

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. 20-005**

**APPLICATION:** Application of Timothy and Heather Schaefer for a variance to reduce the required 10 foot side yard setback to 4 feet for an accessory building on a 1.5 acre parcel in an AR (Acreage Residential) zone located at 7454 Harley Way SE., Salem (T8S; R2W; Section 02C; tax lot 6200).

**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 14, 2022**. 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 accessory building shall maintain a 4 foot minimum setback from the side property line.
2. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
3. 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.

**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 agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain 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 14, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 15, 2020** unless appealed.

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

1. The property is designated Rural Residential in the Marion County Comprehensive Plan and zoned AR (Acreage Residential).

2. The property is located on the east side of 74<sup>th</sup> Ave SE south of Harley Way SE. The subject parcel is currently developed with an existing dwelling, accessory structure, well and septic system. The property was created in its present configuration as Lot 5 of the Dreiszus Home Tracts Subdivision and is a legal lot for land use purposes.
3. Adjacent property on all sides are zoned AR and developed with rural home sites.
4. The applicant is proposing to reduce the required 10 foot front yard setback for an accessory building to 4 feet.
5. Marion County Land Development Engineering & Permits commented that at the time of application or building permits for the proposed accessory structure it will be required to complete an Erosion Acknowledgement Form regarding obligation to implement appropriate measures to minimize the potential for erosion within the County's DEQ-defined Erosion Management Area.

Marion County Building Inspection commented that the accessory structure would be required to meet fire separation requirements of the 2017 Oregon Residential Specialty code section R328.

All other contacted agencies 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 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*
  - (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*
  - (c) *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*
  - (d) *The variance will not have a significant adverse affect on property or improvements in the neighborhood of the subject property; and*
  - (e) *The variance will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and*
  - (f) *The variance will maintain the intent and purpose of the provision being varied.*
7. The subject parcel is 1.5 acres in size. The parcel has approximate side dimensions of 325 feet with front and back dimensions 200 feet. The applicants are proposing to reduce the required 10 foot side yard setback for an accessory building to 4 feet from the front property line on the easterly side. The applicants state that adherence to the required 10 foot front yard setback would place the proposed accessory building in conflict with the existing driveway and impact access to the property. The accessory building will meet the required 10 foot side yard setback from the west property line and the 20 foot front and rear yard setback from the north and south property lines. The proposed 4 foot side yard setback from the east property line is the minimum necessary to accommodate the accessory building. The variance should have no effect on the neighborhood or the health and safety of persons working or residing in the area. The proposal meets the criteria in Finding #6.
8. Based on the above findings, the applicants' request meets all applicable criteria for a variance and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: September 29, 2020

If you have any questions please contact Lindsey King 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.