

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. 21-010**

APPLICATION: Application of the Thomas M & Jan E Frith Irrevocable Trust for a variance to reduce the southern property setbacks from 20 feet to 2 feet on a 1.33 acre parcel in a TC (Timber Conservation) zone located at 9953 North Fork Ln SE (T9S; R3E; Section 02DD; Tax lot 800).

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 **January 26, 2024**. 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. All structures shall maintain a two foot setback from the southern property line.
4. 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.

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 #6 below be contacted to identify restrictions or necessary permits. 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 **January 26, 2022**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 27, 2022** unless appealed.

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

1. The subject properties are designated Forest in the Marion County Comprehensive Plan and correspondingly zoned TC (Timber Conservation). The primary intent of the designation 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 North Fork Ln, approximately 0.50 miles east of its intersection with North Fork Rd SE. The property borders the Little North Santiam to the north and is surrounded by TC zoned lands in all other directions. The property is currently vacant as all structures were destroyed during the Beachie Creek/Lions Head Fires in September 2020.
3. Surrounding properties in every direction consist of TC zoned properties, all parcels and structures were destroyed by the 2020 fires. Before the fire, most had dwellings. The subject property formerly had a dwelling built in 1965 and is therefore considered legal for land use purposes.
4. The applicant is proposing to reduce a 20 foot southern property line setback to 2 feet due to instability of the river's edge.
5. Marion County Soil Survey shows that 100% of the soils on the property are Non-High Value.
6. Marion County Septic provided the following comment: "Original septic system from 2000 is in the proposed dwelling area."

Marion County Building Division commented:

"According to the 2021 ORSC, the location of the dwelling and/or deck may require additional fire resistive construction, based on the 2 foot setback from the property line. Three feet or more would not according to Section R302.1 and Table R302.1 of the 2021 Oregon Residential Specialty Code. Permits are required for any future structures and/or utilities on private property."

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

7. 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*
 - (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.*

8. The subject parcel is 1.33 acres in size and much of that is a steep hillside that slopes into the Little North Santiam River. A geo-technical report was prepared by River Design Group that identified the proposed building area as the most stable and suitable for development on this property. The location of lot lines, steep slopes and the river create a unique circumstance where the only suitable building area will require a variance to a southern property line setback. The variance allows the home to be as far away as possible from the steep slopes while maintaining some separation from the adjacent parcel. It is not expected to adversely affect property, people or wildlife in the area as this building site will ensure the structure does not erode away into the river and cause more extensive problems in the future. The criterion for 7 (a), (b), (c), (d), (e) and (f) is met.
9. Based on the above findings, the applicant's request for a setback variance from 20 to 2 feet meets all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich
Planning Director

Date: January 11, 2022

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.