

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  
FLOODPLAIN DEVELOPMENT CASE NO. 24-006**

**APPLICATION:** Application of SJV Properties LLC for a floodplain development permit to build a structure in the identified 100-year floodplain of Mill Creek on a 4.57 acre parcel in the IC (Industrial Commercial) zone located at 3840 Boone Rd SE, Salem (T8S; R2W; Section 18B; Tax lot 200).

**DECISION:** The Zoning Administrator for Marion County has **APPROVED** the above-described Conditional Use application subject to certain conditions

**EXPIRATION DATE:** This conditional use permit is valid only when exercised by **December 2<sup>nd</sup>, 2026**. 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 proposal. To ensure the subject property can accommodate the proposal the applicant should contact Building Inspection Division, (503) 588-5147.

**All development in the floodplain is subject to federal, local, and state regulations and standards at the time development is begun. These regulations and standards are in the process of being revised and the development proposed in this application may be subject to additional regulations and standards at the time construction of structures or placement of fill on the property begins.**

**Based on preliminary information provided by the National Marine Fisheries Service on April 14, 2016, federal law might only recognize as legal under the county current floodplain ordinance building permits that are issued prior to September 15, 2016, and where the work is begun prior to March 15, 2017. Permits issued after September 15, 2016, or not begun until after March 15, 2017, may be in violation of federal law and thus invalidate this local permit.**

**Construction related to this permit is approved only within the existing developed area of the property. Construction of new structures, fill or other development of the property should not occur outside the existing developed area without prior consultation with the Marion County Planning Division. Federal regulations may require additional approvals for development outside the existing developed area of the property.**

**Applicants are further advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade).**

**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 permits required by the Marion County Building Inspection Division.
2. Prior to issuance of building permits, the applicant shall sign and submit to the Planning Division a Floodplain Declaratory Statement acknowledging that the property and the approved development are located within a floodplain. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

3. Prior to development of the property the applicant shall submit, for review and approval by the Zoning Administrator, a detailed site plan showing how the development will comply with all applicable development standards.
4. Prior to issuance of building permits, the applicant shall develop a base flood elevation for the developments on the property.
5. Prior to issuance of building permits, a registered civil engineer shall certify the proposed structures meet the requirements of Marion County Code: 16.19.130(D) and MCC 16.19.140(C), (D), (E), and (F).
6. An Elevation Certificate shall be supplied at the following times during the permitting process:
  - (a) Prior to construction (based on construction drawings)
  - (b) Once the floor elevation can be determined (based on the building under construction)
  - (c) Prior to occupancy (based on finished construction)
7. The use of the portion of the building not dry flood proofed or elevated to two feet above the BFE shall be limited to parking, building access, storage of items having low damage potential when submerged by water, and construction of components capable of withstanding direct and prolonged (72 hours) contact with floodwaters without sustaining significant damage (any damage requiring more than low-cost cosmetic repair, such as painting), consistent with FEMA Technical Bulletin 7-93.
8. 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.
9. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to a 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 any restrictions or conditions thereon. The applicant is advised of the following:

10. The applicants should contact the Turner 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.
11. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited unless stored within a structure or on land elevated above the base flood level. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.
12. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 below, that may be required.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Zoning Administrator. If there is any doubt that the application conforms with adopted land use policies and regulations the Zoning Administrator must condition or deny the application. Anyone who disagrees with the decision may request that the application be considered by a 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 120-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 Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **December 2<sup>nd</sup>, 2024**. If you have questions about this

decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 3<sup>rd</sup>, 2024** unless further consideration is requested.

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

1. The property is designated Industrial in the Salem Area Comprehensive Plan. It is currently zoned IC (Industrial Commercial) by Marion County. The purpose of this zone is to provide areas suitable for light industrial uses such as warehousing, wholesale commercial sales and services with related outdoor storage or retail sales.
2. The property is located on the south side of Boone Rd SE, at the western terminus of the section that intersects with Turner Rd SE. The railroad on the western border of the subject parcel separates this section of Boone Rd SE from the rest of the road that stretches west from Eastland to 22<sup>nd</sup> Ave SE. The subject parcel is within the City of Salem Urban Growth Boundary (UGB) and the Santiam Water Control District. The subject parcel contains a 11,250 square foot warehouse built in 1978, and approximately 4-acres of outdoor storage area for vehicles and materials. The subject parcel is entirely within the 100-year floodplain of Mill Creek, with the exception of an approximately 15-foot band of 500-year floodplain against the railroad right of way on the western property line.

The parcel comprises a portion of the northwestern corner of lot 1 of the Hanshaw Fruit Farms Plat. The parcel was described in its current configuration by deed on January 5, 1977 and is therefore legal for land use purposes.

