



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 21, 2017

Department: Public Works Agenda Planning Date: June 15, 2017 Time required: None

Audio/Visual aids

Contact: Joe Fennimore Phone: 505-566-4177

Department Head Signature:

TITLE Receive hearings officer's decision approving Variance Case (V) 17-002/Harrell.

Issue, Description & Background The hearings officer issued a decision on June 9, 2017, approving V 17-002. As part of the land use process, the board of commissioners must officially receive the decision.

Financial Impacts: None

Impacts to Department & External Agencies None

Options for Consideration: The land use process mandates that the board of commissioners must receive the hearings officer's decision. As this is process only, there are no options for consideration.

Recommendation: Staff recommends the board of commissioners receive the hearings officer's decision.

List of attachments: Hearings officer's decision

Presenter: Joe Fennimore

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Joe Fennimore - gfennimore@co.marion.or.us

2. The property is on the west side of 82nd Avenue SE, about 327' north of the 82nd Avenue SE-Pudding Creek Drive SE intersection. The subject parcel is developed with an existing dwelling, accessory structures, well and septic system. The property was the subject of Partition Case 10-001 (P10-001) that allowed the property to be divided into a 2.2 acre parcel and a 3.2 acre parcel. P 10-001 is not yet implemented.
3. Surrounding properties to the north, south and west are zoned AR and consist of residential uses. Property to the east across 82nd Avenue SE is zoned EFU (Exclusive Farm Use) and is in farm use.
4. Applicants ask for a variance to reduce the required 10' side yard setback for the proposed personal use shop to 3' along the south property line. According to the site plan submitted with the building permit application, applicants originally proposed a reduction to 5' from the property line.
5. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

Public Works Land Development Engineering and Permits (LDEP) commented:

In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing, and safety standards. In conjunction with application for building permits, an Access Review may be conducted. If changes to access are proposed by the Applicant and/or obligated by PW Engineering, an Access Permit will be required. However, at this time, no required modifications to access are anticipated. It is presumed that access to the proposed shop can be derived internally from the existing driveway approach to 82nd Avenue. It is noted that the proposed land use site plan does not depict secondary shop access.

Marion County Building Inspection commented that building permits would be required.

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

Marion County Code Enforcement commented that there are no code enforcement issues on the property.

V. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving all applicable standards and criteria are met.

2. Under MCC 17.122.040(A), a variance application may be filed by the owner of the property that is the subject of the application. This application was filed by Brett and Mandy Harrell. A statutory warranty deed filed in the Marion County deed records at reel 3754, page 52 shows the subject property was conveyed to Mandy and Brett Harrell in October 2015. The Harrells could file this application. MCC 17.122.040(A) is met.
3. Under MCC 17.122.045(A)(1), variance applications must include signatures of all owners of the subject property. A statutory warranty deed filed in the Marion County deed records at reel 3754, page 52 shows the subject property was conveyed to Mandy and Brett Harrell in October 2015. The Harrells both signed the variance application. MCC 17.122.045(A)(1) is met.
4. Under MCC 17.122.050, the Planning Director has the power to decide applications for all variances. The Planning Director could decide this matter.
5. Under MCC 17.122.058, after the director's final action on the application, interested persons may appeal the decision no later than 15 days after the decision is mailed. The Planning Director's decision was mailed on March 2, 2017. Applicant Brett Harrell, an interested person, appealed the Planning Director's decision on March 6, 2017, well within the 15 day time limit. MCC 17.122.058 was met.
6. Under MCC 17.122.060, if the director's decision is appealed, the hearings officer shall conduct a public hearing in accordance with MCC chapter 17.111. The hearings officer may hear and decide this matter.
7. Applicant wants to build a storage structure accessory to the residential use of the subject property. In the AR zone, MCC 17.128.060(B) setbacks apply to all new structures *other than* residential accessory structures. The provision refers the reader to MCC 17.117. Under MCC 17.117.050, accessory structures not attached to the dwelling are the "same as the dwelling." That leads back to the MCC 17.128.060(B) side yard structure setback and MCC 17.128.060(B)(2) requires a minimum 10' side yard setback. Applicants ask for a 7' variance to achieve a 3' setback.
8. Under MCC 17.122.010, the hearings officer has the power to vary or modify the strict application of any of the standards of MCC title 17 in any case where such strict application would result in practical difficulties or unnecessary hardships with reference to requirements governing: lot area, lot width, percentage of lot coverage and number of dwelling units or structures permitted on a lot, height of structures, location,

yards, signs, parking and loading space, vision clearance and other standards when limits for an adjustment in MCC 17.116.030 are exceeded. Variances to allow uses or new uses not otherwise allowed are prohibited. Variances to criteria and definitions are also prohibited.

