

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
VARIANCE CASE NO. 22-007**

APPLICATION: Application of Daniel Thatcher on behalf of Michael & Megan Jackson for a variance to reduce the front yard setback of an accessory structure from 20 feet to 5 feet on a 1.00-acre parcel in an AR-3 (Acreage Residential) zone located at 5835 82nd Avenue SE, Aumsville (T8S; R2W; Section 14D; Tax Lot 2400).

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

EXPIRATION: This Variance is valid only when exercised by **October 20, 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 proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposal 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 all permits required by the Marion County Building Inspection Division.
2. The building shall maintain a 5-foot setback from the western property line (front yard).
3. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.

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 restrictions or conditions.

APPEAL PROCEDURE: The Marion County Zone Code provides that Variance 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 **October 20, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 21, 2022**, unless appealed.

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

1. The subject properties are designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR (Acreage Residential). The primary intent of the designation is to provide for rural residential development at a density sustainable with rural services.
2. The property is located on 82nd Avenue SE, approximately 880 feet from the road's intersection with Silver Falls Highway (State Route 214). The subject parcel contains a dwelling. The property was recorded in the Waldo Hills Fruit Farms No. 3 Plat in 1968 and is therefore considered a legal property for land use services.
3. Surrounding properties in every direction consist of Acreage Residential zoned properties developed with dwellings.
4. The applicant is proposing to reduce a 20-foot front yard setback from the western property line to 5 feet for an accessory building, a shop.

5. Marion County Building Division commented:

Permit(s) are required for the proposed shop building. If any part of the shop building is located less than 3 feet to the adjoining property lines, additional fire resistive construction may be required in the design of the building.

All other contacted agencies either failed to comment or stated no objection to proposal.

6. In order to obtain a variance, the proposal must meet the criteria in found in Section 17.122.020 of the Marion County Rural Zone Code (MCC). These criteria are:

- (a) *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; and*

According to the applicant, there are existing unnecessary, unreasonable hardships and practical difficulties which make any other location, other than the one proposed, suitable for the proposed shop, justifying the need to modify the western property line setback (front yard setback) from 20 feet to five feet. Some of the stated existing conditions include the location of the septic and drain field (located on the southeast portion of the parcel) and the downhill sloping throughout the middle of the parcel. Additionally, the proposed location for the shop is the flattest area on the property which would mitigate some of the hardships and practical difficulties presented by other potential locations. Therefore, this criterion is met.

- (b) *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*

The minimum lot size in this zone is two acres and due to the historic nature of the subdivision plat, created a sub-standard lot size of one acre. This creates an unusual circumstance that can only be remedied by modifying the code to allow for uses accessory to residential use. This criterion is met.

- (c) *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*

This variance of the front yard setback (from western property line) from 20 feet to five feet is the minimum necessary to create a suitable building site on a sub-standard lot. Therefore, this criterion is met.

- (d) *The variance will not have a significant adverse affect on property or improvements in the neighborhood of the subject property; and*

The applicant is proposing to build a shop in the front yard of the parcel five feet from the property line. The proposed location of the shop would not adversely affect other surrounding properties or improvements in the neighborhood. Therefore, this criterion is met.

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

This variance will not affect the health or safety of persons in the area. The applicant is proposing to build a shop which is consistent with what is a permitted use in the AR zoning code. Additionally, many other surrounding properties have similar uses that have been permitted. Therefore, this criterion is met.

- (f) *The variance will maintain the intent and purpose of the provision being varied.*

The variance will still allow for the placement of an accessory structure in a suitable area. This criterion is met.

7. Based on the above findings, the applicant's request meets all applicable criteria and is, therefore, **APPROVED**, subject to conditions

Brandon Reich
Planning Director/Zoning Administrator

Date: October 5, 2022

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173.

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.