

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. 24-004**

APPLICATION: Application of Folsom & Sons Construction on behalf of Mendell & Darlene Gosnell for a variance to reduce the required 26-foot setback to a 16-foot setback on the northern property line for an accessory structure on a 1.89-acre parcel in an Acreage Residential (AR) zone at 5572 70th Ave SE, Salem (T8S; R2W; Section 15D; 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 **August 21, 2026**. 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 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 structure shall be approved for accessory use only. The area shall not be approved for dwelling space, guest facilities or commercial uses.
4. The structure shall maintain a 16-foot minimum setback from the north property line.
5. 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. 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:

6. The applicant should contact the Marion County No. 1 Fire District and obtain a copy of the District's Recommended Building Access and Identification Guidelines. For personal and property safety it is recommended that the applicant follow these guidelines. Fire District access standards may be more restrictive than County Standards.
7. The applicant is advised of the engineering requirements received from Public Works Land Development

Engineering and Permits Division (LDEP) outlined in the Findings and Conclusions section below. These Requirements and/or advisories are listed in Finding #6.

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 **August 21, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 22, 2024**, 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. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow for the creation of acreage home sites at a density that maintains the character and environmental quality of the County's rural residential areas.
2. The property is located on the east side of 70th Ave SE where the road terminates a quarter mile south of its intersection with Aumsville Hwy SE. It contains a dwelling and several small accessory structures. The parcel was originally created by the Cascade View Ranchets subdivision as Lot 7 of Block 1 on March 19th, 1963, and has not changed its configuration since. The parcel is therefore legal for land use purposes.
3. Surrounding properties in the area consist of exclusively AR zoned parcels in use as acreage homesites. Most parcels contain at least one residential accessory structure in addition to the primary dwelling, including the abutting parcel sharing the north property line from which the applicants are proposing to reduce the setback.
4. The applicant is proposing to reduce the required setback of 26-feet for an accessory structure to 16-feet on the north property line. The proposed accessory structure has a peak height of 35-feet, the maximum allowed height for structures in the zone, and is assessed the 26-foot setback based on the proposed location in the rear yard and the height of the structure.
6. Various agencies were contacted with the proposal and given an opportunity to comment.

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Requirements:

“At the time of application for building permits an access field review will be conducted. A preliminary review of remote imagery suggests that the driveway approach has no culvert installed or may be buried. A culvert had been required under the original Access Permit #D92-081 for home construction. An Access Permit may then be required to install a culvert if absent. “

Marion County Septic commented: “An authorization is required to connect the accessory structure to the existing system.”

Marion County Building commented: “No concerns with variance to reduced setback. Permit(s) are required to be obtained prior to development and/or utilities installation on private property.”

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

7. In order to obtain a variance, the proposal must meet the criteria 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*

In their statement, the applicants claim that if the proposed structure were to be sited in a location that meets the required setbacks to the north property line, the structure would “disconnect the property behind the building” preventing the applicants from seeing into their backyard to keep track of their children that play in this part of the property. This appears to be a practical difficulty that can be relieved by modifying the literal requirements of the ordinance. The 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 applicants state that the access to the structure and slope of the property present difficulties in building the proposed structure elsewhere on the property that would meet the required 26-foot setback. Examination of the contour lines, available imagery and proposed site plan found that the site is sloped, and that the location of the structure is on a portion of the property that has already been leveled out and provides garage door access to the structure from the driveway. 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*

The applicants state that the standard setback for an accessory structure in this situation is 9-feet. However, the standard setback in this zone for dwellings is 10-feet from side yards, and if this structure was built in either the front or side yards, that would be the standard assessed to the structure. Since the proposed accessory structure is located in the rear yard, the setback is determined by the height of the structure, and the setback calculation for an accessory structure that is 35-feet tall is 26-feet minimum from the property lines. The applicants are not asking for a variance to adjust the setbacks below the 10-feet that would be assessed if the location was in another section of the lot. Since the applicants are not requesting a setback reduction that would be less than 10-feet, it is reasonable to assume that they are requesting the minimum reduction necessary to accomplish their goals. 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*

The property that shares the property line which the applicants are requesting to reduce the setbacks from contains two existing large accessory structures nearby the location of the applicant’s proposed structure. The use of the area is already established as a place for siting large accessory structures. The applicant’s proposal is congruent with the existing land use pattern and would not have a significant adverse impact on the neighboring property. 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*

The proposed structure is a residential accessory structure not intended to be a residence or for any sort of disruptive commercial use. The structure will be sufficiently far enough away from nearby structures that it would not be of concern for fire safety. No other health or safety concerns were brought to the attention of the Planning staff by any commenting agencies. The criterion is met.

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

The rationale for this section is partially addressed under the staff response to criterion *c* above, where the requested adjustment would not reduce the setback below what would be assessed to the accessory structure if it was sited in the side or front yard as opposed to the rear. Since the setback is not being reduced to less than what is typically required of structures in similar circumstances, the request does maintain the intent and purpose of the provision. The criterion is met.

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

Brandon Reich
Planning Director/Zoning Administrator

Date: August 6, 2024

If you have any questions regarding this decision contact Alexander Seifer 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.