



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Denied

Permit Type: Variance

File No. Z0306-22-V

Proposal: The applicant is requesting a variance to the minimum 30' foot front setback, from S Bateson Ln, to be reduced to 15 feet to accommodate a 36'x30' detached accessory shop building.

Decision Date: August 31, 2022

Deadline for Filing Appeal: September 12, 2022, at 4:00 pm

Unless appealed, this decision is effective on September 12, 2022 at 4:00 pm

Issued By: Annabelle Lind, Planner I, Alind@clackamas.us

Assessors Map & Tax Lot(s): T3S R3E Section 15 Tax Lot 02405

Site Address: 21750 S Bateson Ln, Estacada OR 97023

Applicant: Julie Volpel

Owner of Property: Julie & Richard Volpel

Zoning: Rural Residential Farm Forest – 5 Acre (RRFF-5)

Community Planning Organization (CPO) for Area:

Lance Ward 503-631-2550

lancecward@aol.com

Community Planning Organizations (CPOs) are part of the county's community involvement program. They are advisory to the Board of County Commissioners, Planning Commission and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact the Community Involvement Office at 503-655-8552.

OPPORTUNITY TO REVIEW THE RECORD: The submitted application is available for review online at <https://accela.clackamas.us/citizenaccess/>. Select the Planning tab and enter the file number to search. Select Record Info and then select Attachments from the dropdown list, where you will find the submitted application. The complete application file is available for inspection at no cost by contacting the Planner listed on the first page of this decision. Copies of all documents may be purchased at the rate of \$2.00 per page for 8 1/2" x 11" or 11" x 14" documents, \$2.50 per page for 11" x 17" documents, \$3.50 per page for 18" x 24" documents and \$0.75 per sq ft with a \$5.00 minimum for large format documents.

APPEAL RIGHTS: Any party disagreeing with this decision, or the conditions of approval, may appeal this decision to the Clackamas County Land Use Hearings Officer. An appeal must include a completed County Appeal Form and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified on the first page of this decision.

Appeals may be submitted in person during office hours (8:00 am to 4:00 pm Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

The County Appeal Form is available at www.clackamas.us/planning/supplemental.html. Any party or parties appealing this decision may withdraw their appeal at any time prior to the hearing or final decision by the Hearings Officer. A party wishing to maintain individual appeal rights may file an individual appeal and pay the \$250.00 fee, even if an appeal by another party or parties has been filed.

A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

APPLICABLE APPROVAL CRITERIA: This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 316, 1205 and 1307.

PUBLIC AND AGENCY COMMENTS:

Notice was sent to applicable agencies and owners of property within 500 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. One comment was received from an adjacent neighbor regarding support to the variance request.

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.

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

503-742-4545: ¿Traducción e interpretación? |Требуется ли вам устный или письменный перевод? 翻译或口译 ? | Cán Biên dịch hoặc Phiên dịch? | 번역 또는 통역?

