



Marion County
OREGON

CONDITIONAL USE APPLICATION

RECEIVED

NOV 14 2023

**Marion County
Planning**

Do not double-side or spiral bind any documents being submitted

Fee: Please check the appropriate box:

- Conditional Use - \$1450
- Conditional Use Hardship - \$450
- Conditional Use Hardship Change of Occupant - \$120
- Non-Farm Dwelling \$1930
- UT Zone Replacement Dwelling - \$450
- Conditional Use Home Occupation - \$770
- Amend Conditions/Permit - \$600
- Aggregate Site (non Goal 5) - \$3000+\$80/acre
- Agri-Tourism Single Event - \$375
- Agri-Tourism Max 6 Events - \$640
- Agri-Tourism Max. 18 Events/Longer Duration-\$640

PROPERTY OWNER(S): Tammy Perez	ADDRESS, CITY, STATE, AND ZIP: 3871 Brush Creek Road NE Silverton, Oregon 97381
PROPERTY OWNER(S) (if more than one): ---	ADDRESS, CITY, STATE, AND ZIP
APPLICANT REPRESENTATIVE: Norman Bickell	ADDRESS, CITY, STATE, ZIP 2232 42nd Ave. SE #771 Salem, Oregon 97317
DAYTIME PHONE (if staff has questions about this application): 503-510-1742	E-MAIL (if any): nbickell0027@aol.com
ADDRESS OF SUBJECT PROPERTY: 12564 Masher Road NE	SIZE OF SUBJECT PROPERTY:
THE PROPERTY OWNERS OF THE SUBJECT PROPERTY REQUEST TO (summarize here; explain in detail on the "Applicant's Statement"): <u>Place a non Farm Dwelling</u>	

FOR OFFICE USE ONLY:			
Township <u>7S</u>	Range <u>1W</u>	Section <u>10</u>	Application elements submitted:
Tax lot number(s) <u>700</u>			<input checked="" type="checkbox"/> Title transfer instrument
Zone: <u>EFU</u>			<input checked="" type="checkbox"/> Site plan
Zone map number: <u>34</u>			<input checked="" type="checkbox"/> Applicant statement
<input type="checkbox"/> TPA/header			<input checked="" type="checkbox"/> Filing Fee
Case Number: <u>CU/ADJ 23-043</u>			<input type="checkbox"/> GeoHazard Peer Review (if applicable)
<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural			<input type="checkbox"/> Physician's Certificate (if applicable)
Signs given:			<input type="checkbox"/> Home Occupation Supplemental (if applicable)
			<input type="checkbox"/> Agri-Tourism Supplemental (if applicable)
Date determined complete:			Application accepted by: <u>JSS</u>
			Date: <u>11-14-2023</u>

IF THIS IS FOR A CONDITIONAL USE HARDSHIP:

WILL THE TEMPORARY DWELLING BE () MANUFACTURED HOME OR () RV? Check one.

IF USING AN RV, DO YOU INTEND TO:

() CONNECT TO THE EXISTING SEPTIC SYSTEM OR () USE THE RV HOLDING TANK? Check one.

NAME OF PERSON(S) WITH MEDICAL HARDSHIP:

HE/SHE/THEY WILL RESIDE IN: () PRIMARY DWELLING OR () TEMPORARY DWELLING

NAME OF CAREGIVER:

HE/SHE WILL RESIDE IN: () PRIMARY DWELLING OR () TEMPORARY DWELLING

RELATIONSHIP OF CAREGIVER TO PERSON(S) WITH MEDICAL HARDSHIP:

WHAT TYPE OF ASSISTANCE WILL CAREGIVER PROVIDE:

IF THERE ARE OTHER ADULTS THAT RESIDE OR WILL RESIDE IN THE DWELLING WITH THE PERSON(S) NEEDING CARE, PLEASE EXPLAIN WHY HE/SHE CANNOT BE THE CAREGIVER:

THE APPLICANT(S) SHALL CERTIFY THAT:

- A. If the application is granted the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
- B. I/We hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements and the statements in the plot plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.
- C. I/We hereby grant permission for and consent to Marion County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.
- D. The applicants have read the entire contents of the application, including the policies and criteria, and understand the requirements for approving or denying the application.

PRINTED NAME AND SIGNATURE of each owner of the subject property.

