

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
ADJUSTMENT CASE NO. 19-005**

APPLICATION: Application of Excellence Investments and Rentals, Inc. to reduce the required 14 foot rear yard setback to 6 feet for a second story deck in an UD (Urban Development) zone located at 4929 Sergio PL NE, Salem (T7S; R2W; Section 20CA; tax lot 2300).

DECISION: The Planning Director for Marion County has **DENIED** the above-described Adjustment application.

PROCEDURE: The Marion County Zone Code provides that Adjustment 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 **June 28, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 29, 2019** unless appealed.

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

1. The subject parcel is located within the Salem Urban Growth Boundary (UGB), designated Single Family Residential in the Salem Comprehensive Plan, and zoned UD (Urban Development). The UD (URBAN DEVELOPMENT) zone is under the jurisdiction of Marion County.
2. The property is located on the north side of Sergio PI NE approximately 130 feet west of its intersection with Hoffman Rd NE. The property contains a new dwelling that is currently under construction.
3. The properties to the north, south, and east are zoned UD and in residential development. Property to the west is inside the City of Salem and developed with a park.
4. The applicant proposes an adjustment to reduce the required 14 foot rear yard setback to 6 feet for a second story deck.
5. Marion County Building Inspection commented that a building permit is required for new construction.

Marion County Tax Assessor commented regarding taxes on the subject property.

All other contacted agencies did not respond or stated no objections to the proposal.

6. In order to approve the adjustment, the criteria found in 16.41.030 MCC must be satisfied. These include:
 - (a) *The proposed development will not have a significant adverse impact upon adjacent existing or planned uses and development; and*
 - (b) *The adjustment will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and*
 - (c) *The adjustment is the minimum necessary to achieve the purpose of the adjustment and is the minimum necessary to permit development of the property for the proposed use; and*
 - (d) *The intent and purpose of the specific provision to be adjusted is clearly inapplicable under the circumstances; or, the proposed development maintains the intent and purpose of the provision to be adjusted.*

7. The burden of proof in land use applications of this type is with the applicant. The applicants are currently constructing a new dwelling on the parcel that has a required rear yard setback of 14 feet. The applicants have built a second story deck that is 8 feet by 24 feet for the purpose of having a view of the park located on property west of this parcel. The applicant filed this adjustment application to reduce the setback from 14 feet to 6 feet from the northern property line. The deck lies entirely within the required setback area and was constructed without first obtaining building permits. While these circumstances are unfortunate, no information has been provided which shows how reducing the setback standard to 6 feet is the minimum necessary to permit development of the property. In order to meet the above criteria, the applicant must prove the proposed development will not have a significant adverse impact on adjacent properties. In this instance the applicant did not specifically address any of the criteria. Based on available information, the applicants' proposal does not meet the criterion identified in 6 (a).

No discussion was included regarding the reduced second story deck setback and any potential impact on other adjacent properties. The setback is measured from the posts to the property line. The 8 foot x 24 foot deck appears to be more than 9 feet height, however, the plan submitted to the file, does not indicate what the height of the deck actually is nor does it show how much of an overhang the deck has beyond the posts. This would have an adverse affect on neighboring properties. The proposed setback reduction, therefore, does not comply with the criteria set forth in 6 (b) and 6(c).

The intent and purpose of a setback is to provide buffering between dwellings and/or adjacent structures. This proposal significantly reduces the required setback and available information seems to indicate that, as a result, the buffering is inadequate. The proposed setback reduction, therefore, does not comply with the criteria set forth in 6 (d).

8. Based on the above discussion, the applicant's request does not meet all the applicable criteria for granting a variance. The application to reduce the required 14 foot rear yard setback to 6 feet for a second story deck is, therefore, **DENIED**.

Joe Fennimore
Planning Director

Date: June 13, 2019

If you have any questions regarding this decision contact Patty Dorr 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.