the ADU. The criterion is met.

(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.*

This adjustment still maintains the intent of the setback provision by maintaining a 3-foot setback which is the minimum for an AU located in a side yard. The criterion is met.

7. 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 12, 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.