3. The east adjacent parcel is also zoned IC. East of that parcel is a parcel within the City of Salem. Both of these are in similar industrial uses to the subject parcel. To the south of these parcels is an 11-acre field within the City of Salem and adjacent to Mill Creek. This field north of Mill Creek is part of a larger 390.5-acre parcel within the City of Salem's planning jurisdiction that formerly housed a reform school and rehabilitation center. There are plans to develop this parcel for residential purposes. To the west of the subject parcel, across the railroad and Eastland Ave SE, are two parcels split zoned IG (General Industrial) and UT-10 (Urban Transition). The area south of Boone Rd SE and west of Eastland Ave SE is all a mix of UT and IG, within the UGB of Salem. The subject parcel lies in the northeastern section of this unannexed area south of Kuebler, most of which is designated Industrial in Salem's Comprehensive Plan.
4. The applicant proposes to establish a 40x60-foot shop for fabrication of cell tower components.
5. Marion County Planning requested comments from various agencies, those that provided comments are:

Marion County Building Inspection commented: "Permit(s) are required to be obtained prior to structure development and/or utilities installation on private property. An item to address in the architectural plans is the proposed storage system layout, materials quantities, storage methods, materials use, and processes within the building for fire and life safety concerns. Discussion with a building plans examiner is highly recommended during plans design and prior to application submittal."

Marion County Septic commented: "An authorization is required to connect a new structure to the existing septic system. An application/major alteration to increase the number of employees from 6-12 and attach the structure to the system was received on 10/15/24."

Turner Fire District provided comments that are included in the case file and were provided to the applicant.

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

6. The purpose of the Floodplain Overlay Zone is to promote public health, safety and general welfare to minimize public and private losses due to flood conditions. In order to ensure that the development is reasonably safe from flooding, the County requires the development to comply with the criteria and standards listed in Section 16.19.130 and 16.19.140 of the Marion County Code (MCC).

7. Marion County Flood Insurance Rate Map #41047C0363H indicates that the development site is in an AE zone. Base Flood Elevations (BFE) are provided in this zone but vary across the subject parcel. The applicant will be required to develop a BFE at the proposed site of development.

8. Marion County Code 16.19.130 requires the following prior to any development in the floodplain:

(C) *Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest, acknowledging that the property and the approved development are located in a floodplain.*

The recording of this declaratory statement shall be a condition of approval.

(D) *Prior to obtaining a building permit, commencing development or placing fill in the floodplain, the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.*

The provision of this certification shall be a condition of approval.

(E) *The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations (in relation to mean sea level) of the lowest floor (including basement) and all attendant utilities of all new or substantially improved residential structures including manufactured dwellings meet the requirements of MCC [16.19.140\(A\)](#), (B) and (C) where applicable, as follows:*

1. *Prior to construction (based on construction drawings); and*
2. *Once the floor elevation can be determined (based on the building under construction); and*
3. *Prior to occupancy (based on finished construction).*

Elevation certificates provided to Marion County Planning at these stages shall be a condition of approval.

9. Marion County Code 16.19.140 requires the following flood protection standards for development in the Special Flood Hazard Area:

(C) *Nonresidential Development.*

1. *New construction and substantial improvement of any commercial, industrial or other nonresidential structures shall either have the lowest floor, including basement, elevated to two feet above the level of the base flood elevation, and where the base flood elevation is not available, the lowest floor, including basement, shall be elevated to two feet above the highest adjacent natural grade (within five feet) of the building site; or together with attendant utility and sanitary facilities, shall:*
  - a. *Be floodproofed to an elevation of two feet above base flood elevation or, where base flood elevation has not been established, two feet above the highest adjacent grade, so that the structure is watertight with walls substantially impermeable to the passage of water.*
  - b. *Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.*
  - c. *Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. This certificate shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed and shall be provided to the floodplain administrator.*

*Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (A)(5) of this section.*

*Applicants floodproofing nonresidential buildings shall be notified by the zoning administrator that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).*

An elevation certificate from 2011 for the existing building shows a Base Flood Elevation (BFE) of 238, and a floor elevation of 237.2. The applicant explains that elevation of the proposed shop would create issues for forklifts carrying steel components. The applicant proposes wet-floodproofing instead of elevation or floodproofing. Variance criteria for wet-floodproofing are addressed in section 10 of this document. The provision of engineering certification that 16.19.140(C)(1)(a-c) have been met shall be a condition of approval.

(D) *Anchoring.*

1. *All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.*

The provision of this certification shall be condition of approval.

(E) *Construction Materials and Methods.*

1. *All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*
2. *All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.*

The provision of this certification shall be a condition of approval.

