

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
PROPERTY LINE ADJUSTMENT CASE NO. 22-049**

APPLICATION: Application of Steve & Leah Farrell and Nikolaus & Nicole Pries for a property line adjustment to adjust the property lines on a 0.36-acre parcel and a 6.23-acre parcel to create a 0.45-acre parcel and a 6.14-acre parcel in a SA (Special Agriculture) zone located at 8123 and 8143 Olney St SE, Salem (T8S; R2W; Section 26A, Tax lots 300 & 700).

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

EXPIRATION DATE: Title transfer instruments accomplishing the property adjustments shall be recorded, and all conditions of approval shall be met by the applicants with the Marion County Clerk by **January 27, 2025**. The effective period of an approved application may be extended for an additional year subject to approval of an extension (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 uses 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 activities. To be sure the subject property can accommodate the proposed use the applicant needs to 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 resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
2. Prior to recording of property line adjustment deeds or surveys, applicants shall consult with Marion County Septic to obtain permits or complete an existing system evaluation for the septic system on the smaller Farrell parcel. Evidence of septic approval will need to be provided to Planning before approval of the survey.
3. Per Marion County Surveyor's Office: Resultant properties must be surveyed per ORS 92.060 (7) and the survey submitted for review. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4): The deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment.

ADDITIONAL CONDITIONS: Once the approved use is established the following conditions must be continually satisfied:

4. After the property line adjustment has been completed, no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

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 the 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 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) 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. 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 Road 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 **January 28, 2023**, unless further consideration is requested.

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

1. The subject properties are designated Special Agriculture in the Marion County Comprehensive Plan and correspondingly zoned SA (Special Agriculture). The primary intent of both this designation and zone is to promote and protect small farm operations or areas with a mixture of good and poor farm soils.
2. The properties are located off Olney Street SE approximately 0.75 miles west of Olney Street's intersection with Aumsville Highway SE. The parcels are located along the western edge of Beaver Creek. The properties generally have slopes extending down towards the creek and road, with higher elevations at the northwesterly portions of the properties.
3. Both properties contain dwellings. Tax Lot 300, based on tax assessor records, contains one dwelling and multiple accessory structures. Per the Assessor data, the home was built around 1946. A review of Marion County Building Division records suggests that some sort of dwelling did exist at least as early as 1972. Therefore, this dwelling predates modern zoning regulations and appears to have been legally established. Tax Lot 700, based on tax assessor records, contains one dwelling built around 1973. A Marion County Building Division address card also suggests this home was built around 1973. Therefore, this dwelling predates modern zoning regulations and appears to have been legally established.
4. Tax Lot 300 appears to have existed in its current form since prior to September 1, 1977, based on a warranty deed recorded in Volume 522, Page 557 of the Deed Records of Marion County. The parcel existed prior to 1971 to include both properties but was later altered in 1971 (see next finding) when a portion was sold as a separate parcel. The property is described as one parcel in the deed. The parcel was then reduced in size through Lot Line Adjustment application LLA96-029. No further changes to the parcel have occurred since then. Therefore, this parcel is considered legal for the purposes of land use per Marion County Code 17.110.427.
5. Tax Lot 700 appears to have existed in its current form since prior to September 1, 1977, based on a warranty deed recorded in Volume 714, Page 377 of the Deed Records of Marion County. This property is described as one parcel in the deed and was split from the parent parcel in 1971. Therefore, this parcel is considered legal for the purposes of land use per Marion County Code 17.110.427.
6. Adjacent properties in all directions are zoned SA (Special Agriculture). The area is distinguished predominately by smaller rural residential uses and small- to medium-size farm operations. The City of Aumsville boundary is approximately 0.50 miles away currently.
7. Soil Survey for Marion County, Oregon, indicates approximately 100.0% of the soils on the subject tax lots are classified as high value.
8. Marion County Surveyor's Office commented:

Resultant properties must be surveyed per ORS 92.060 (7) and the survey submitted for review. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4): The deed shall

contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment.

9. Marion County Septic Division commented: The smaller parcel has no records of septic installation. Existing system evaluation will be required per Marion County policy.
10. Marion County Assessor's Office provided information regarding taxes on the subject properties.
11. Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies either failed to comment or stated no objection to the proposal.
12. The criteria for reviewing lot line adjustments within an SA zone are listed in Chapter 17.137.090(C) MCC. These criteria are as follows:
 1. *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to subsection (A)(1) of this section, the same number of lots or parcels shall be as large or larger than the minimum parcel size after the adjustment. When all lots or parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no lot or parcel shall be reduced below the applicable minimum parcel size. If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.*

Both parcels are less than 80 acres in size. The minimum parcel size listed in MCC 17.137.090(A)(1) for SA parcels is 80 acres. Both parcels will remain under the minimum parcel, and thus this section does not apply.

2. *If the minimum parcel size in MCC 17.137.090(A)(1) is larger than 80 acres, and a lot or parcel subject to property line adjustment is smaller than the minimum parcel size but larger than 80 acres, the lot or parcel shall not be reduced in size through property line adjustment to less than 80 acres.*

The minimum parcel size is not larger than 80 acres; both parcels are also under the minimum parcel size. Therefore, this section does not apply.

3. *Any property line adjustment shall result in a configuration of lots or parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.*

The property line adjustment proposes a minor expansion of the smaller parcel in order to accommodate expansion of the home on the property. The area where the property line is adjusting is already occupied by residential uses and does not affect the farming ability of the land. Both properties will remain as suitable for commercial agriculture as they were prior to the adjustment. The criterion is met.

4. *A property line adjustment may not be used to:*

 - a. *Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;*
 - b. *Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or*

- c. *Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.*
- d. *Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established unit of land affected by the property line adjustment is larger than the size granted by the waiver.*

Neither parcel was subject to a Measure 37 or Measure 49 claim/order, and thus (4)(d) does not apply. Subsection (4)(a), (4)(b), and (4)(c) are all met, as neither property can qualify for a dwelling based on tract acreage. All parcels involved do not have dwellings that were qualified through farm income or acreage. These criteria have all been met.

- 5. *Any property line adjustment that results in an existing dwelling being located on a different parcel shall not be subject to the standards in MCC 17.137.030(A) so long as the adjustment:*
 - a. *Does not increase the any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and*
 - b. *Does not increase the potential number of dwellings on the resulting parcels.*

No dwellings will be located on different parcels, nor will the adjustment allow for additional dwellings. This section does not apply.

- 13. The resulting lots shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
- 14. Based on the above findings, the applicants' proposal meets the criteria for a property line adjustment in a SA zone. The property line adjustment request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: January 12, 2023

If you have any questions regarding this decision contact Daniel Jansen 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.