



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: January 25, 2023

Department: Public Works Agenda Planning Date: Time required: None

☐ Audio/Visual aids None

Contact: Lindsey King Phone: 503-566-4162

Department Head Signature: 

TITLE Receive Hearings Officer's decision on Variance 22-009/Rodney and Paula Loder.

Issue, Description & Background The Marion County Hearings Officer issued a decision on January 13, 2023, approving V22-009. As part of the land use process the Marion County Board of Commissioners must officially receive notice of the decision.

Financial Impacts: None

Impacts to Department & External Agencies None

Options for Consideration: 1. Receive notice of the decision.
2. Receive notice of the decision and call the matter up.

Recommendation: Staff recommends that the board receive notice of the hearings officer's decision.

List of attachments: Hearings Officer's Decision

Presenter: Lindsey King

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Lindsey King - lking@co.marion.or.us
Brandon Reich - Breich@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of) Case No. Variance 22-009
Rodney and Paula Loder)
) **VARIANCE**

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Wallace W. Lien on behalf of Rodney and Paula Loder for a variance to reduce the side yard setback of an accessory structure from 10 feet to 2 feet on a 1.52 acre parcel in and AR (Acreage Residential) zone located at 1010 Pastureland Lane, NE, Salem (T7S; R2W; Section 21DD; Tax Lot 1502)

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code (MCC) 17.122.020 (Variances) and MCC 17.128.060 (Acreage Residential Zone).

III. Public Hearing

A public hearing was held on this matter on December 1, 2022. At the hearing, the Planning Division file was made a part of the record. The following persons appeared at the hearing and provided testimony and/or argument on the application:

- | | |
|--------------------|---------------------------------|
| 1. Lindsey King | Marion County Planning Division |
| 2. Wallace W. Lien | Attorney for Applicant |
| 3. Rodney Loder | Applicant |
| 4. Adrian Lopez | Opponent |
| 5. Brent Roush | Opponent |

No objections were made to notice, jurisdiction, or conflict of interest. No further exhibits were offered.

IV. Executive Summary

Applicants seek a variance to reduce the side yard setback of an accessory structure from 10 feet to 2 feet on a 1.52 acre parcel in and AR (Acreage Residential) zone located at 1010 Pastureland Lane, NE, Salem (T7S; R2W; Section 21DD; Tax Lot 1502). Applicants have met their burden of proving the applicable standards and criteria for approval of a variance application, and the variance application is APPROVED with conditions as stated in the Notice of Decision.

V. Findings of Fact

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR (Acreage Residential). Acreage residential zones are areas that are suitable for development of acreage homesites. Such areas are necessary to meet the housing needs of a segment of the population desiring the advantages of a rural homesite.
2. The property is located near the end of Pastureland Lane NE, approximately 1000 feet from the intersection of Pastureland Lane NE and Fruitland Road NE. The property is developed with one single-family dwelling and multiple accessory structures. Adjacent properties in all directions are also zoned Acreage Residential (AR).
3. The subject property consists of Tax Lot per the Marion County Assessor's map. This tax lot corresponds with Parcel 2 of Major Partition 80-024. This plat was recorded in 1981 with Marion County Planning approval. No further changes to the parcels have occurred since then. Therefore, the parcel is considered legal for the purposes of land use per Marion County Code 17.110.427.
4. The Planning Division requested comments from various governmental agencies and received the following comments:

Marion County Building Division commented:

The construction of the lean-to onto an existing structure would have required a structural permit prior to construction. The setback of 2 feet to the property line would have been addressed in plan review. Two feet could be allowed by the 2021 Oregon Residential Specialty Code, provided fire rated construction be provided to the posts and overhang. Applicants are required to apply for a structural permit for the lean-to, provide a site plan with distances to adjacent property lines, engineer calculations and plan since the method of construction does not meet prescriptive structural requirements in the 2021 ORSC, and provide additional plans identifying the fire rated construction methods and materials for the posts and overhang as required by ORSC R302.1.

Marion County Assessor's Office provided information regarding taxes on the subject properties.

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

5. On October 13, 2022, the Planning Director approved the Applicant's proposal. On October 19, 2022, a timely appeal was filed by Adrian and Laura Lopez, adjacent landowners. The Notice of Appeal indicated that the appeal was filed because the structure is not two feet from the northern property line and that a section of the fence was moved further north to gain clearance for the new structure that is only 16 inches from the fence. The Appellant requested that the original ten (10) foot setback be

reinstated or additional conditions be imposed. The Appellant also stated concern regarding additional water drainage damaging water and electrical lines.

