



Curry County Community Development

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ADMINISTRATIVE STAFF REPORT AND DECISION

IN THE MATTER OF THE REQUEST FOR A VARIANCE TO THE SECONDARY FIRE SAFETY AREA REQUIREMENTS TO ALLOW PLACEMENT OF AN ACCESSORY STORAGE BUILDING ON A PARCEL ZONED FORESTRY GRAZING (FG)

Application: AD-2128

March 16, 2022

Applicant: Nathan Feasel

Property Owner: Nathan Feasel

Property Description: Township 41 South, Range 13 West W.M., Section 02,
Tax Lot (TL) 501

Location: 16355 Campbell Rd, Brookings, OR 97415

About 1 mile south of Campbell Rd's intersection with South Bank Chetco Rd. This property is outside the Brookings Urban Growth Boundary.

Land Use Request: Request for a variance to the secondary fire safety area of 100 ft to allow construction of a shop building as an accessory to the existing single-family dwelling.

I. BACKGROUND INFORMATION:

Parcel Size: 13.54 Acres

Zoning: Forestry Grazing (FG)

Fire District: Harbor Rural Fire Protection District (RFPD), by contract with annual fee.

The subject parcel has moderately sloped topography, with a large grassy area at the upper northwest corner and mixed hardwood and conifer timber below. The property has been

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improved with a single-family dwelling since 1991. Originally, this 13.54-acre parcel was lawfully created as an approved minor partition (P-8373) in 1983. On 2/1/1990, a conditional use request (AD-9003) approved a single-family resource-related dwelling. The first dwelling sited was a 1991 manufactured home (MH, building permit MCC-12-91), but the MH was replaced with a site-built home in 2003 (building permit 221-02-0320). The building permit for the 2003 dwelling was certified as complete when the 1991 MH was removed from the parcel.

With this application the Applicant seeks approval for a variance to the secondary fire safety area requirement to construct a 25'x50' shop at the existing graded pad previously occupied by the 1991 MH. A variance to the secondary fire safety area requirement may be approved if it meets the requirements listed Section 8 of the CCZO.

The Community Development Department has duly accepted the application filed in accordance with CCZO Section 7.020 for an application requesting conditional use approval and has given notice of this matter to affected property owners as set forth in CCZO Section 2.070(2).

II. APPLICABLE CRITERIA

To approve this application, the Planning Director must determine that it is in conformance with the following sections of the Curry County Zoning Ordinance (CCZO):

Article III.	USE ZONES
Section 3.050	Forestry Grazing Zone (FG)
Section 3.055	Fire Fighting Standards for Dwellings and Structures

Article VIII	VARIANCES
Section 8.010	Authorization to Grant or Deny a Variance
Section 8.020	Application for a Variance
Section 8.030	Standards for Granting a Variance

III. FINDINGS OF CONFORMANCE

CCZO Article III.	USE ZONES
Section 3.050.	<u>Forestry Grazing Zone (FG).</u>

Purpose of Classification: The Forestry Grazing Zone is applied to resource areas of the county where the primary land use is commercial forestry with some intermixed agricultural uses for livestock uses. The purpose of the Forestry Grazing Zone is:

- (a) *to implement the forest land policies of the Curry County Comprehensive Plan; and*
- (b) *to implement Statewide Planning Goal 4 with respect to forest lands in the county.*
- (c) *to implement the agricultural land policies of the Curry County Comprehensive Plan with respect to livestock grazing and related farm uses which are intermixed with forest land in some parts of the county; and*

- (d) to implement Statewide Planning Goal 3 with respect to intermixed farm and forest land in the county.

FINDING: A conditional use request to construct a single-family resource-related dwelling was approved, establishing the residential use of this FG zoned parcel in 1990. The Applicant proposes to construct a shop as an accessory structure to the existing dwelling. The variance to the secondary fire setback requirement for the accessory structure will not change the existing use of the property. This finding is met.

Section 3.055. Fire Fighting Standards for Dwellings and Structures.

The following fire siting standards shall apply to all new dwellings or permanent structures constructed or placed on lands within the Forestry Grazing (FG) Zoning designation.

- 1) *The dwelling shall be located on a parcel that is located within a structural fire protection district or the owner has contracted with a structural fire protection district for residential fire protection. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the Director determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the Director may provide an alternative means for protecting the dwelling from fire hazards. The alternative means for providing fire protection may include a fire sprinkling system, onsite fire suppression equipment and water storage or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year-round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.*

FINDING: The subject parcel receives forest protection from the Coos Curry Forest Protective District. Although the parcel is outside the Harbor RFPD, the Applicant states that they pay an annual fee to Harbor RFPD for structural protection. Per the Applicant, there is about 27,500 gallons of spring-fed water storage on the property, with a 10,000-gallon tank identified for irrigation and fire protection. This criterion is met.

