

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. 22-006**

**APPLICATION:** Application of Samantha Jaeger for a variance to reduce the side setback of an accessory structure from 20 feet to 10 feet on a 1.52-acre parcel in an EFU (Exclusive Farm Use) zone located at 13166 Downs Road NE, Mt. Angel (T6S; R1W; Section 22; Tax Lot 300).

**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 **June 11, 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.

**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 development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
3. 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 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. The applicant is advised of the following:

**APPEAL PROCEDURE:** The Marion County Zone Code provides that Variance 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) based on 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 **June 11, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 13, 2022**, unless appealed.

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

1. The subject parcel is designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of the designation is to provide for commercial farm uses and agriculture.
2. The property is located on the south side of Downs Road NE, approximately 140 feet east of its intersection with Wilco Highway. The property contains a dwelling built in 1901, a detached garage, and one other accessory structure. The parcel in its current formation is described as Parcel 1 in a deed dating from July 5, 1977, which can be found in Reel 87, Page 263. Therefore, this parcel legal for land use purposes.
3. The parcels north, south, and east of the subject parcel consist of EFU and consist of large to medium sized farm operations. To the northwest of the subject parcel, are two parcels that are zoned Industrial. The uses of these two parcels consist of agricultural storage.
4. The applicant is proposing to reduce the eastern side setback from 20 feet to 10 feet for an attached garage to replace a detached garage that is eight feet from the eastern property line.
5. Soil survey for Marion County indicates that approximately 100% of the soil is high value.
6. All contacted agencies either failed to comment or stated no objection to proposal.
7. In order to obtain a variance, the proposal must meet the criteria in found in Section 17.122.020 of the Marion County Rural Zone 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*

According to the applicant, the proposed attached garage cannot be built on the western or southwestern side of the parcel and can only be built on the northeastern side, which would necessitate a variance to the required 20 feet in the EFU zoning. The applicant has stated that the attached garage cannot be built on the western and south side of the property because of the existing well, septic system and drain field, and propane tank. Additionally, the land south of the dwelling would not be impacted and disturbed where farming could occur if the attached garage were built where the current detached garage currently is. Therefore, another location would impose an unnecessary and unreasonable hardship for the applicant. The criterion is met.

- (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*

As stated above, the existence of the well, septic system and drain field, and propane tank on the western and southwestern side of the parcel, pose an unnecessary and unreasonable hardship for the applicant and necessitate building the attached garage on the northeastern portion of the parcel with a 10-foot setback. Additionally, the parcel is 1.52 acres with the dwelling located on the north portion of the parcel. The unusually small size of the parcel and lack of access to a potential garage on the southern portion of the parcel, makes the proposed location the most reasonable area to build an attached garage. Therefore, the criterion is met.

- (c) *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*

This variance is the minimum necessary. The criterion is met.

- (d) *The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and*

The proposed use will not have a significant effect on the property or improvements in the neighborhood of the subject property. In fact, the proposed attached garage will be two feet further from the eastern property line than the current detached garage, which is eight feet from the eastern property line. The criterion is met.

- (e) *The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and*

The proposed attached garage will not have a significant effect upon the health and safety of persons working or residing in the vicinity. The attached garage is not atypical of the zoning and is consistent with permitted residential uses. Therefore, the criterion is met.

- (e) *The variance will maintain the intent and purpose of the provision being varied.*

The intent and purpose of setbacks in the EFU zone is to add further protection to parcels engaged in farm use. By allowing an attached garage to be built 10 feet away from the eastern property line, it is very unlikely that it would disturb the farm parcel to the east. Therefore, the criterion is met.

8. Based on the above findings, the applicant's request meets all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: May 27, 2022

If you have any questions regarding this decision contact Jared Bradford 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.