

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. 23-002**

**APPLICATION:** Application of Derril Rutherford and Nancy Ho for an adjustment to allow an existing detached dwelling to be converted into an Accessory Dwelling Unit (ADU) to be placed in the front yard on a 0.23-acre parcel in the Single Family Residential (RS) zone located at 4648 Indiana Avenue, Salem. (T7S, R2W, 18AD, Tax Lot 4400).

**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 proposed ADU shall otherwise meet all applicable ADU code (Marion County Code (MCC) 16.25.100(O) and MCC 16.26.100).
4. The new primary dwelling to be built shall be a minimum of 960 square feet.
5. The situs address of the current dwelling to be converted into an ADU shall remain **4648 Indiana Ave NE**.
6. The situs address of the new primary dwelling to be built shall be **4646 Indiana Ave NE**.
7. The applicant shall sign and submit an Accessory Dwelling Unit Use and Standards Agreement (enclosed) to the Planning Division once it has been notarized and recorded with the county Clerk's Office.

**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:

8. 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 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 \$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 south side of Indiana Ave NE, approximately 300 east of the intersection of Indiana Ave NE and Brown Rd NE. The property contains one single-family home built in 1956. The property was platted as Lot 6 of Block 12 in the Middle Grove Tracts subdivision, which was recorded on November 9, 1948, as Town Plat 15-040. Therefore, both the dwelling and the parcel are considered legal for land use purposes.
3. Surrounding area in every direction is developed Single Family Residential.
4. The applicant proposes to have the use of the existing 720 square foot primary dwelling changed to that of an ADU, and requests to be allowed to build a new primary dwelling behind the existing home in the southern portion of the property.
5. City of Salem Planning commented:

“It looks like the proposed development meets the standards for the RS (Single Family) Zone for ADU square footage standards (SRC 511-5) and set back standards (SRC 511-3). The City recommends development meet all standards in Chapter 511 and Sec. 700.007 (a) of the SRC in order to not be non-conforming upon annexation.”

City of Salem Public Works commented:

“The subject property is located within the East Salem Sewer Service District and the Carolina Wells 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 secondary address is assigned.
- B. Transportation System Development & Parks Charges (SDCs) will be assessed upon application for building permits. The net cost differential between single-family dwelling and ADU conversion will be credited toward the proposed rear dwelling.
- C. Potential utility service extension work conducted within Indiana Avenue public right-of-way requires Utility Permits from Public Works Engineering.

Marion County Building Department commented:

“No concerns with proposal, based on information contained within application and site plan. Permits are required to be obtained prior to any on site construction or development and/or utilities on private property.”

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 reversal of the positions of the main dwelling and the ADU in relation to the front yard 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 current use for this structure is already that of a legal dwelling. This property is zoned Single Family Residential, and the area is developed with single family homes. The subject parcel will still function as a residential parcel with the current dwelling's change of use to an ADU and a new primary dwelling located behind. 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*

The structure is currently a legal dwelling and has been in use as such since 1956. Per a phone conversation with the applicant on 3/27/2023 it is their intent to tie the new primary dwelling in with the existing city sewer and Carolina Water Company services. Based on the evidence in the record there is nothing to indicate that this primary dwelling becoming an ADU, and a new primary dwelling being built will create any adverse health effects or safety concerns. 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 a new, larger primary dwelling. The adjustment will maintain the existing intent of the RS zoning code by allowing for residential use on the subject parcel. 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 will maintain the intent of MCC 16.25.200(O) and 16.26.100 by conditioning the approval so that the existing dwelling to be converted will meet said ADU code. The approval will also be conditioned so that the new primary dwelling will be a minimum of 960 square feet in order for the current 720 square foot home meet MCC 16.26.100(A). In this way allowing for the home currently qualifying as the primary legal dwelling, which has been in existence in its current location as such since 1956, to be an ADU in the front yard will not alter the character of the neighborhood. The criterion is met with conditions.

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.