- 2) *Fire Safety Area.*
Owners of new dwellings and structures shall comply with the following requirements:
 - a) *A primary fire safety area of at least thirty (30) feet width shall be maintained around all structures;*

NOTE: For purposes of this ordinance a primary fire safety area shall be defined

as follows:

An area in which the vegetation shall be limited to mowed grasses, low shrubs (less than two (2) feet high, and trees that are spaced with more than fifteen (15) feet between the crowns and pruned to remove dead and low (less than eight (8) feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath the trees.

b) *A secondary fire safety area of at least one hundred (100) feet width shall be cleared and maintained around the primary fire safety area.*

NOTE: For purposes of this ordinance a secondary fire safety area shall be defined as follows:

An area in which the vegetation shall be limited to mowed grasses, low shrubs (less than two (2) feet high, and trees that are spaced with more than fifteen (15) feet between the crowns and pruned to remove dead and low (less than eight (8) feet from the ground) branches.

FINDING: The Applicant would like to construct a shop on an existing leveled pad. The leveled pad was created for the first dwelling, a MH sited in 1991. The MH was removed in 2003 since the replacement residence was constructed about 250 ft southeast of the MH site. As proposed (Exhibit A), the shop would be built about 35-40 ft from the north property line.

Per the Curry Co. GIS map with contours and elevations, this parcel has moderately sloped topography (Exhibit B). The Applicant states that the only suitable location for building the shop is on the existing leveled pad. This site has easy access from the drive and utility poles for electrical service are already in place. However, this proposed location for the accessory shop does not meet the secondary fire safety area requirements. The Applicant is requesting a variance to the secondary fire setback from 100 ft to 5-10 ft along the north side of the proposed structure. There is still ample area along the west, south and east sides of the proposed structure to meet the secondary Fire Safety Area requirements. Compliance with variance requirements will be reviewed next under Section 8.

CCZO. Article VIII. VARIANCES

Section 8.010. Authorization to Grant or Deny a Variance.

The Director may grant variances from the provisions of this ordinance where it has been shown that owing to unusual topographic conditions, unusual conditions such as the shape of the property or the location of a building on the property, or other conditions over which the applicant has had no control, the literal interpretation of this ordinance would cause an undue or unnecessary hardship. No variance shall be granted to allow the use of property for purposes not authorized within the zone in which the proposed use would be located. In granting a variance, the Director may attach conditions which he/she finds necessary to protect the best interests of the surrounding property or neighborhood and to otherwise achieve the purpose of

this ordinance or the comprehensive plan.

Section 8.020. Application for a Variance.

A request for a variance may be initiated by filing an application in accordance with Article II of this ordinance.

FINDING: The Applicant's request for variance was filed in accordance with Section 2.060 of the CCZO.

Section 8.030. Standards for Granting a Variance.

A variance may be granted only in the event that the applicant can show that all of the following standards have been met:

- 1) *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size, shape, topography, or other circumstances over which the owner of the property has no control.*

FINDING: This parcel is over 13 acres, but the topography is moderately sloped, and a gully crosses the parcel, traversing from an area near the northwest corner down to an area near the southeast corner of the lot, limiting the parcel's buildable area. The home site is in the northeast section of the lot and the paved drive ends at the dwelling. The septic system is installed along the drive and the identified septic repair area is adjacent to it along the drive, further limiting the available area. Therefore, exceptional circumstances for the owner of the subject property exist due to the topography and placement of the existing improvements of the parcel. This requirement is met.

- 2) *The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess.*

FINDING: The subject property is in the FG zone. Other property owners in the FG zone can site an accessory structure to an existing single-family dwelling provided that the CCZO requirements are met. Suitable sites for building an accessory structure on this parcel are limited by the topography and placement of the existing improvements (dwelling, septic, septic repair area, drive, etc). Therefore, the variance is necessary to preserve the Applicant's right to build an accessory structure. This requirement is met.

- 3) *The variance would not be materially detrimental to the purposes of this ordinance, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of the comprehensive plan or other county regulation.*

FINDING: Construction of the shop as an accessory structure to the existing single-family residential use will not increase or intensify the uses currently permitted on the subject parcel. Approval of the requested variance is not anticipated to conflict with the purposes of zoning ordinance. Approval of the requested variance will allow for a use

that is generally consistent with the intent of this ordinance and the comprehensive plan.

