

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. 24-016**

APPLICATION: Application of David & Karen Schiedler for a property line adjustment to adjust the property lines on a 41.6-acre parcel, a 0.95-acre parcel and a 1.25-acre parcel to create a 38.8-acre parcel and 5-acre parcel in an EFU (Exclusive Farm Use) zone located at 7862 Gallon House Rd NE, Silverton (T6S; R1W; Section 22; Tax lot 1000, 1100, & 2100).

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 by the applicants with the Marion County Clerk by **August 31, 2026**. (two years). 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 drainfield 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. Per the Marion County Surveyor's office: No surveys are required for properties greater than ten acres per ORS 92.060 (8), however, properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fees are required at the time of review. Finally, property line adjustment deeds shall be recorded with the Marion County Clerk's Office per ORS 92.190 (4).
2. **Prior to recording the deeds**, the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division. See Finding #6 for further information.
3. 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.

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 Finding # ___ below be contacted to identify restrictions or necessary permits.

5. Prior to recording the deed all taxes due must be paid to the Marion County Assessor Tax Section (contact them at (503) 588-5215 for verification of payments).

6. The applicants should contact the Mt. Angel and Silverton Fire Districts 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) 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 **September 3, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 4, 2024**, unless further consideration is requested.

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

1. The subject properties are designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The properties are located at 7862 Gallon House Rd NE, roughly 500 feet south of the intersection between Gallon House Rd NE and Downs Rd NE and a half mile north of the Gallon House covered bridge. The property contains a 1915 farmhouse and several large farm structures such as silos, sheds, and greenhouses. The rest of the property consists of open fields planted with grass as identified on the applicant's site plan. There is one previous case on the properties, a temporary medical hardship, but the hardship case did not contain a legal determination of all the lots involved in this proposed adjustment. Through research of past land deeds, it was found that "Parcel C" on the site plan was first described as a separate legal parcel in a deed from January 21st, 1919 and has remained in the same configuration since. "Parcel A" has been in its current configuration since it was sold in 1971. While "Parcel B" was not directly identified as an independent parcel in the process, the applicants are not seeking to retain 3 total parcels at the end of the property line adjustment but rather have 2 separate legal parcels of 5.0-acres and 38.8-acres. At least two parcels are legal for land use purposes to execute the intent of this property line adjustment.
3. Adjacent properties consist of primarily farm fields engaged in commercial hazelnut orchards, with the exception of the Wilco/Valley Agronomics service depot to the northeast at the intersection of Downs Rd and Highway 214. Highway 214 and a railroad line run parallel together a half-mile East of the proposed location for the hardship dwelling. Other major features are an identified wetland located on the parcel to the North roughly along the shared property line, the Abiqua Creek to the West, and the historic Gallon House covered bridge which is where Gallon House Rd crosses the Abiqua creek.
4. Soil Survey for Marion County, Oregon, indicates approximately 98.2% of the soils on the subject tax lots are classified as high value.
5. The applicants are proposing to adjust the property lines on a 0.98-acre parcel, a 1.25-acre parcel, and a 41.6-acre parcel to create two new parcels. One parcel of 5.0-acres and the other of 38.8-acres, with the intent of consolidating the existing farm structures and 1915 farmhouse on one property and the open fields on the other. This is to better represent the change in farming operations on the properties.
6. Various agencies were contacted about the proposal and given an opportunity to comment.
Marion County Surveyor's Office commented:
 - 1) No survey required for properties greater than ten acres per ORS 92.060 (8).
 - 2) Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review.

- 3) Survey checking fee required at the time of review.
- 4) Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4).

Marion County Assessor's Office provided information regarding taxes on the subject properties.

Marion County Septic commented: "An existing systems evaluation is required for both proposed parcels. Existing systems must meet a 10ft setback to proposed property lines."

Marion County Building commented: "Marion County Building Inspection suggests the proposed property line(s) be established at least 3 feet from existing residential use structures exterior walls and overhangs, and at least 10 feet from commercial-use structures exterior walls and overhangs. If any less than these dimensions, then additional fire resistive materials may be required to be installed on the exterior walls and/or overhangs of existing structures referenced in this comment."

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

7. The criteria for reviewing lot line adjustments within an EFU zone are listed in Chapter 17.136.090(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.*

All the lots or parcels involved in the proposed property line adjustment are below 80-acres, which is the minimum parcel size. The criterion does not apply.

2. *If the minimum parcel size in subsection (A)(1) of this section 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 in the area is not larger than 80-acres and none of the existing lots or parcels are larger than 80-acres. The criterion 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 proposed configuration by the applicants would result in the primary farm dwelling and farm structures present on the property being sectioned off from the rest of the open farmland. While this would appear to reduce the suitability for agriculture on the property, the intention behind the change is to consolidate the open land so the son of the applicants can take over farming the open ground with an adjacent property the son already owns (tax lot 2000 of the same township, range and section). The property owners can continue to operate out of greenhouses already on the property located around the farmhouse and existing farm structures. This new configuration is just a suitable for commercial agriculture as before, therefore 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;*

The proposed property line adjustment would not make the parcel without a dwelling greater than the minimum tract size to qualify for a dwelling. The criterion is met.

- 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;*

The proposed property line adjustment would not make the parcel without a dwelling greater than the minimum tract size to qualify for a dwelling. The criterion is met.

- 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; or*

The existing dwelling located on the property has a year built date of 1915 in the Marion County Tax Assessor's "Property Details" information. This means that the dwelling was established prior to the adoption of land use planning and zoning ordinances and that the land was not used to qualify the tract for a dwelling based on an acreage standard. The only prior land use case on the property was a Conditional Use medical hardship which does not qualify a parcel for a dwelling based on an acreage standard. The land on the tract has therefore not been used to qualify a for a dwelling. The criterion is met.

- 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.*

None of the involved parcels were the subject of a Measure 49 waiver. The criterion is 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 17.136.030(A) so long as the adjustment:*
- a. *Does not increase any adverse impacts on the continued practice of commercial agriculture on the resulting parcels;*
 - b. *Does not increase the potential number of dwellings on the resulting parcels; and*
 - c. *Does not 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.*

The existing dwelling on the subject properties is not moving to a different parcel. Only the open farmland is moving to a different parcel, therefore none of the criteria of 5 apply.

8. 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.
9. Based on the above findings, the applicants' proposal meets the criteria for a property line adjustment in an EFU zone. The property line adjustment request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: August 16, 2024

If you have any questions regarding this decision contact Alexander Seifer 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.