Tammy Perez Tammy Perez

Print Name Signature Print Name Signature

Print Name Signature Print Name Signature

DATED this _____ day of _____, 20_____



Marion County
OREGON

ADJUSTMENT APPLICATION

Fee: ~~\$600~~

Do not double-side or spiral bind any documents being submitted \$300

PROPERTY OWNER(S): Tammy Perez	ADDRESS, CITY, STATE, AND ZIP: 3871 Brush Creek Road NE Silverton Oregon 97381
PROPERTY OWNER(S) (if more than one): -----	ADDRESS, CITY, STATE, AND ZIP
APPLICANT REPRESENTATIVE: Norman Bickell	ADDRESS, CITY, STATE, ZIP 2232 42nd Ave. SE #771 Salem, Oregon 97317
DAYTIME PHONE (if staff has questions about this application): 503-510-1742	E-MAIL (if any): nbickell0027@aol.com
ADDRESS OF SUBJECT PROPERTY: 12564 ^{IN BRUSH CREEK} Masher Road NE	SIZE OF SUBJECT PROPERTY:
THE PROPERTY OWNERS OF THE SUBJECT PROPERTY REQUEST TO (summarize here; provide detailed information on the attached "Applicant Statement" page): Adjust the special 200 foot dwelling setback for a non-farm dwelling _____ _____	
WILL A RAILROAD HIGHWAY CROSSING PROVIDE THE ONLY ACCESS TO THE SUBJECT PROPERTY? () YES (X) NO IF YES, WHICH RAILROAD:	

FOR OFFICE USE ONLY:			
Township 7S	Range 1W	Section 10	Application elements submitted:
Tax lot number(s) 700	<input checked="" type="checkbox"/> Title transfer instrument		
Zone: EFU	<input checked="" type="checkbox"/> Site plan		
Zone map number: 34	<input checked="" type="checkbox"/> Applicant statement		
<input type="checkbox"/> TPA/header	<input type="checkbox"/> GeoHazard Peer Review (if applicable)		
Case Number: CU/ADJ23-043	<input checked="" type="checkbox"/> Filing fee		
<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural	Application accepted by: JSS Set up by: JSS		
Date determined complete:	Date: 11/14/2023		

THE APPLICANT(S) SHALL CERTIFY THAT:

- A. If the application is granted the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
- B. I/We hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements and the statements in the plot plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.
- C. I/We hereby grant permission for and consent to Marion County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.
- D. The applicants have read the entire contents of the application, including the policies and criteria, and understand the requirements for approving or denying the application.

PRINTED NAME AND SIGNATURE of each owner of the subject property.

Tammy Perer Tammy Perer
Print Name Signature

Print Name Signature

Print Name Signature

Print Name Signature

DATED this _____ day of _____, 20_____

APPLICANT STATEMENT

Tammy L Perez owns a .2.17 acre parcel located at 12584 Masher Road NE that is zoned EFU (Exclusive Farm Use) and is listed in the Assessors Records as T7S; R1W; S10; TL00700. The applicant is now requesting a conditional use to complete the process for a non-farm dwelling on the subject parcel. In addition to the criteria for a non-farm dwelling the applicant will have to address an adjustment to the special agricultural and timber setbacks due to the parcel being only 2.17 acres in size. The following addresses the criteria for a non farm dwelling as listed in Chapter 17.136.060, 17.136.070 and 17.136.100:

17.136.160(A) The following criteria apply to all conditional uses in the EFU zone;

- (1) The use will not force significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception area approved under ORS 197.732, or in an acknowledge urban growth boundary.*

Response: The subject 2.17 acre parcel slopes from the east and north to the southwest, is largely covered with trees and located on the south side of Masher Road NE. The Property to the west is in farm use for pasture and has a farm building and driveway along the property line. To the west is also a smaller 1.59 acreage homesite. To the north across Masher Road is an orchard that is approximately 20 feet off the improvement of Masher Road. The property to the south and east on the same side of Masher Road is in grass and grain production. The Assessors records indicate that, except for the smaller lot to the west, the adjacent farm parcel is in farm and resource land deferral. The applicant is proposing to place the dwelling towards the eastern side of the property where it will be screened from adjoining grass and grain production land by the existing trees as well as a large storage building. To the east is the existing driveway that serves the storage building. In order to meet the special agricultural setbacks for a non-farm dwelling the applicant will have to gain approval for an adjustment. With this adjustment the proposed location of the dwelling impact should be minimized. The applicants' proposed dwelling will comply with (1) above.