The purpose of the fire safety area requirements is to restrict the spread of fire and the associated risks to nearby properties. With conditions of approval, the requested variance will not be materially detrimental to restricting the spread of fire from the proposed structure. First, the Applicants propose to build a shop with metal roofing and metal siding, which will minimize fire risks. Second, Campbell Rd crosses the adjacent property about 200 ft north of the subject's property line, and Harbor Hills Heights Rd crosses about 350 ft north. Both gravel roads serve as additional fire breaks. The Applicant can still maintain a primary fire safety area around all sides of the proposed shop, as well as the secondary fire safety area around the west, south and east sides. This criterion of the CCZO is met.

- 4) *The variance requested is the minimum variance which would alleviate the hardship.*

FINDING: Applicants request a variance from the secondary fire safety area for the accessory structure. The request to reduce the required fire safety area to the property lines on the north side of the proposed structure is the minimum variance necessary to alleviate the hardship based on the submitted site plan and conditions of the property. Therefore, this criterion will be met with the following condition of approval: Applicants shall site the accessory structure in accordance with the submitted site plan and may not change the development site without approval of a new variance request.

IV. PUBLIC COMMENTS OR CONCERNS

A Notice of Application was mailed to nearby property owners and interested parties regarding this request for Conditional Use Approval on December 28, 2021.

Micah Horowitz, Senior Transportation Planner for the Oregon Department of Transportation, responded via a December 28, 2021 email that the proposal should not significantly affect ODOT's facilities. **Response:** None.

Gretchen Hurley, adjacent property owner to the north, expressed concern in a January 18, 2022 letter whether the Applicant can accurately identify their common property line, subject to this variance request and proposed that the Applicant have the property line identified by survey. **Response:** This application is a conditional use request for a land use decision. The basis of the that decision relies on whether the property can meet, with conditions, the requirements of the CCZO. The determination of a lot line is the Applicant's responsibility; and, if an issue precipitates from that determination, it is a civil matter between affected property owners.

V. CONCLUSION

The proposal is hereby found to be consistent with applicable standards and criteria of the Curry County Zoning Ordinance.

VI. DECISION

File AD-2128, a request for a variance to reduce the secondary fire safety area requirements from 100 ft to 5-10 ft under the provision of Section 3.055(2)(a) and (b) on property described as Assessor Map 4113-02 tax lot 501, filed by Nathan Feasel, to allow the construction of a shop accessory to an existing single-family dwelling is hereby **APPROVED** subject to the following conditions:

- 1) The proposed accessory shop shall be sited according to the site plan submitted in the application and shall meet all other federal, state and county fire codes and standards.
- 2) Applicants shall maintain the primary fire safety areas around all sides of the proposed shop.
- 3) Applicants shall maintain the secondary fire safety areas around the west, south and east sides of the proposed shop and to the property line on the north side.
- 4) Applicants shall maintain the 27,500-gallon spring-fed water storage and the 10,000-gallon tank in working order for fire suppression.
- 5) The shop shall be constructed with metal roofing and metal siding.
- 6) This approval will **expire four (4) years** from the date this decision becomes final unless substantial construction of the dwelling has taken place, or an extension of time has been granted. Requests for extension of time shall be consistent with CCZO Section 7.050(5) and must be received by the Planning Department, in writing, with the appropriate fee, prior to the expiration date.

This decision is limited to the Planning Director's review of applicable zoning rules and land use law, as outlined in the Curry County Comprehensive Plan and the Curry County Zoning Ordinance. Other County, State and Federal agencies may have regulatory review authority for development projects. The decision rendered herein neither implies nor guarantees compliance with the requirements of any other regulatory agency. It is the property owner's responsibility to ensure that the development complies with the requirements of any other regulatory agency or provisions of law prior to initiating the development. Notice of this decision is being sent to property owners in the vicinity of this property. This decision will not become final until 15 days after the date of the order provided a timely appeal has not been filed. Appeals of Planning Director decisions are a de novo hearing before the Planning Commission. For further information contact the Planning Division.