6. Wallace W. Lien confirmed that there was a scrivener's error in the Staff Report, and the Applicants name is Loder (not Jackson). Mr. Lien also stated that the subject appeal does not allege that the approval decision did not properly or legally apply the criteria to the facts of the application. Mr. Lien argued that where the appeal does not raise issues with compliance to the approval criteria, it must be denied. Mr. Lien further argued that the appeal was not filed in good faith, but rather was an attempt to "defend an easement litigation case" in which the Applicants were asserting their right to use existing easements on Appellants' property for access to a domestic well.
7. Applicants allege that the actual setback distance is two feet. The Appellants allege that the set back is closer to sixteen inches (16"). Mr. Lien argued that whether the setback is sixteen (16) or twenty-four (24) inches makes no difference with respect to compliance of the application with the variance approval criteria. No survey was presented to confirm the actual distance of the setback, and no argument is presented that the alleged eight-inch (8") difference in setback presents any legal or factual error that should cause the decision to be overturned.
8. Appellant Adrian Lopez stated that a two-foot setback is not the issue; the issue is where the property line is located. Mr. Lopez has hired a surveyor, and one corner post has been located. The survey was not complete at the time of the hearing.
9. Brent Roush testified that his property is located approximately 150 feet from the subject property, and he was present to testify about livability in the area. Mr. Roush stated objected to placing a lean-to within two feet of the property line and stated that there was sufficient property to place the structure on the elsewhere property. Mr. Roush also noted that it was "coincidental" that the lean-to was built when the neighboring property was vacant.
10. Mr. Lien stated that the lean-to was built last summer and that his client, Mr. Loder, was alerted to the setback issue when he was speaking with a building inspector. Mr. Lien stated that the property is oriented to Pastureland Lane, and that the current placement off the lean-to was the best place for it on the property.
11. Mr. Lien stated that his concern with Staff's approval was not a variance issue but was the working of Condition of Approval #2. Mr. Lien stated that Condition #2 is very important because the approval was based on the property as currently existing. Mr. Lien proposed that Condition #2, which required the setback to be maintained at two feet be revised to require that "[t]he structure shall maintain the setback currently existing from the northern property line to the edge of the current lean-to structure, which setback shall be no less than one foot in width." Mr. Lien argues that the proposed language removes any doubt that the intent of the approval, and condition is to allow the current structure to remain as it is currently structured. Mr. Lien posited that the exact distance of the setback does not matter for purposes of the variance criteria.

12. Lindsey King, Marion County Planning, stated the two (2) feet setback is the “bare minimum” that planning staff would consider as a setback, and had reviewed the criteria with respect to the Application as presented. Ms. King stated that Staff may have reviewed the Application differently if there was less than a two-foot setback. Ms. King indicated that the Marion County Building Division may have made a different statement and that the distance of the setback may have an impact on the analysis.

VI. Additional Findings of Fact and Conclusions of Law

1. In order to obtain a variance, the proposal must meet the criteria found in Marion County Code 17.122.020(A). These criteria are:

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

The subject property is in a rural residential neighborhood (all zoned Acreage Residential). Most lots in the neighborhood range from 1.5 to 2.0 acres in size. The Acreage Residential zone allows for this kind of neighborhood, and further allows for farm use and limit home occupations. These permitted land uses often take shape in the form of small hobby farms, gardens, and equipment for a variety of rural or recreational uses. This also includes accessory structures to store such equipment. It is also typical that such accessory structures are placed behind the home, rather than the “front yard.” The applicant indicated that possible locations for the structure were limited due to existing structures, the septic system, and existing features. The lean-to was placed in a location with existing improved surfaces connected to the driveway. Thus, no new access or driveway was necessary for the property, and the chosen location effectively consolidated development. To comply with the setback requirements of the code would have required either the development of new access to the property and/or more driveway improvements which would have made more of the land unusable for other purposes.

The lean-to’s purpose is for equipment storage that has access directly onto the driveway and then onto Pastureland Lane. The current location allows protective cover and access to the road. The width of the lean-to necessitates that it extend to two feet of the property line. 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 Applicant has indicated that the unusual circumstances of the property again relate to the existing development. Because the access, house, and existing shop were developed in one corner, very little room was left for further expansion of those improvements. Furthermore, the applicant states that the property owners are collectors of antique railroad equipment, and some of their storage space is dedicated to this use. In order to

move such equipment onto the property, the lean-to would need to be in a location with easy and legal access. Altogether, these unusual circumstances do indeed limit the options for the location of an accessory structure or lean-to. 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*

The proposed variance is the minimum necessary to accommodate the lean-to. The criterion is met.

