

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. 23-001

APPLICATION: Application of Mackenzie Strawn, Michale Strawn, and Jodi Luckenbill for an adjustment to reduce the required setbacks from 3-feet to 2-feet for an ADU located in a side yard on a 0.16-acre property in a RS (Single-Family Residential) zone located at 3759 Midway Avenue NE, Salem. (T7S, R2W, Section 30BB, Tax Lot 3700).

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

EXPIRATION DATE: This decision is valid only when exercised by **April 18, 2025**, unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure 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:

1. The applicants 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. The ADU shall maintain a 2-foot setback from the south and east property lines.
4. The situs address of the ADU shall be **3761 Midway Ave NE**.

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 any restrictions or conditions thereon. The applicant is advised of the following:

5. The applicants should contact the Marion County No.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. **Paula Smith at MCFD#1/(503) 588-6513.**

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 deny the application. Anyone who disagree 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 \$200.00 fee) 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 **April 18, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective on **April 19, 2023**, unless appealed.

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

1. The property is designated Single Family Residential in the Salem Area Comprehensive Plan. The purpose of this designation and the corresponding Single-Family zone is to promote residential development at low densities.
2. The property is located on the north side of Midway Ave NE, approximately 440 west and 125 feet north of the intersection of Midway Ave NE and Morgan Ave NE. The property contains one single-family home built in 1977 and multiple accessory structures. The property was platted as Parcel 2 of Major Partition 76-27, which was recorded in Reel 88 Page 785 on July 13, 1977, and depicted in Marion County Survey of Record 26271. Therefore, both the dwelling and the parcel are considered legal for land use purposes.
3. Surrounding area to the east, south, and west is developed Single Family Residential. Property to the north is Commercial Retail with a Limited Use overlay.
4. The applicant proposes to reduce the setbacks of a side yard ADU to 2 feet on the south and east property lines.
5. City of Salem commented that once the property is annexed it will be subject to SRC. 700.007 and Table 700-1.

City of Salem Public Works commented:

“The subject property is located within the East Salem Sewer Service District and the Suburban East Salem Water District. Any future connections to this sewer district will require an annexation agreement to be filed with the City of Salem, where one has not already been done so.”

Land Development Engineering and Permits commented:

ENGINEERING REQUIREMENTS

- A. An Access Permit may be required upon application for building permits, depending in part on whether a unique address is assigned.
- B. Transportation System Development & Parks Charges (SDCs) will be assessed upon application for building permits.
- C. Potential utility service extension work conducted in Midway Avenue public right-of-way requires Utility Permits from Public Works Engineering.

Marion County Building Department commented:

“Permit(s) are required to be obtained prior to any development and/or installation of utilities on private property. The proposed location of the structure, less than 3 feet to the property lines, would require fire resistant construction of the exterior walls adjacent to these property lines. Also, if the structure is less than 6 feet to the adjacent home, the exterior wall adjacent to the existing home would also require fire resistant construction. The detail of construction for these exterior walls is required to be in the construction plans.”

All other agencies: Either failed to comment or stated no objection 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*

The reduction of this setback is not expected to cause any adverse impacts on uses in the area. The proposed use will be that of an ADU, which is permitted in the zone. The zone is Single Family Residential, and the area is developed with single family homes. The subject parcel will still function as a residential parcel with reduced setbacks for the ADU unit. The criterion is met.

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

A reduction in the setbacks for an ADU will not adversely affect the health or safety of persons in the vicinity as there is no evidence in the record to show an ADU creating adverse health or safety effects. The ADU will be placed where there is currently a carport, which has had non-conforming setbacks of 2 feet from the east property line and a 4-foot setback from the south property line. Neighboring properties do not have any residences within 25 feet of the proposed ADU location, and the Marion County No. 1 Fire District stated they had no comment regarding a reduced setback. 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; and*

This adjustment is the minimum necessary to accommodate placement of the ADU while allowing for safe and reasonable access to the subject parcels primary dwelling without impeding entrance and exit of said main home. The adjustment will maintain setbacks of an adequate size to buffer the neighboring residences from the ADU. 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.*

This adjustment still maintains the intent of the setback provision by maintaining a 2-foot setback, which is only 1 foot less than the code required minimum for an ADU located in a side yard. The criterion is met.

7. Based on the above findings, it has been determined that the request satisfies all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: April 3, 2023

If you have any questions regarding this decision contact Nicole Inman 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.