Under MCC 17.116.030(D), side yard adjustments are limited to a maximum adjustment of three feet but in no instance less than four feet for a one-story building or less than five feet for a two-story or two-and-one-half-story building. (Story is defined in MCC 17.110.540.) Applicants seek a 7' adjustment, resulting in a 3' setback. Both requests exceed MCC chapter 17.116 allowances. To achieve the desired setback, applicants must seek a variance.

9. Under MCC 17.122.020(A), the hearings officer may permit and authorize a variance when it appears from the application and the facts presented that:
 1. There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and
 2. 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
 3. The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and
 4. The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and
 5. The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and
 6. The variance will maintain the intent and purpose of the provision being varied.
10. The Harrells live on a 5.32 acre property approved for division into 2.2- and 3.2-acre parcels, with the house, barn, storage building, well, septic drain field and replacement drain field remaining on the 2.2 acre parcel. The partition has not been

implemented yet, so the property is still 5.32 acres, but to preclude interference with the partition, the hearings officer considers the 2.2 acres as the area subject to the variance application. Development on the 2.2 acres is spread over its central area, with some space at the back and some space at the front of the area. The rear area behind the barn is about 80' deep, and is about 135' wide from the south property line to the drainfield replacement area. The front property area, from the roadway to the existing storage building is about 125' deep, and over 100' wide from the south property line to the existing driveway. The rear portion offers about 10,800 square feet and the front portion 12,500+ square feet. (These are rough measurements estimated from the site plan, Assessor's map and aerial photos in the record.) The Harrells want to install a 40' x 74' pole building (storage and shop) for personal uses, including parking a semi truck and trailer used in their off-roading pursuits. The truck and trailer combination is 63.5' long and requires a lot of space to maneuver. Given the size of the rig, the front of the property with its extra 2,000+ square feet of maneuvering area, extra depth and no need to maneuver through the on-site development is the best option for siting the pole building but is not without its difficulties.

Due to the size and length of the truck-trailer combination, geometry of the existing driveway, and location of existing onsite development, the truck-trailer combination cannot be driven onto the property head-in. The Harrells must, with the help of flaggers, drop the trailer on 82nd Avenue SE, pull the semi truck onto the property, drive their pickup truck onto the road, attach the trailer and back the trailer onto the property. If it is dark out, they drop the trailer in town, park the semi truck on their property, take the pickup out to fetch the trailer and then back them onto the property. Mr. Harrell said he could likely make things work with the 10' setback, but it would require a 27-point turn to back the trailer into the proposed shop. The Harrells' situation does not rise to the level of an unnecessary or unreasonable hardship, but it presents practical difficulties with engaging and disengaging vehicles in the public right of way and difficult on-site maneuvering. Applicants can potentially relieve the situation somewhat by requesting a driveway permit (and plan to do so in combination with the building permit) but are not expected to demolish or remove existing development to relieve the rest of the situation. There are practical difficulties which can be relieved only by modifying the literal requirements of MCC 17.128.060(B)(2). MCC 17.122.020(A)(1) is met.

11. There are no severe slopes or unusual natural features associated with the subject 2.2 acres. The existing home, barn and shop on the property are types of buildings expected in an

AR zone and were on the subject property when purchased by applicants in 2015. (See 2009 aerial photograph in the record.) A shop and storage is not an unusual rural residential use, but the specific type of storage here is unusual because a recreational use semi truck and trailer combination is not normally associated with typical rural residential uses. This is a close call, but the hearings officer finds, and under the totality of the circumstances specific to this case, there are peculiarities that do not apply generally to AR zone uses. MCC 17.122.020(A)(2) is met.