CURRY COUNTY PLANNING DIRECTOR



Becky Crockett

March 16, 2022

Date

Exhibit A – Proposed Site Plan

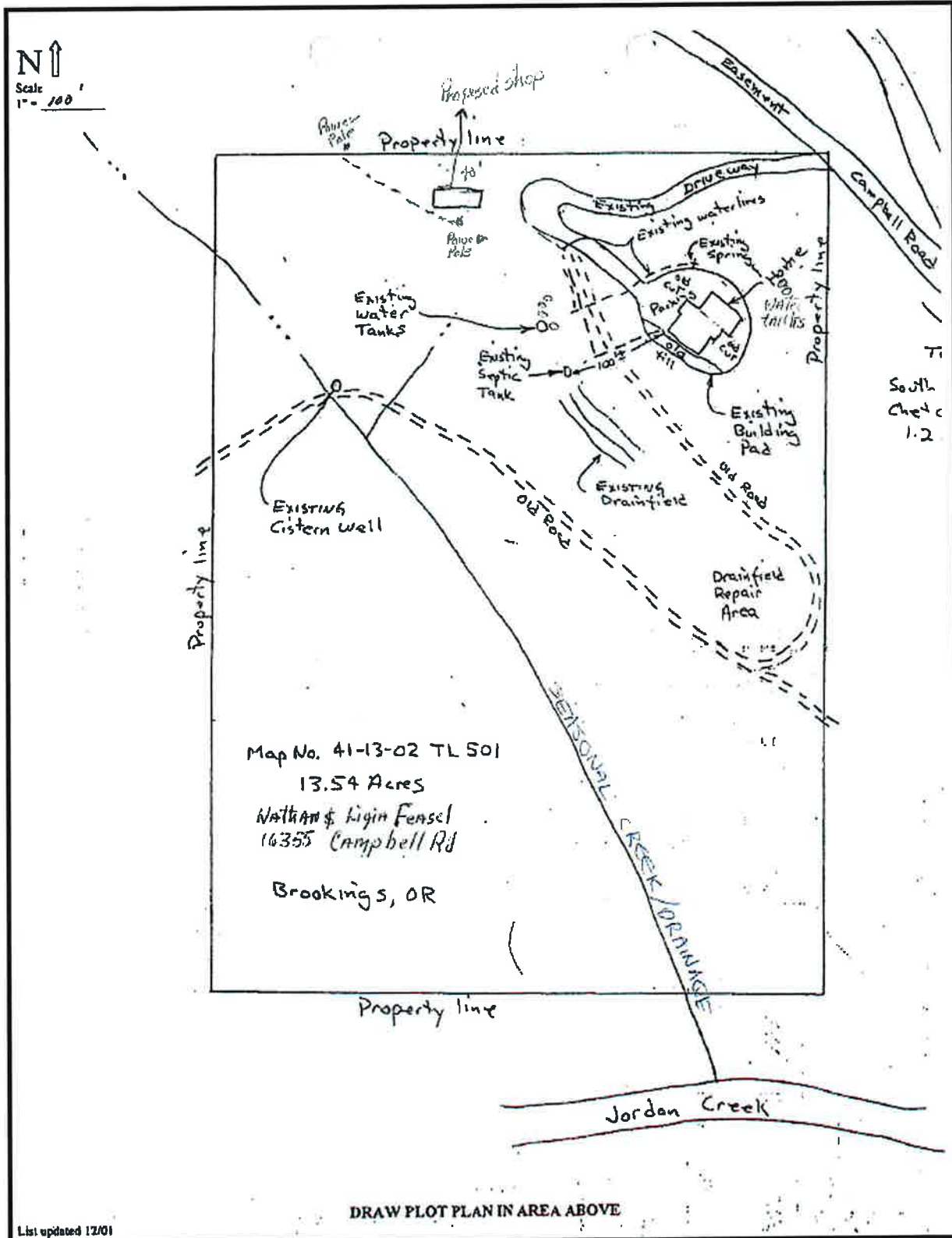


Exhibit B – GIS Map with Elevation Contours

Curry County Web Map



3/10/2022, 12:40:36 PM

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|-----------------------------|--|--|
| World Imagery | <input type="checkbox"/> Override 1 | <input type="checkbox"/> Townships |
| Low Resolution 15m Imagery | <input type="checkbox"/> Highways (1) | <input type="checkbox"/> City Limits |
| High Resolution 60m Imagery | <input type="checkbox"/> All Roads | <input type="checkbox"/> Urban Growth Boundary |
| High Resolution 30m Imagery | <input type="checkbox"/> Parcels | <input type="checkbox"/> Counties |
| Citations | <input type="checkbox"/> Parcel Labels | <input type="checkbox"/> Streams |
| 60m Resolution Metadata | <input type="checkbox"/> Situs Address (Current) | |



Map: Microsoft
 Bureau of Land Management, State of Oregon, State of Oregon
 DOI, State of Oregon GEO, Esri Canada, Esri, HERE, Garmin,
 IGN, IPG, iStock, Mapbox, Swatch, USDA, USGS, AeroGRID, IGN, Esri, Mapbox

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