

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. 19-002**

APPLICATION: Application of Frederick and Karen Herold for a variance to reduce the required 20 foot side yard setback to five feet and the required 20 foot rear yard setback to 10 feet for a dwelling on a 0.95 acre parcel in an EFU (Exclusive Farm Use) zone located at 11623 Feller Road NE, Hubbard. (T4S; R1W; Section 32D; tax lot 500).

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

EXPIRATION: This Variance is valid only when exercised by **August 22, 2021**. 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 proposal 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 be sure the subject property can accommodate the proposal the applicant should contact 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 replacement dwelling shall maintain a 10 foot minimum setback from the north property line, a 4 foot minimum setback from the west property line, and a 20 foot setback from the east and south property lines.
2. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
3. 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.

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 restrictions or conditions thereon. It is recommended that agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. The applicants should contact the Aurora Fire 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.
5. 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 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 fee of \$200.00)

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 **August 22, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 23, 2019** unless appealed.

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 zoned EFU (EXCLUSIVE FARM USE). The intent of both designation and zone is to promote and protect commercial agricultural operations.
2. The property is located on the north side of Feller Road NE in the 11,600 block. The surrounding property, tax lot 400, was approved for a replacement dwelling in 2005. Therefore, this parcel, tax lot 500, which may have been a part of a larger parcel at some time in the past, is a separate legal parcel as well. The property is developed with a residence, accessory structures, well and septic system.
3. Surrounding properties in all directions are zoned EFU and consist of properties being farmed.
4. The applicant is proposing to reduce the required 20 foot rear and side yard setbacks for a new dwelling to a 10 foot rear yard setback and a 4 foot side yard setback.
5. Public Works Land Development and Engineering Permits (LDEP) requested the following be included in the land use decision:
 - A. The subject property is within the unincorporated area of Marion County and may be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively. Should a replacement dwelling be determined to be replacing an existing approved use that was established prior to year 2000, then no SDCs will be assessed if a complete building permit application is submitted within 12 months from the last verifiable date of occupation of the dwelling to be replaced, or if prior SDCs had been paid.
 - B. In accordance with Marion County Code 11.10, a driveway "Access Review" will be conducted at the time of application for building permits. If changes to access are deemed necessary by the County Inspector, an "Access Permit" will be required. Driveways must meet sight distance, design, spacing, and safety standards."

Marion County Building Inspection commented that a building permit is required for new construction or placement of a manufactured home.

6. In order to obtain a variance the proposal must meet the criteria in found in Section 17.122.020 of the Marion County Code (MCC). These criteria are:
 - (a) *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; and*
 - (b) *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*
 - (c) *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*
 - (d) *The variance will not have a significant adverse affect on property or improvements in the neighborhood of the subject property; and*

- (e) *The variance will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and*
- (f) *The variance will maintain the intent and purpose of the provision being varied.*

7. The long, narrow shape of the property limits the areas where a new dwelling could be placed on the land. The applicant states that the proposed location permits the replacement of the existing residence with a new residence before the existing dwelling is removed or converted to a non-residential use. Requiring the existing dwelling to be removed before the replacement dwelling is built would mean that the property owner could not live on the land while the new dwelling is being built. This would be a great cost to the applicant and unusual on rural land, since most replacement dwellings can be built on land while the existing dwelling remains on the site. The proposed dwelling cannot be placed closer to the road because of the location of the septic system on the property. The applicant states that the proposed placement of the replacement dwelling would permit better utilization of the land for uses such as a garden and orchard. The applicant states that the proposed location should have minimal impact on the neighboring farm use of the raising of livestock. And there are no existing buildings on surrounding land which would be impacted by the proposed location of the replacement residence. The proposal meets the criteria in Finding #6.
8. Based on the above findings, the applicants' request meets all applicable criteria for a variance and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: August 7, 2019

If you have any questions please contact Brandon Reich 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.