

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. 22-010**

APPLICATION: Application of Daniel Allen on behalf of Jolene Granly and Deborah Avery for an adjustment of the rear yard setback for a pool house from 8 feet to 4 feet on a 0.27-acre property in a RS (Single-Family Residential) zone located at 4469 Ward Drive NE, Salem (T7S; R2W; Section 7AA; Tax Lot 3400).

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

EXPIRATION DATE: This decision is valid only when exercised by **November 15, 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 proposed use 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 use. To ensure the subject property can accommodate the proposed use 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 approval for all required permits from the Marion County Building Inspection Division.
2. The proposed accessory structure shall maintain at least a 4-foot setback from the side and rear property lines.
3. The applicant shall continue to adhere to the conditions of approval established in the approval for a home occupation from Conditional Use Case 21-049.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or another 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:

4. The applicants should contact the Marion County #1 Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

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 Rd. NE, Salem, by 5:00 p.m. on **November 15, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 16, 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 located within the City of Salem Urban Growth Boundary (UGB). It is designated as Single Family Residential in the City of Salem Comprehensive Plan and zoned Single Family Residential (RS). The intent of both this designation and zone is to allow development of attached or detached residences on individual lots provided with urban services at low urban densities. All adjacent parcels in all directions are also zoned RS.
2. The property is located off the north side of Ward Drive NE, approximately 200 feet west from Ward Drive's intersection with 45th Avenue NE. The property is currently developed with single family dwelling. The single-family dwelling is permitted outright in this zone.
3. The parcel on which the accessory structure will be placed was the subject of land use case Conditional Use 21-049. The parcel was created as part of the Jan Ree Gardens Number 4 subdivision plat. That subdivision was recorded in 1963. Therefore, the parcel is considered legal for land use purposes.
4. The applicant has previously proposed to build a pool house in the rear yard of this parcel. The pool house will be utilized for an infant swim instruction business. This business was approved as a conditional use home occupation through land use case CU21-049. The pool house is an accessory structure (secondary to the residential use of the property). Because the proposed structure included projections towards the property line, it does not currently meet setback requirements.
5. Per Marion County Code (MCC) 16.02.130(C), setbacks for accessory structures are provided separately in Chapter 16.28. MCC 16.28 applies setbacks and location requirements indirectly through sections 16.28.020 and 16.28.030. In particular, the applicant's proposed structure does not meet the requirements of 16.28.030(A), which state: *structures in residential zones or the UD and UT zones shall not project above the following height limits: nine feet at the lot line, increasing one foot for each one foot of distance from the lot line to a maximum of 20 feet. Roof drainage shall be accommodated within the confines of the property.*
6. Marion County Building Division commented that the proposed setback exceeds minimum fire separation distance to property line based on 2021 Oregon Residential Specialty Code.
7. All other contacted agencies either failed to comment or had no objection to the proposal.
8. According to Marion County Code (MCC) 16.41.020, to approve an adjustment in an urban zone, the adjustment application needs to address the criteria found under MCC 16.41.030. These include:
 - A. *The proposed development will not have a significant adverse impact upon adjacent existing or planned uses and development.*

The adjacent existing or planned uses/development consist of single-family dwellings. Because the property exists within the Urban Growth Boundary and within an RS zone, uses are predominantly limited to single-family dwellings, but the urban nature of the area does also allow for some flexibility in use; examples include home occupations, schools subject to special standards, care facilities as a conditional use, and so forth. The proposed pool house has been reviewed and approved through Conditional Use 21-049. Limited effects are to be expected; however, no evidence has been found that the pool house itself or the home business use will cause significant adverse effects. The criterion is met.

- B. *The adjustment will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity.*

The adjustment for a reduced setback will still meet the requirements of Building Code (specifically, fire separation) according to comments provided. The reduced setback of this pool house does not appear to have any other potential adverse effects upon the health or safety of persons working or residing in the vicinity. The criterion is met.

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.

The applicants indicate through their statement and site plan that the reduced setback is the minimum necessary to fit the pool house onto the property. The reduced setback is necessary due to the angle of the property line relative to the pool house structure. The criterion is met.

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.

The proposed development maintains the intent and purpose of the provision to be adjusted because the adjustment is only necessary for a portion of the structure. The intent of the relationship between height and setback established in MCC 16.28.030 is to help maintain vision clearance, noise separation, and so forth in a low-density environment. Most of the pool structure will meet the requirements of the code, only a portion of the structure needs the adjustment. In addition, the structure itself is not a very tall structure, and would not tower over adjacent properties blocking views. The character of the single-family residential neighborhood is maintained. The criterion is met.

E. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for an adjustment to an accessory structure setback and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: October 31, 2022

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.