- (2) Adequate fire protection and other rural services are. or will be, available when the use is established.*

Response: The subject parcel does have a well and a septic system approval will have to be obtained for the proposed dwelling. The subject parcel is within the Silverton Fire District so there is adequate fire protection. The property has electrical service available to the front of the

parcel that serves the existing storage building and has emergency protection by the Marion County Sheriff. Based on these findings the proposed dwelling will comply with (2) above.

- (3) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*

Response: The proposed dwelling has an established driveway, a well, and will have to obtain approval for a septic system. The property is not within and identified Ground Water Limited Overlay and is not within a geologic hazards area. A single dwelling should not have a significant effect on fish and wildlife habitat and the dwelling will not be located within the Big Game Habitat Overlay. Based upon the above discussion and findings the proposed dwelling will comply with (3) above.

- (4) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

Response: The proposed use is a single family dwelling and as such it should not produce an unreasonable amount of noise.

- (5) *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

Response: There are no significant mineral and aggregate sites or potential water impoundments identified in the Comprehensive Plan that are located near the proposed dwelling. Therefore, there should not be any impact to the resources identified above.

In addition to the criteria for all conditional uses within the EFU zone are specific criteria for non-farm dwellings. These criteria are listed in 17.136.060 (B) and are as follows:

- (1) *The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classification shall be those of the Soil conservation Service in its most recent publication, unless evidence is submitted as required in MCC 17.136.130.*

Response: The applicants obtained a copy of the Marion County soil analysis and it determined that the predominant soils were Class VI. This is verified by use of the Survey of Marion County Area Report on Page 30 of the soils maps which indicate that the soils are a Nekia Very Stoney Silty Clay Loam and are listed as a Class VI. Therefore, the subject parcel qualifies as a soil that meets the requirements for a non-farm dwelling.

- (2) *The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993, in any way that enables the lot or parcel to meet the criteria for a non-farm dwelling.*

Response: The parcel was reviewed for a non-farm dwelling in CU91-23 and was denied. The reasons for the denial were not related to the parcel being a parcel that was not recognized by the county so it has already been determined to be a legal parcel by the planning review for that conditional use. The boundary of the parcel has not changed since it was first described in the 1950's and it does not now or in the past contain a dwelling. Therefore, the criteria listed in (2) above is met.

- (3) *The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings on other lots or parcel in the area similarly situated shall be considered to address the standard, the following information shall be provided:*
- (A) *Identify a study area for cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm operations or practices that distinguish it from other, adjacent agricultural areas, and why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;*
- (B) *Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.) and the dwelling development trends since 1993. Determine the potential number of non-farm dwellings that could be approved under subsection (D) of this section and MCC17.137.050 (A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;*

- (C) *Determine whether approval of the proposed non-farm dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.*

Response: To approach the standards of (a) above, the applicant applied to the Marion County Planning Division and requested a GIS map to be created that meet the standards listed. A 2,000 acre map was created that gave the soils, individual parcels, zoning of the study area, Planning case listings and the land use within the study area. A printout of the current accounts for each parcel within the study area was also supplied. A review of the past land use approvals show that there was one nonfarm dwelling approved in the study area in case number 04-030.

The land use pattern of the study area shows that it is a widely diverse area of the county. The predominant uses within study area on the flatter ground are grass seed and grains, berry crops with some pasture lands, orchards and timber production . These parcels range in size from over 80 acres to smaller acreage sites that are used for pasture for grazing animals. On the steeper slopes and on the gentler slopes to the north near Masher Road are a mixture of larger farm parcels with intrusions of smaller non- farm parcels. Much of the area is in some form of both forest and farm use. Some of the larger parcels are over 100 acres in size and are largely devoted to grasses and grains.

By using the map, Assessors records, aerial photographs and the soils of each parcel it was possible to analyze the impact of the proposed dwelling on the other parcels in the study area. Within the study area there were a total of 146 whole and partial tax lots. Of these parcels there were three that were in a P (Public or semi-public) use (a school and public park land) and those were removed from further study. There are 94 parcels that contain one or more dwellings. There are 52 vacant parcels with 29 of those being contiguous to parcels with dwellings and 23 that are Class IV though VIII soils. Of these 23 parcels, 21 are developed with dwellings or contiguous to other dwellings in the same name. This leaves 2 (one being the subject parcel) parcels that are vacant and Class IV though VIII soils. From this study it has been shown that there are 2 potential non-farm dwellings. This number is the maximum non-farm dwellings that could be placed within the study area. 2 potential non-farm dwellings are not a significant number when the study area includes 2000 acres. Since this is maximum that could be established there has to be an assumption that other factors like would further limit the maximum number of dwellings and that there are 2 at a maximum non-farm dwellings in the study area. It

can be concluded that these potential dwelling will not materially alter the land use pattern of the area.

