

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. 23-009**

APPLICATION: Application of Brian Howard for a variance to reduce the required 20-foot front yard setback to 8 feet for a single-family dwelling on a 0.25-acre parcel in an Acreage Residential (AR) zone located at 24105 Butteville Road NE, Aurora (T3S; R1W; Section 23BC; Tax lot 900).

DECISION: PLEASE READ ALL CONDITIONS: 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 6, 2025** (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 structure shall continuously maintain an 8-foot setback from the front 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. 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 **October 6, 2023**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 7, 2023** 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 corresponding zoned AR (Acreage Residential). The purpose of this zone is to provide rural homesites on small acreage.
2. The property is located on the northwestern side of Butteville Rd NE, approximately 760 feet south of its intersection with Schutz Rd NE. The property currently contains only a dwelling built in 1962 and is therefore legal for land use purposes.
3. Surrounding properties in all directions are zoned AR and are developed with dwellings. This house sits within the Historic Butteville area where early settlement of the Willamette Valley occurred.
4. The applicant is proposing to reduce the front yard setbacks for a dwelling/garage from 20 feet to 8 feet.
5. Marion County Building Department “permits are required for any new structures”.

All other commenting agencies stated to objection to the proposal.

6. 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*

The steep nature of the Willamette River riverbank and location of the existing septic system, create practical difficulties to locate a new home on the subject parcel. The buildable area is shrunk because of these factors, requiring a variance. The criteria 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 discussed above, the existing retaining wall and steepness of the riverbank create a buildable area much smaller than the 0.25 acre parcel. Almost half of the land is buildable due to the bank and river setbacks. This is not typical in the AR zone where the current minimum parcel size is 2 acres. The criteria 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 to place the house/garage and maintain a septic drainfield and river setbacks. The criteria is met.

- (d) *The variance will not have a significant adverse affect on property or improvements in the neighborhood of the subject property; and*

Development of a home and garage is typical for this area as it is residentially zoned and was developed as a small town. The setback still maintains a safe distance from the roadway. The criteria 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*

A reduction in the setback for a garage is not expected to create any health or safety concerns. No comments were received in regards to roadway issues/safety. No comments were received from the right-of-way authority that this siting is too close. The criteria is met.

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

The applicants state that this is the minimum necessary to accommodate the structure. The criteria 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 21, 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.