

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. 20-002**

APPLICATION: Application of Javier and Arcelia Mena for an adjustment to allow a 13 foot tall accessory structure where a 9 foot tall structure is permitted on a 0.15 acre parcel in a RS (Single-Family Residential) zone located at 758 Shenandoah Drive SE, Salem. (T7S; R2W; Section 32BD; tax lot 1600).

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 **May 28, 2022** (two years) 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. All water draining from the roof must be contained on the property.
3. The gazebo may not be enlarged or increased in height unless another adjustment is approved.
4. No additional accessory structures are allowed.

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.

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 **May 28, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective on **May 29, 2020** 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 approximately 240 feet south of the intersection of Shenandoah Drive SE and Elkhorn Drive SE. The property is described as Santana Village Phase 2, Block 15, Lot 2 and is considered a legal parcel for land use purposes.
3. Surrounding properties are zoned RS on all sides and are all small urban residential lots developed with dwellings.
4. The applicant is proposing to legalize an existing 13 foot tall structure located in the backyard in a location where a nine foot tall building is permitted. In addition, the area of the structure located within 14 feet of the rear property line is 343 square feet, where 304.5 square feet is allowed.
5. Public Works Land Development and Engineering Permits (LDEP) commented that the accessory structure appears to have been constructed on a five foot wide utility easement that is shown on Santana Village Phase 2 Plat.

Marion County Building Inspection commented that a building permit will be required for new construction.

City of Salem Planning Division commented that “Upon annexation into the City of Salem, the proposed development would not meet the following standards of the Salem Revised Code (SRC): Minimum rear yard setback for accessory structures of 1 foot for each foot of height over 9 feet (SRC511.010 (b)). If permitted, the proposed structure would be non-conforming development upon annexation, and the proposed adjustment would not carry forward with the property.”

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

6. 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.*
7. The structure appears to be approximately five feet taller than the wooden privacy fence that separates the subject property from the lot to the east and is constructed with an asphalt shingle roof, similar to the dwellings in the area. The sides of the structure are not enclosed and the structure is intended to provide shelter from rain and hot sun and allow more comfortable use of the backyard. The structure was built without building permits; however the applicant has applied for a building permit, which will provide for inspections of the construction to ensure that the structure has been built in accordance with the Building Code. Approving the adjustment is not likely to have any significant adverse impact on other property in the area. The location and size of the gazebo will not be unsafe for persons living or working in the vicinity as it doesn't change the use of the backyard. No adverse effects or impacts are expected from reducing the setback this storage shed or allowing more than 25 percent of the required rear yard area to be devoted to a structure, the criteria in# 7(a) and (b) are met.

This adjustment is the minimum necessary to make the setbacks on this structure the same, as the applicant wishes to do. The shed still maintains the intent of a setback, as the roof structure maintains a visual barrier between the outside activities in the rear yard of the subject property and the neighboring property to the east. Based on these findings, the criteria in #7(c) and (d) are met.

8. Based on the above discussion, it has been determined that the request satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: May 13, 2020

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.