

Attention Property Owner: A land use proposal has been submitted for property near where you live or property you own elsewhere. State law requires the county notify property owners within a certain distance from this property. The proposal and address 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. 19-003**

APPLICATION: Application of Tomas and Candace Cantu for a variance to reduce the required 20 foot side yard setback to 8 feet for an addition to a dwelling on a 4.22 acre parcel in a FT (Farm Timber) zone located at 6555 Starlight Ln. NE, Silverton. (T6S; R1E; Section 29DB; tax lot 1200).

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 **September 30, 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 addition to the dwelling shall maintain an 8 foot minimum setback from the side property line.
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 Silver Falls 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 **September 30, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 1, 2019** unless appealed.

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

1. The subject property is designated Farm/Timber in the Marion County Comprehensive Plan and zoned FT (Farm Timber). The intent of both designation and zone is to promote and protect commercial agricultural and timber operations.
2. The property is located on Starlight Lane NE south off the 16,700 block of South Abiqua Road NE. The property was approved for a hardship dwelling by Conditional Use Case #80-50, which determined that the property was lawfully created.
3. Surrounding properties to the north, east and south are zoned TC and consist of homesites and properties being farmed with some native stands of timber. Property to the west is zoned EFU and consist of properties being farmed with some native timber.
4. The applicant is proposing to reduce the required 20 foot side yard setback for an addition to an existing dwelling to an 8 foot side yard setback.
5. Public Works Land Development and Engineering Permits (LDEP) requested the following be included in the land use decision:
 - A. Prior to issuance of building permits for the proposed addition, provide evidence of legal access easement(s) from the subject property to the private access easement, Starlight Lane. PW Engineering is unable to verify legal access to South Abiqua Road.”

Marion County Building Inspection commented that a building permit is required for new construction.
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 an addition to the existing dwelling could be constructed. The homes septic lines extend from the west side of the house, preventing an addition from being constructed to the west of the existing dwelling. It is impractical to relocate the existing dwelling to meet the current setbacks applied to the property. The applicant indicates that the neighboring home on the far eastern side of its parcel, away from the proposed addition. The proposal appears to be the minimum to permit an addition to the dwelling. A residential additional to an existing home is low impact in nature and would not be expected to have a significant adverse affect on property or improvements in the area of the subject property or an adverse

affect upon the health or safety of persons working or residing in the vicinity. The reduced setback would still preserve the intent and purpose of the requirement for setbacks, for instance for fire protection or for separation from neighboring uses. Based on this discussion, 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: September 13, 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.