

**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  
FLOODPLAIN/VARIANCE DEVELOPMENT PERMIT CASE NO. 21-009**

**APPLICATION:** Application of The City of Turner on behalf of Juan Aguilar and Maria Ibarra for a floodplain permit to construct a fence in the 100 year floodplain of Mill Creek and for a variance to locate a 6 foot fence 6.5 feet from the property line where the minimum setback is 10 feet on a 1.1 acre parcel in an SA (Special Agriculture) zone located at 6686 Turner Rd. SE, Turner (T8S; R2W; Section 20D; tax lot 200).

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

**EXPIRATION DATE:** This Floodplain Development Permit is valid only when exercised by **January 26, 2024**. 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.

**All development in the floodplain is subject to federal, local and state regulations and standards at the time development is begun. These regulations and standards are in the process of being revised and the development proposed in this application may be subject to additional regulations and standards at the time construction of structures or placement of fill on the property begins.**

**Based on preliminary information provided by the National Marine Fisheries Service on April 14, 2016, federal law might only recognize as legal under the county current floodplain ordinance building permits that are issued prior to September 15, 2016 and where the work is begun prior to March 15, 2017. Permits issued after September 15, 2016 or not begun until after March 15, 2017 may be in violation of federal law and thus invalidate this local permit.**

**Construction related to this permit is approved only within the existing developed area of the property. Construction of new structures, fill or other development of the property should not occur outside the existing developed area without prior consultation with the Marion County Planning Division. Federal regulations may require additional approvals for development outside the existing developed area of the property.**

**Applicants are further advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade).**

**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. Prior to issuance of building permits, a registered civil engineer or architect shall certify the proposal meets the requirements of MCC 17.178.060(C), (D)(1) and (E).

3. Prior to construction of the project, the applicant shall sign and submit to the Planning Division a Declaratory Statement acknowledging that the property and the approved development are located within a floodplain. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
4. Public Works Land Development Engineering and Permits Division (LDEP) placed the following conditions on approval of a fence within the special setback:
  - a. The applicant shall record a Removal Agreement Declaratory Statement, which PW Traffic Engineering will prepare. The cost is approximately \$200 and includes the recording fee. Reference is MCC 17.112.20(C).
  - b. Fencing above 30 inches is that the fencing must be comprised of chain-link without privacy screening or possibly some form of architectural metal versus wooden plank. Reference is MCC 17.770.110(D).

**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.

5. The applicants should contact the Turner County Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Polk County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
6. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited unless stored within a structure or on land elevated above the base flood level. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the 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 and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **January 26, 2022**. If you have any questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 27, 2022** 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 Special Agriculture in the Marion County Comprehensive Plan and correspondingly zoned SA (Special Agriculture). It is located within the identified floodplain of Mill Creek.
2. The subject property is located on the east side of Turner Road in the 6600 block.
3. Surrounding lands to the north, south, and east are within the City of Turner and developed with housing. Property to the west is in an SA zone and consists of land to be farmed and residential homes.
4. The subject property is comprised of 100% High Value soils.

5. The applicants propose to construct a 6 foot tall fence on the property 6.5 feet from the property line. Fences over 4 feet in height must be constructed 10 feet from the property line unless approval for a variance is obtained.
6. Marion County Building Division commented that a building permit is required if the fence exceeds 7 feet in height.

Marion County Land Development and Engineering provided the following comments:

### **ENGINEERING REQUIREMENT**

- A. Turner Road is classified as a rural Arterial. This has bearing on ultimate Right-of-Way (R/W) width, otherwise referred to as Special Setback, and dimensions of the Vision Clearance Area (VCA). Both affect placement of structures such as fencing. We highly recommend providing a detailed fencing plan to PW Engineering for review before placement. Please see the numbered points below.
  - 1) **Special Setback:** The Special Setback, or intended ultimate R/W half-width for Turner Road, as a rural Arterial, is 50 feet. The recent R/W dedication by the Applicant in support of a continuous center turn lane project results in approximately a total of 36.5 feet, less than the ultimate 50 feet. While the turn lane is indeed already constructed, it is to a rural cross-section. Future speculative improvements could entail addition of curb, gutter and sidewalk. Ordinarily, PW Engineering would not support installation of fencing within the Special Setback. However as mentioned, the Applicant did accommodate the recent street project with R/W dedication; therefore, **we could allow fence placement as generally proposed with recordation of a Removal Agreement Declaratory Statement**, which PW Traffic Engineering can prepare for approximately \$200 that includes recording fee. Reference is MCC 17.112.20(C). Fence placement within the Special Setback authorized by a Removal Agreement will still need to meet VCA criteria, as detailed below.
  - 2) **Vision Clearance Area:** The VCA is a triangular area within which must remain free of certain vision obstructions. For an Arterial road the VCA is formed by a triangle having dimensions of 10 feet along the driveway centerline, 100 feet along the front property line (in either direction) and connecting diagonal (hypotenuse) lines. Any fencing placed inside the described VCA would need to be a maximum of 30 inches in height, or have 25% or less opacity (detraction from unimpeded view). Effectively what this means for fencing above 30 inches is that the fencing would need to be comprised of chain-link without privacy screening or possibly some form of architectural metal versus wooden plank. Reference is MCC 17.770.110(D).

