

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. 18-005**

**APPLICATION:** Application of Timothy and Eve Woodland for a variance to reduce the required 10 foot side yard setback to 5 feet for an accessory structure on the AR-10 (Acreage Residential – 10 Acre Minimum) zoned portion of a 0.47 acre parcel located at Lucier Avenue NE, St. Paul. (T4S; R2W; Section 19AD; tax lot 4100).

**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 **November 22, 2020**. 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 location of the accessory structure shall substantially conform to the site plan submitted with this request and maintain a 5 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

**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 **November 22, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 23, 2018** 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 south side of Lucier Av NE approximately 85 feet east of the intersection with Second St. The western 99.31 feet of the subject parcel identified as tax lot 4100 is located inside the city limits of St. Paul and currently is developed with a dwelling. The eastern 30 feet of the parcel is located outside the city limits and in the AR-10 zone. The property was created in its present configuration as Lot 6, of French Canadian Estates, and is a legal lot for land use purposes.
3. Surrounding properties to the northeast and east are zoned AR and consist of residential uses. Property to the south, west and north are located inside the city limits and in residential use.
4. The applicant is proposing to reduce the required 10 foot side yard setback for the accessory structure to 5 feet. The accessory structure will be built in the side yard within the eastern 30 feet of the parcel which is located outside the city limits and in the AR zone.
5. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

City of St. Paul commented that the applicant failed to adequately address why the shop cannot be moved closer to the dwelling and that the applicant didn't explain what type of water and sewer lines are located in the side yard and exactly where they are located. The city acknowledged the applicant's reasoning as to why the shop cannot be located in the rear yard. The city feels the variance is not justified and that the applicant should construct a smaller or narrower shop so the minimum setback can be met. The full text of the comments are available for review in the planning file.

Area Advisory Committee commented that the variance should not be approved.

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 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 applicants are proposing to construct an accessory structure in the side yard within the eastern 30 feet of the parcel which is located outside the city limits and in the AR zone. The subject parcel is 0.48 acres in size and was created on March 6, 2006. The AR zone allows for a reduced side yard setback of five feet for parcels of one-half acre or smaller that were created prior to January 1, 1994. The applicants are requesting to reduce the 10 foot minimum side yard setback to five feet. The applicant states that the location of the water and sewer lines along with a water flush pipe are located in the side yard where the sidewalk ends, just east of the dwelling and approximately 30 feet from the east property line would prohibit the shop from being located closer to the house. The applicant has submitted pictures documenting the water flush pipe as well. The rear yard has a drainage

easement and many Oak trees that are known as “Oak Grove” located in the rear yard which prohibits placement of the accessory structure in the backyard. The five foot side yard setback meets the allowed reduction for parcels one-half acre or smaller. The structure or use of the structure does not create noise, odor or vibrations that would impact surrounding properties and would have no impact on health or safety of persons working or residing in the vicinity. 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: November 7, 2018

If you have any questions please contact Patty Dorr 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.