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

The lean-to should not result in adverse effects to the adjacent properties or improvements. There is still a proposed space between the lean-to and the fence on the property line. There is still room to manage water run-off from the structure. The height of the lean-to also does not significantly impact vision, as it is lower in height than the adjacent structures. The variance does not have an impact on access either. The criterion is met.

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

The granting of reduced setbacks will not have a significant adverse effect upon the health or safety of adjacent properties or people. The lean-to itself and the use of the lean-to are for storage and typical residential accessory use. Furthermore, regardless of the variance, the structure will be required to meet any requirements of Marion County Building division and relevant building codes to reduce risks. The lean-to is contractor built, has been inspected, and no concerns have been raised about its structural integrity. The criterion is met.

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

The purpose and intent of the side yard setback is to provide spacing between structures and other developments on adjoining parcels. Typically, this spacing helps improve fire safety, ventilation, sound insulation, and maintain natural vision or lighting. Acreage Residential zones utilize two different methods of applying setbacks to accessory structures depending on the location of the structure. It is typical for required setbacks to be smaller when the structure itself is smaller (as evidenced by MCC 17.117.030). The lean-to is not fully enclosed and is a lower structure which has fewer impacts than other structures. The granting of this variance will maintain the intent of the setback. The criterion is met.

2. All criteria required for approval of the variance are met. The Appeal of the decision does not establish that the decision was legally or factually incorrect. The decision is based upon the Application, which requested a setback from ten to two feet and is approved with those conditions.

VII. Order

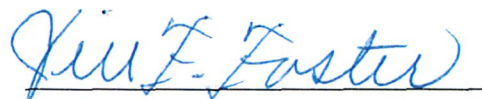
It is hereby found that Applicants have met their burden of proving the applicable standards and criteria for approval of a variance application to allow reduce the side yard setback of an accessory structure from 10 feet to 2 feet on a 1.52 acre parcel in and AR (Acreage Residential) zone located at 1010 Pastureland Lane, NE, Salem (T7S; R2W; Section 21DD; Tax Lot 1502). Therefore the variance application is APPROVED with the following conditions:

1. The Applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. The structure shall maintain a 2-foot setback from the northern property line (side yard property line).
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.

VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Suite 2130, Salem, OR 97301) by 5:00 p.m. on the 28th day of January, 2023. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must stated wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED this 13th day of January, 2023.



Jill F. Foster

Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Rodney and Paula Loder
1010 Pastureland Lane
Salem, OR 97317

Wallace W. Lien
Attorney at Law
1004 Crescent Drive NW
Salem, OR 97304

Adrian Lopez
1030 Pastureland Lane
Salem, OR 97317

Brent Roush
6277 Lahaina Lane NE
Salem, OR 97317

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

Agencies Notified:

Planning Division

(via email: breich@co.marion.or.us)
(via email: iking@co.marion.or.us)
(via email: DJansen@co.marion.or.us)
(via email: CTate@co.marion.or.us)

Assessor's Office

(via email: assessor@co.marion.or.us)

Tax Collector

(via email: Rweisner@co.marion.or.us)
(via email: NMcVey@co.marion.or.us)
(via email: ADhillon@co.marion.or.us)

Surveyor's Office

(via email: KInman@co.marion.or.us)

Fire District: Marion County No. 1

(via email: PaulaS@mcfd1.com)

Building Inspection:

(via email: Kaldrich@co.marion.or.us)

Public Works LDEP Section

(via email: mcldep@co.marion.or.us)

PW Engineering

(via email: jrasmussen@co.marion.or.us)

(via email: JShanahan@co.marion.or.us)

Code Enforcement

(via email: CGoffin@co.marion.or.us)

(via email: JTaylor@co.marion.or.us)

(via email: rgoe@co.marion.or.us)

Salem Keizer School District

(via email: fridenmaker_david@salkeiz.k12.or.us)

Pudding River Watershed Council

(via email: anna@puddingriverwatershed.org)

(via email: cleanpuddingriver@gmail.com)

by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 13th day of January, 2023 and that the postage thereon was prepaid.



Kellie Whiting
Administrative Assistant to the
Hearings Officer