

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 VARIANCE CASE NO. 25-006

APPLICATION: Application of Microplant Nurseries, Inc. for a variance to reduce the required 20-foot northern and eastern property line setbacks to a 5-foot setback for accessory structures on a 2.55-acre parcel in the Exclusive Farm Use (EFU) zone located at 11888 Treco Ln NE, Gervais (T5S; R1W Section 32; Tax lot 900).

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

EXPIRATION DATE: This variance is valid only when exercised by **June 13th, 2027** (two years). The effective period of an approved application 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 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 applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. The proposed accessory structure shall maintain a 5-foot setback from the adjacent northern and eastern property lines; future accessory structure(s) shall maintain the standard 20-foot setback from the property line. 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.
3. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.

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:

4. The applicants should contact Mt. Angel Fire Department and obtain a copy of the District's Recommended Building Access and Identification Guidelines. For personal and property safety it is recommended that the applicant follow these guidelines. 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 June 13th, 2025. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective June 16th, 2025, unless further consideration is requested.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farming Use). The purpose of the EFU zone is to provide areas for continued practice of commercial agriculture. These areas are generally well suited for large-scale farming. The EFU zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources of the county.
2. The property is located on the north side of Mt. Angel Gervais Road, approximately one mile east of its intersection with Miller Road.
3. The subject parcel was created in its current configuration by Partition Plat 2000-40 in 2001. This was part of land use case P/CU99-026. This was a partition application to divide the tissue lab from the main farm parcel and run the tree tissue lab as a commercial activity in conjunction with farm use. This parcel is not in the special farm tax deferral program. The Planning Department has determined that the parcel is legal for land use purposes.
4. Surrounding properties contain a mixture of various-sized commercial farm operations in an EFU zone.
5. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Building Division commented:

Permit(s) are required to be obtained prior to the installation of carports with solar arrays, other structures with solar arrays, and/or the alteration of existing structures to include solar arrays. Fire separation requirements from 2022 OSSC Chapter 7 will be closely reviewed, amongst the other provisions of the state building code. It's recommended these structures and solar arrays be evaluated by an Oregon licensed architect for fire and life safety purposes. Fire rated construction and/or fire sprinklers may be required.

Marion County Septic commented:

All proposed structures must meet a 5ft minimum setback to septic tanks and effluent lines, and a 10ft minimum setback from foundations to the drainfield is required.

The Marion County Tax Assessor provided information about the property's tax liabilities.

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

6. The applicant is proposing to reduce the required 20-foot property line setback to five feet on the northern and eastern property lines. This is to allow for the siting of covered carports that will support photovoltaic panels. The applicants state that they are attempting to minimize the amount of the impervious parking surface that would have to be covered so as not reduce parking and maneuvering space in the parking lots. They further state that they are attempting to provide sufficient structural surface to produce as much solar electricity as they can on the site to offset their electrical power consumption for cultivating their blueberry, hazelnut, and maple plants. To accomplish this the applicants are requesting to reduce the 20-foot property line setbacks required in the EFU zone to five feet along the northern and eastern property lines. The southern and western property lines are adjacent to roadways and the standard setbacks will remain in effect.
7. To obtain a variance, the proposal must meet the criteria found in Marion County Code 17.122.020(A). These criteria are:
 1. There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and

The subject property is zoned EFU and has setbacks of 20-feet for all structures except ag-exempt structures. This

property is not in the special tax deferral program for farm use and would not qualify for an Ag-Exempt structure. The parcel is being used for commercial activity in conjunction with farm use and is much smaller at 2.55-acres than the minimum 80-acre size for EFU parcels. The land immediately surrounding the current commercial use is actively being farmed by the applicants (north) and other neighbors (east). The reduction in the setbacks would be the best way to accomplish the applicant's goals. The criterion is met.

2. *There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and*

The configuration of the commercial structure, accessory structures, septic system, well, parking and loading docks make the request for a variance to the 20-foot property line setback reasonable and meets the definitions in this section. The criterion is met.

3. *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*

The applicant has stated that the proposed variance from the EFU setback of 20-feet to a setback of 5-feet along the northern and eastern property lines would be the minimum necessary to permit the construction of the accessory structures without modification of the land or reducing the parking and loading area. The criterion is met.

4. *The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and*

The proposed variance would place the accessory structures closer to the north and east property lines but still allow for some property line separation. Due to the parcel's existing layout, the proposed variance is sufficient to accommodate the property owner's needs but retain sufficient buffer from the property lines. This is not expected to have a significant adverse effect on the property or to the neighborhood. The criterion is met.

5. *The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and*

The proposed accessory structures will be required to meet building and fire code requirements, which may be more stringent than zoning code requirements, for health and safety reasons. A 5-foot setback will still allow for space between the structures and property line to maintain open area. The criterion is met.

6. *The variance will maintain the intent and purpose of the provision being varied.*

The variance will still maintain the intent and purpose of the setback requirements in the code. The majority of the parcel will still have the standard EFU property line setbacks to maintain the intent and purpose of the provisions in the code. The criterion is met.

8. Based on the above findings, the applicants' proposal meets the criteria for a variance. The variance request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: May 29th, 2025

If you have any questions regarding this decision contact George Brandt 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.



ZONING MAP

Input Taxlot(s): 051W320000900

Owner Name: MICROPLANT NURSERIES INC

Situs Address: 11888 TRECO LN NE

City/State/Zip: GERVAIS, OR, 97026


Land Use Zone: EFU

School District: GERVAIS

Fire District: MT ANGEL

Legend

 Input Taxlots

 Lakes & Rivers

 Highways

 Cities



scale: 1 in = 339 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.