

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. 24-006**

APPLICATION: Application of Jim and Carmenza Sarvay for a variance to reduce the required 10-foot side yard setback to 5 feet on the north-eastern property line for a garage addition/remodel on a 1.03-acre parcel in an AR (Acreage Residential) zone at 23925 Butteville Rd NE, Aurora (T3S; R1W; Section 32CA; 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 **September 19, 2026** (two years). 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. 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.
4. The dwelling shall continuously maintain a 5-foot setback to the north-eastern side yard property line.
5. The applicant shall record a Floodplain Declaratory Statement prior to the issuance of a building permit.

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. 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 **September 19, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 20, 2024**, 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 and correspondingly zoned AR (Acreage Residential).
2. The property is located on the west side of Butteville Road NE approximately 1,100 feet north of its intersection with Union Street NE. The property contains a single-family dwelling and accessory structures. The property is legal for land use purposes as the dwelling was established in 1960.
3. Surrounding properties are zoned AR in all directions and are developed with small acreage homesites.
4. The applicant is proposing to vary the north-eastern side yard setback from 10 feet to 5 feet for an addition to the primary dwelling.
5. Various agencies were contacted for comments on the proposal. The following agencies commented:

Marion County Building Department commented:

“Permit(s) are required to be obtained prior to any development and/or utilities installation on private property. The Fire Resistive Construction requirements of the 2023 Oregon Residential Specialty Code, Section R302, will be applied during the building plan review.”

The Marion County Tax Assessor’s Office provided information regarding taxes on the subject properties.

Marion County Septic Commented:

“A 5’ setback to the existing tank, and a 10’ setback to the existing drain field is required. There are currently no records of the existing system, so it is recommended that the drain lines be located prior to development.”

All other contacted agencies either failed to comment or stated no objection to the 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:

1. There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; and

The parcel is 1.03 acres, 0.97-acre under the minimum lot size and in an irregular hexagonal shape. The whole property is in the FEMA Flood Zone with the majority in the 100-year floodplain– the primary dwelling is located in the area designated as a 500-year floodplain. The dwelling is currently located on the highest elevation on the property which drops nearly 40 feet in elevation on the southwestern side towards the Willamette River. This creates a hardship when trying to expand the home. The proposal also reduces the non-conformity of the north-eastern property line setback from 3 feet to 5 feet. There are no other options on a lot shaped like this. The criterion is met.

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

The properties in the vicinity are all tightly spaced with the primary dwellings encroaching on the property lines, and the sizes of the lots are uncommon and present difficulties when attempting to site dwellings away from the

common property lines – in particular the north-eastern and south-western property lines. Many of the adjacent properties are less than one half acre where the minimum setbacks from property lines are 5-feet (MCC 17.128.060 B,2). The criterion is met.

3. The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and

This proposal reduces the nonconformance from 3 feet to 5 feet. This is a minimum necessary to permit development of the addition to the dwelling. The criterion is met.

4. The variance will not have a significant adverse affect on property or improvements in the neighborhood of the subject property; and

The area is zoned for residential development and this proposal is in line with such. The variance is for a single-family dwelling. The criterion is met.

5. The variance will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and

The reduction of a property line setback is not expected to adversely affect persons in the vicinity. The criterion is met.

6. The variance will maintain the intent and purpose of the provision being varied.

The variance creates a 5-foot setback which would be the minimum if the parcel was one half acre or smaller. 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: September 4, 2024

If you have any questions regarding this decision contact George Brandt at (503) 588-3981.

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.