

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. 22-011**

**APPLICATION:** Application of Wilburn and Faye McCary for a variance to reduce the required setbacks of a dwelling from 20 feet to 10 feet on an approximate 1.40-acre parcel in an EFU (Exclusive Farm Use) zone located at 3553 Jefferson Marion Road SE, Jefferson (T10S; R2W; Section 6BB; Tax Lots 700, 800, 900, 1000, and 1200).

**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 **January 27, 2025**. 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 dwelling shall maintain at least a 9-foot setback from the northern property line (rear yard property line).
3. Per the requirements of Marion County Code 17.136.110 and the previous land use approval, the parcels shall be consolidated and will be treated as one single parcel for land use purposes. Ideally, all tax lots should be consolidated by the property owner as well to avoid future confusion as well.
4. 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:

**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 **January 27, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 28, 2023**, unless further consideration is requested.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which the 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 property is located off Jefferson Marion Road SE approximately 600 feet west of its intersection with Parrish Gap Road SE. The property is mostly flat. The property is developed with one single-family dwelling and multiple accessory structures. Adjacent properties in all directions are also zoned Exclusive Farm Use (EFU); these properties include smaller acreage homesites immediately to the east, south, and west. To the north is a larger farm operation.
3. The subject property originally consisted of multiple parcels created by deed prior to September 1, 1977. However, the approval of Administrative Review 94-037 for reduced setbacks and an accessory structure on the property required that the property be treated as a single parcel. Therefore, this property is considered **one parcel** is considered legal for the purposes of land use per Marion County Code 17.110.427.
4. Marion County Building Division commented: No Building Inspection concerns. Permits are required for the future addition and remodel to existing home.
5. Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies either failed to comment or stated no objection to the proposal.
6. 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, which is a farm zone that requires 20-foot setbacks. However, the parcel is only about 1.40 acres in size and is de facto used in a more rural residential fashion. Due to the small size, the location of the home, and layout of the property lines (which were all created prior to modern zoning regulations), fitting a home plus septic system and other items on the property within the required setbacks becomes nearly impossible. The existing home exists in a corner of the property where expansion will encroach within the required 20-foot setback no matter which direction it expands. Therefore, a variance is necessary to permit expansion of the home. 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*

As stated previously, the unusual parcel shape and size constitute circumstances or conditions that do not apply generally to other “normal” properties in the same zone. These conditions are indeed unusual because the EFU zone regulations are intended to fit larger farm parcels, but this parcel was created prior to those regulations. 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 proposed variance is the minimum necessary to accommodate the expansion of the home. This has been illustrated by the applicant through their site plan and applicant statement. 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 home is already separated from adjacent farm operations by an intermittent creek and natural buffer zone to the north, thus reducing the potential for adverse effects. The variance for a reduced setback will not adversely impact other nearby homes because the variance is not for expansion towards those homes, nor is the single-family residential nature being altered. 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 granting of reduced setbacks will not have a significant adverse effect upon the health or safety of adjacent properties or people. The proposed home expansion is typical of the area and does not create any new unusual land use. The nature of the use will remain as a single-family residence. Furthermore, regardless of the variance, the structure will be required to meet any requirements of Marion County Building division and relevant building codes to reduce risks. The criterion is met.

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

The purpose and intent of the setback requirement is to maintain a healthy distance between land uses and structures. For example, setbacks are applied in order to help maintain noise separation, separation for run-off, and separation for vision clearance. The granting of this variance will maintain the intent of the setback especially because the expansion is proposed to happen towards empty land. The criterion is met.

7. 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: January 12, 2023

If you have any questions regarding this decision contact Daniel Jansen 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.