

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. 22-009**

**APPLICATION:** Application of Wallace W. Lien on behalf of Rodney & Paula Jackson 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 an AR (Acreage Residential) zone located at 1010 Pastureland Lane NE, Salem (T7S; R2W; Section 21DD; Tax Lot 1502).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-listed Variance application subject to certain conditions.

**EXPIRATION DATE:** This variance is valid only when exercised by **October 27, 2024**. The effective period of an approved application 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 proposed uses is for land use purposes only. Due to septic, well and drain field replacement areas, this parcel may not be able to support the proposed activities. To be sure the subject property can accommodate the proposed use the applicant needs to check with 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 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.

**OTHER PERMITS, FEES, AND RESTRICTIONS:** This approval does not remove or affect any 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in the Findings and Conclusions section below be contacted to identify restrictions or necessary permits.

**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 condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) 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. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Road NE, Salem, by 5:00 p.m. on **October 27, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 28, 2022**, unless further consideration is requested.

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

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. 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.

5. Marion County Assessor's Office provided information regarding taxes on the subject properties.
6. Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies either failed to comment or stated no objection to the proposal.
7. 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 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 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.

8. Based on the above findings, the applicants' proposal meets the criteria for a variance in the Acreage Residential zone. The variance request is, therefore, **APPROVED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: October 13, 2022

If you have any questions regarding this decision contact Daniel Jansen 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.