Additional agencies notified of the proposal but either had no comment or failed to respond to the request to comment.

7. The purpose of the Floodplain Overlay Zone is to promote public health, safety and general welfare to minimize public and private losses due to flood conditions. The criteria and standards which must be satisfied are listed in Section 17.178.050 and 17.178.060 of the Marion County Code (MCC).
8. The subject property is located with the identified floodplain of Mill Creek. Flood Insurance Rate Map 41047C0677J indicates that the floodplain elevation is approximately 267.0 feet above mean sea level (MSL) and is in Zone AE.
9. New development in the floodplain must comply with the provisions in Marion County Code 17.178.050.

MCC 17.178.050 (C) requires:

*Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest, acknowledging that the property and the approved development are located in a floodplain.*

This requirement can be made a condition of any approval.

MCC 17.178.050 (D) requires:

*Prior to obtaining a building permit, commencing development or placing fill in the floodplain the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.*

The applicant's engineer provided this certification. This criterion is met.

10. New development in the floodplain must comply with the provisions in Marion County Code 17.178.060.

*C. Nonresidential Development.*

- 1. New construction and substantial improvement of any commercial, industrial or other nonresidential structures shall either have the lowest floor, including basement, elevated to two feet above the level of the base flood elevation, and where the base flood elevation is not available, the lowest floor, including basement, shall be elevated to two feet above the highest adjacent natural grade (within five feet) of the building site, or together with attendant utility and sanitary facilities shall:*
  - a. Be floodproofed to an elevation of two feet above base flood elevation or, where base flood elevation has not been established, two feet above the highest adjacent grade, so that the structure is watertight with walls substantially impermeable to the passage of water.*
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.*
  - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. This certificate shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed and shall be provided to the floodplain administrator.*
  - d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsections (A)(5) and (6) of this section.*
  - e. Applicants floodproofing nonresidential buildings shall be notified by the zoning administrator that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).*

*D. Anchoring.*

- 1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.*

*E. Construction Materials and Methods.*

- 1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*

2. *All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.*

The provision of these certifications can be made a condition of any approval.

11. Fences above 4 feet in height must be located 10 feet from the property line in order to remain outside of the vision clearance area, which helps ensure that areas in and adjacent to the roadway are visible to drivers as well as others uses of the roadway. A fence of greater than four feet height closer than 10 feet to the property line may be approved if a variance to the standard can be granted. The criteria for a variance are found in MCC 17.122.020:
  - (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.*
12. The applicants state that this is an unusual situation on their property that does not apply to other properties in the area. The property is completely surrounded by the City of Turner and a multi-family housing development. The fence would be the minimum necessary to provide separation between the dwelling and that development. Because the area is developed with larger structure of greater density, there are no impacts anticipated to neighboring properties. The subject property is separated from the property across the street by Turner Road.
13. Further, Marion County Land Development and Engineering Permits reviewed the request and consider the safety of the roadway if a fence of 6 feet was placed in the proposed location and found that, subject to conditions of approval, a fence of that height would be able to be placed in the requested location.
14. Based on the evidence provided, it appears that the request meets the criteria for a variance and granting the variance would be the minimum necessary to permit a fence at this location while still maintaining the intent and purpose of keeping the property and roadway safe from potential roadway visual obstructions.
15. Based on the above findings, it has been determined that the proposal complies with the criteria in the Marion County Code and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich  
Planning Director

Date: January 11, 2022

If you have any questions regarding this decision 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.