(F) *Utilities.*

1. *All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system as approved by the State Health Division.*
2. *New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.*
3. *On-site waste disposal systems shall be designed and located to avoid impairment to them or contamination from them during flooding consistent with the requirements of the Oregon State Department of Environmental Quality.*
4. *Electrical, heating, ventilation, plumbing, duct systems, air conditioning, and other equipment and service facilities not installed so as to prevent water from entering or accumulating within the components during conditions of the base flood shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site. If replaced as part of a substantial improvement the utility equipment and service facilities shall meet all the requirements of this subsection.*

The provision of this certification shall be a condition of approval.

(H) *Storage of Materials and Equipment. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and*

*equipment have low damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.*

This shall be a condition of approval.

10. Wet-floodproofing of structures is required to comply with the Variance criteria in MCC 16.19.170:

(A) *Variances shall only be issued upon a showing that:*

*1. There is a good and sufficient cause;*

The proposed structure would be for purpose of siting a metal fabrication business engaged in the fabrication of cell towers. The structure may not be elevated due to the frequent use of forklifts entering and exiting the structure. To accomplish elevation of the structure and safe ingress and egress of the machinery associated with the use would require significant fill that could render compliance with 16.19.130(D) difficult or impossible. Floodproofing the structure while still maintaining large access and ingress for machinery would be similarly difficult. Allowing wet-floodproofing, engineered to meet all other relevant criteria in MCC 16.19, is the only way to permit the use and structure proposed by the applicant. The criterion is met.

*2. Failure to grant the variance would result in exceptional hardship to the applicant;*

Failure to grant this variance would result in complex, and potentially dangerous, construction to elevate an industrial structure with ramps for forklifts. The large access and ingress points required for the machinery involved in the use, and the transportation of large products produced, presents a significant obstacle for engineering floodproofing components that are capable of resisting hydrostatic and hydrodynamic loads.

The engineering and construction expenses may preclude utilizing elevation or floodproofing for the proposed structure. Wet-floodproofing, as described in the FEMA technical bulletin 7, would allow the structure to be built with components that are capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage.

The use proposed for the structure is permitted in the IC zone, and the locations where the use is permitted are limited. The cost of alternative construction or location presents an exceptional hardship to the applicant. The criterion is met.

*3. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws;*

The proposed structure is for industrial/commercial purposes and will be occupied during work hours by employees. It will not be used as a residence, nor frequented by the public. Water level gages monitor Mill Creek a quarter mile southeast of the subject parcel, and the East fork of Pringle Creek a quarter mile northwest of the subject parcel. Adequate notice of rising floodwaters appear to be available, providing time for evacuation. Therefore, granting this variance will neither create additional threats to public safety, nor cause extraordinary public expenses.

The requirements of MCC 16.19.130(D) are to “provide certification from a registered civil engineer demonstrating that the proposed structure will not result in an increase floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.” This certification will be required as a condition of approval, and will assure that the proposed structure does not increase flood heights. There is no indication that granting of this variance will result in fraud or victimization of the public. Approval of this variance does not conflict with existing local laws. The criterion is met.

*4. The variance is the minimum necessary, considering the flood hazard, to afford relief;*

Considering the purpose of the structure, approval of wet-floodproofing plans is the only way to allow the proposed structure to be used as required by the applicant. The criterion is met.

*5. The variance will be consistent with the intent and purpose of the provision being varied;*

Wet-floodproofing the structure will protect the structure itself from damage resulting from periodic inundation of water. Plans provided during the building permit process for the proposed storage system layout, quantities and categories of materials, storage methods, materials use, and processes within the building for fire and life safety concerns will help ensure that private losses are not incurred and public health, safety and general welfare are minimized.

Elevating or dry floodproofing the structure would be consistent with the purpose of the overlay, but render the proposed use extremely difficult or impossible on the subject parcel. Wet-floodproofing the proposed structure can be done in a way that is consistent with the purpose of the floodplain overlay zone to promote the public health, safety and general welfare to minimize public and private losses due to flood conditions. The criterion is met.

*6. There has not been a previous land use action approved on the basis that variances would not be allowed;*

There has not been a previous land use action approved on the basis that variances on this property would not be allowed. The criterion is met.

*7. The new construction or substantial improvement is not within any designated regulatory floodway, or if located in a floodway, no increase in base flood discharge will result; and*

The proposal is not within a designated regulatory floodway, the criterion does not apply.

*8. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use; provided, that the criteria of this subsection are met, and the structure or other development is protected by methods that will minimize flood damages during the base flood and create no additional threats to public safety.*

The proposed structure is not a functionally dependent use. The criterion does not apply.

11. Based on the above findings, it has been determined that the proposal satisfies all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: November 15, 2024

If you have any questions regarding this decision contact John Speckman 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.