12. A 3' setback would be ideal for applicants' proposed use, but applicants do not see this as an all or nothing scenario and concede that the five foot setback originally requested would work. The 7' setback reduction is not the minimum degree necessary to permit development but a 5' setback will alleviate practical difficulties associated with applicants' proposed use. As modified from 7' to 5', the degree of variance from the 10' standard is the minimum necessary to permit development of the property for the proposed use. MCC 17.122.020(A)(3) is met.
13. The proposed storage building will be built near applicants' south property line. Neighbors on abutting properties north and south provided statements in support of the proposed variance. Mr. Harrell testified that the nearest structure on the southern property is 150' from the shared property line. A 5' setback allows access behind the building for landscape and structural maintenance. As modified, the variance will not have a significant adverse effect on property or improvements in the neighborhood. MCC 17.122.020(A)(4) is met.
14. Applicants already bring their semi truck and trailer to the subject property, but cannot get them on the property in combination and must disconnect the truck and trailer before coming onto the subject property either by unhooking on the public right-of-way, driving the truck onto the property, hooking their pick up to the trailer and backing the trailer onto the property. Applicants acknowledge their driveway is narrow for entry and exit for a rig this size and will apply to alter the driveway. Any approval of this application would also trigger a driveway review. This should help with the problem but is not likely to eliminate it, but in combination with the variance, safety in the neighborhood will be improved by allowing proper access and on-site maneuvering. Allowing the variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity. MCC 17.122.020(A)(5) is met.
15. MCC 17.128.010 contains the AR zone purpose statement:

The purpose and intent of the acreage residential zone is to provide appropriate regulations governing the division and development of lands designated rural residential in the Marion County Comprehensive Plan. Acreage residential zones are areas that are suitable for development of acreage homesites. Such areas are necessary to meet the housing needs of a segment of the population desiring the advantages of a rural homesite. It is the intent that residential sites be provided with adequate water supply and wastewater disposal without exceeding the environmental and public service capability of the area or compromising the rural character of the area.

The proposed use and variance do not implicate water, sewage or environmental issues. The proposed variance will improve public safety by allowing head in movements and eliminating the need to drop applicants' trailer in the public right-of-way. The variance will maintain the intent and purpose of the provision being varied. MCC 17.122.020(A)(6) is met.

VI. Order

It is hereby found that applicants have met the burden of proving the applicable standards and criteria for approval of a **modified** variance reducing the required 10' side yard setback to 5' on property in the AR zone have been met. Therefore, the application is **GRANTED subject to the following condition** necessary for the public health, safety and welfare:

Prior to building permit issuance, applicants shall contact Marion County Public Works for a driveway review, and a driveway permit if required by Public works.

VII. Other Permits

The applicant herein is advised that the use of the property proposed in this application may require additional permits from other local, state or federal agencies. The Marion County land use review and approval process does not take the place of, or relieve the applicant of responsibility for, acquiring such other permits, or satisfy any restrictions or conditions thereon. The land use permit approved herein does not remove, alter or impair in any way any covenants or restrictions imposed on this property by deed or other instrument.

VIII. Effective Date

The application approved herein shall become effective on the 27th day of June 2017, unless the Marion County Board of Commissioners, on their own motion or by appeal timely filed, is

asked to review this order. In case of Board review, this order shall be stayed and shall be subject to such final action as is taken by the Board.

IX. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court Street NE, Salem) by 5:00 p.m. on the ~~26th~~ day of June 2017. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon, this 9th day of June 2017.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Order on the following persons:

Agencies Notified


Brett & Mandy Harrell
2923 82nd Ave. SE
Salem, OR 97317

Sharon Burgess
8131 Pudding Creek Dr. SE
Salem, OR 97317

Donald Maxwell
2679 82nd Ave. SE
Salem, OR 97317

Planning Division (via email: breich@co.marion.or.us)
(via email: gfennimore@co.marion.or.us)
Public Works Engineering (via email: jrasmussen@co.marion.or.us)
Building Inspection (via email: twheeler@co.marion.or.us)
Assessor's Office (via email: assessor@co.marion.or.us)
Tax Office (via email: adhillon@co.marion.or.us)
Code Enforcement (via email: bdickson@co.marion.or.us)
AAC Member No. 3 (no members)
1000 Friends of Oregon (via email: meriel@friends.org)

by mailing to them copies thereof, except as specified above for agency notifications. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 9th day of June 2017, and that the postage thereon was prepaid.



Christi Klug
Secretary to Hearings Officer