

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. 22-004**

APPLICATION: Application of Norman Bickell on behalf of the property owners Jamon Wanker and Sophia Wood for a variance to MCC 17.110.800 to allow a total of seven dwellings to be served off a private easement in an AR (Acreage Residential) and UT-5 (Urban Transition 5-Acre Density) zone located at 241 Schooley Lane NE, Silverton. (T7S, R1W, [Section 2D, Tax Lot 300], [Section 2DA, Tax Lot 5200], and [Section 2DB, Tax Lot 800]).

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 **May 12, 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. Any dwelling located at Tax Lot 300 will be addressed as 231 Schooley Lane NE while any dwelling located at Tax Lot 800 will be addressed as 251 Schooley Lane 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 restrictions or conditions. It is recommended that agencies mentioned in Finding 6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

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 **May 12, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 13, 2022**, unless appealed.

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

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding Acreage Residential (AR) zoning is to accommodate the housing needs of the population desiring the advantages of a rural homesite. Additionally, a small portion on the Northeast of Tax Lot 5200 is zoned UT-5. The purpose of the Urban Transition (UT) is to retain and protect for future urban use properties which are undeveloped or underdeveloped and do not have available urban facilities such as sanitary sewer, water, drainage and streets.
2. The northeastern property is located approximately 200 feet south of the intersection of Schooley Lane NE and S Water Street (State Route 214). One of the three subject parcels has been developed with a dwellings and outbuildings (Tax Lot 5200), while the other parcels remain undeveloped (Tax Lots 300 and 800). The parcels have not been the subject of any known previous land use cases. However, the legality of Tax Lot 300 is confirmed by a Warranty Deed from September 1959 (Volume 592, Page 51), while the legality Tax Lots 5200 and 800 are confirmed by a Warranty Deed from July 1957 (Volume 503, Page 69). For land use purposes, these parcels are legal and land use action can be commenced.
3. The surrounding uses vary widely. To the north of the parcels, the land uses mostly consist of a mix of single-family residential in the city of Silverton and rural homesites zoned Acreage Residential. To the south of the parcels, the land uses consist of small to large farms and rural homesites which are zoned Acreage Residential, Exclusive Farm Use, and Farm Timber. East of the parcels, zoning is made up of Acreage Residential, Urban Transition, and zoning for the city of Silverton and contain rural and urban homesites. Lastly, to the west of the parcels, zoning consists of Acreage Residential and Exclusive Farm Use, while land uses are made up of rural homesites and small to large farms.
4. The applicant is proposing to allow a private easement (Schooley Lane NE) to serve more than four dwellings and serving a total of seven dwellings.
5. Marion County Septic Division commented that proposed dwellings will require site evaluations for on-site wastewater facilities.

Silverton Fire District made the following comments:

Future development of the property will need to comply with Oregon Fire Code regarding access and water supply.

Fire access roads and turnarounds will need to be evaluated and upgraded as needed for compliance with Oregon Fire Code.

An Oregon registered civil or structural engineer will need to inspect the bridge for structural stability and soundness and verify vehicle load limits as per Oregon Fire Code.

Vehicle load limits shall be posted at both sides of the bridge on a minimum 18"x 24" metal white reflective sign with a minimum 3" black letters. Signs shall be installed with a clear space above grade at a level of at least 5' feet and no more than 7' feet. The bridge weight limit as determined by a State of Oregon registered civil or structural engineer, shall appear above the word "TONS". (OFC 503.2.6 & D.102.1)

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

6. 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*

The applicant's representative has stated that via Schooley Lane NE, which consists of a bridge over Silver Creek, is the only viable way to access each of properties. They have also stated that access to a public street (Victor Point Road NE) from the southwestern and western properties is not possible because the applicants do not own the parcels and, therefore, do not have access by right. Additionally, even if access were possible from the southwestern and western properties, the fact that a geohazard exists on the ridge overlooking the properties could make accessing the parcels a potential safety hazard in the event of a flood, earthquake, or another natural disaster. Access to the properties from the southeast via Silverwood Lane, a private road, would be impractical as well, considering that the applicants do not own the parcel in which this road is located on. Based on this criterion, access to the parcels via Schooley Lane NE is the only practical way because of the existence of Schooley Lane NE and the proximity to the subject parcels. 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*

According to the applicant's statement, access to the subject parcels is limited because of the unique geography of the parcels and the geography surrounding them. As stated previously, access to the subject parcels is limited and would be impractical via Victor Point Road NE because of the existing geohazards and the potential safety hazards stemming from floods, earthquakes, and other natural disasters. Additionally, the applicant lacks the ability to access the parcels, other than the route being proposed (Schooley Lane NE), because they do not own any surrounding parcels that would allow them to access their parcels from South Water Street (State Route 214) or Silverwood Lane by right. Therefore, the 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 is the minimum necessary to accommodate building two additional dwellings on Tax Lots 300 and 800. The 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*

Allowing access to all three parcels via Schooley Lane NE has the potential to create adverse effects on property or improvements in the vicinity. According to Chapter 17.110.800, a private drive (Schooley Land NE) cannot serve more than four dwelling units. Currently, Schooley Lane NE serves five dwellings with the applicant applying for a variance for a private drive to serve two additional dwellings which would be a total of seven dwellings. There will be an increase in traffic because of the two additional dwellings being built. As a consequence, this could also result in an increase in noise and vibration and place a strain on the existing infrastructure through increased vehicle usage. However, the applicant is proposing to build only two additional single-family dwellings (as allowed per the Acreage Residential zoning), resulting in a small increase in traffic, but would not create a significant adverse effect on property or improvements in the vicinity. Therefore, the 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*

Allowing access to all three parcels has the potential to impact the health and safety of persons working or residing in the vicinity. According to Chapter 17.110.800, a private drive (Schooley Land NE) cannot serve more than four dwelling units. Currently, Schooley Lane NE serves five dwellings with the applicant applying for a variance for a private drive to serve two additional dwellings which would be a total of seven dwellings. The two additional dwellings will increase traffic in the vicinity. Therefore, this

could create an adverse effect upon the health and safety of the persons working or residing in the vicinity by potentially delaying access to emergency services. However, the applicant is proposing to build only two additional single-family dwellings (as allowed per the Acreage Residential zoning), resulting in some increase in traffic, but would not create a significant amount that delay emergency services or would impact the health and safety of persons working or residing in the vicinity. Therefore, the criterion is met.

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

The variance maintains the intent and purpose of the zone by allowing for rural residential use on parcels with a minimum of two acres. The applicant is not proposing to add more dwellings than what is already allowed in the base zoning district, Acreage Residential. Therefore, the criterion is met.

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

Brandon Reich
Planning Director/Zoning Administrator

Date: April 27, 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.