In further research of Marion County records show that there were 8 land use actions since 1993 within the study area. Four of these cases were for replacement of an existing dwelling and were approved. This would not change the analysis of the impact and these dwellings were inventoried in the above analysis. One of the cases was for a non-farm dwelling and it was approved (see CU93-65) and the dwelling was placed on the parcel and was also inventoried as one of the existing dwellings listed above. This analysis of the land use history of the study area shows that there have been relatively few changes to the area that would affect the land use stability of the area.

In addition to the standards and criteria listed above are the requirements of 17.136.070 Non-farm dwellings requirements. These are:

A. Special Setbacks.

- 1. Dwellings. A special dwelling setback of 200 feet from any abutting parcel in farm use or timber production is required.*
- 2. Accessory Buildings. A special setback of 100 feet is required for buildings accessory to a dwelling from any abutting parcel in farm use or timber production.*

Response: The applicants are proposing to place the new dwelling on an area of the parcel in the middle of a stand of both oak and fir trees on the eastern side of the parcel.. This site has the least slope and is adjacent to the roadway. At this site it will not meet the 200 foot special setback from the adjoining parcel to the north and west. The criteria for an adjustment to this setback will follow. The criteria listed in 3 for adjustments will be addressed:

- 3. Adjustments. The special setbacks in subsections (A) (1) and (2) of this section may be reduced if it is determined, concurrently with any land use application or as provided in Chapter 17.116, that a lesser setback will meet the following review criteria for alternative sites:*
 - a. The site will have the least impact on nearby or adjoining forest or agricultural lands.*
 - b. The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.*
 - c. The amount of agricultural and forestlands used to site access roads, service corridors, the dwelling and structures is minimized.*
 - d. The risks associated with wildfire are minimized.*

Response: As has been noted throughout this report the subject parcel is 2.17 acres in size. Its shape is generally triangular with the narrow end of the triangle to the west and it is wider along its eastern side. At the proposed dwelling location it will not meet the 200 foot special setback from the northern and western boundary. The applicant is proposing to locate the dwelling approximately 130 feet from the farm orchard to the north and 100+' feet from the east. The neighboring property on the south and east has been in grass and grain production and the driveway as well as the existing storage building should provide sufficient buffering from this parcel. The dwelling lot to the west as well as the farm operation will be over 200 feet from the proposed dwelling.

In 1991 the owner of this parcel applied for and was denied a non-farm dwelling on the subject parcel applied for and was denied a non-farm dwelling (see CU91-23). Findings in that report stated that the dwelling will be the only dwelling on the subject parcel, the site was not within a Big Game Habitat Area, that non-farm dwellings are not generally compatible with farm and forest uses, the availability of water and the effect on additional wells, additional traffic and the effect on farm equipment traveling along Masher Road (which was unpaved at that time), and it was noted that an additional five residential trips per day may not of itself result in the road being inadequate. Also within those findings were that the non-farm dwelling will not have a significant adverse impact on timber production, grazing land watersheds, fish and wildlife habitat, soil and slope stability, air and water quality or outdoor recreation activities. In addition to the above findings it was noted that the comprehensive plan discourage the development of non-farm uses on identified agricultural lands and to limit residential uses on lands designated primary agriculture. The 2000 acre study area gives a complete analysis of the number of potential non-farm homesites and it concludes that only 2 additional non-farm dwellings are potentially able to be placed. This is not a significant number to negatively affect the farming and timber uses in the area.

The applicant has to supply a response the above finding if the applicant wishes to obtain approval for a non-farm dwelling. So each of the negative findings are to be addressed as follows:

1. Non-farm dwellings are not compatible with farm and forest uses.

The applicant has proposed a building site that will provide the greatest amount of buffering possible on this lot for the dwelling from adjacent farming operations. Existing driveway, existing storage building, Masher Road, and existing trees all will provide additional buffering for the dwelling from the commercial farm operations on the adjacent farm parcels. At the site of the proposed dwelling there will be sufficient buffering to protect the farming operations surrounding the subject parcel.