

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. 23-004**

**APPLICATION:** Application of Randy and Michchiel Moberg for a variance to reduce the required setbacks of a hardship dwelling from 20 feet to 10 feet on the southern property line on a 2.63-acre parcel in an TC (Timber Conservation) zone located at 27880 North Santiam Highway SE, Mill City (T9S; R2E; Section 25D; Tax Lot 300).

**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 **March 24, 2025**. 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 hardship dwelling shall maintain a 10-foot setback from the southern property line.

**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 #5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

5. The applicant should contact the Mill City 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.

**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 **March 24, 2023**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 25, 2023**, unless appealed.

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

1. The subject property is designated Forest in the Marion County Comprehensive Plan and zoned Timber Conservation. The purpose of this zone is to conserve forest lands by maintaining the forest land base and to protect the forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use of forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.
2. The property is located on the south side of Highway 22 and the north side of River Rd SE, approximately 0.50 miles east of their intersection. The property contains a single-family dwelling, built in 1975 and was the subject of Conditional Use 11-028 and Conditional Use 22-030 and is therefore considered legal for land use purposes.
3. Surrounding properties are zoned TC in all directions except north. Surrounding properties zoned TC are developed with single family homes as well. The parcel to the north is zoned C (Commercial) and appears to contain a small trucking company/storage business.
4. The applicant is proposing to reduce the required setbacks of a hardship dwelling from 20 feet to 10 feet on the southern property line.
5. Marion County Building Department commented:  
“Permits are required for future development.”

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*  
  
The location of the existing gravel pad and the septic system create circumstances such that, the only way to place the hardship dwelling and meet septic standards is to vary this code. 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*  
  
As explained above, based on the location of the septic drain field and pond on the property, as well as existing access roads and other structures, create unusual conditions that apply to this land. The location of the pond to the northwest of the home precludes the dwelling to be placed there. Access roads take up the interior of the property and the septic system is oriented such that, this dwelling needs a reduction in its setbacks to be sited properly. 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 degree from the standard as indicated by the applicants on their site plan and narrative statement is the minimum necessary to permit development. 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 hardship dwelling was permitted through CU22-030 and would have the same impacts on the surrounding area as if it were 20 feet from the property line. The 10 foot reduction is not expected to have any adverse effects.

- (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 variance is being done to accommodate the drain field, as well as the existing ponds and roads onsite. If this variance were not to be approved, significant site work would need to be done to accommodate the dwelling which would have a greater adverse effect than the temporary placement of a home. The criterion is met.

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

The setback is being varied by 50%, an acceptable standard which still maintains the intent of the standard which is to properly space buildings from other parcels and structures. All building codes will still need to be met. 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: March 9, 2023

If you have any questions regarding this decision contact Austin Barnes 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.