Location Map

Exhibit A- Aerial Map

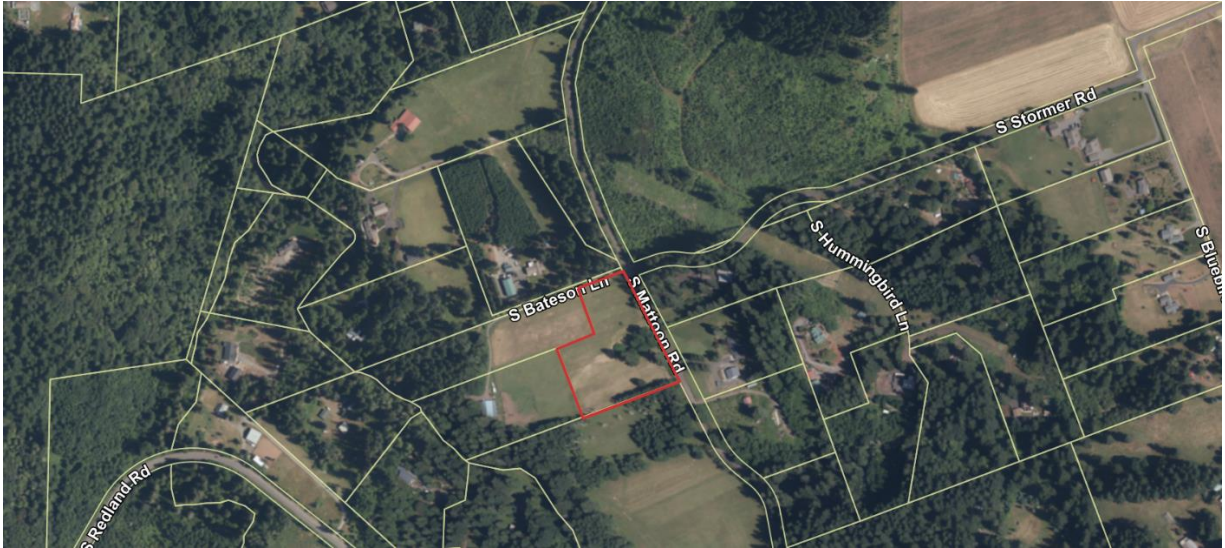


Exhibit B - Contour Map

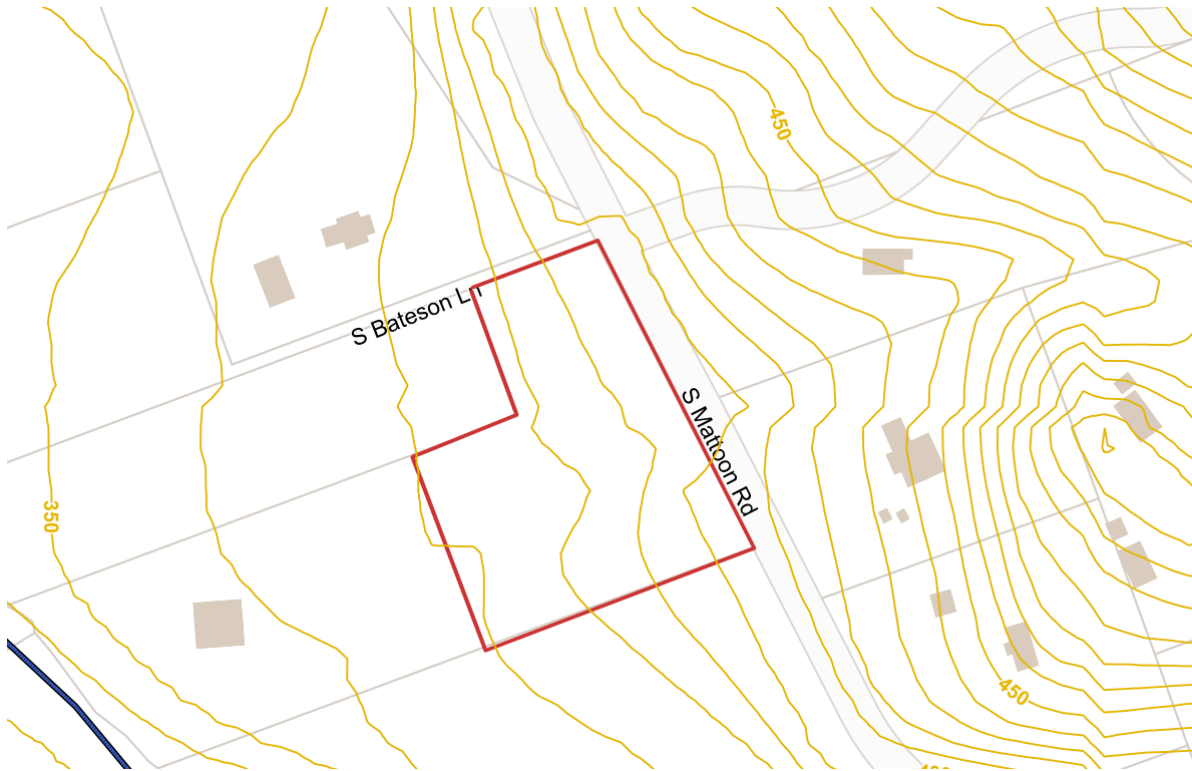
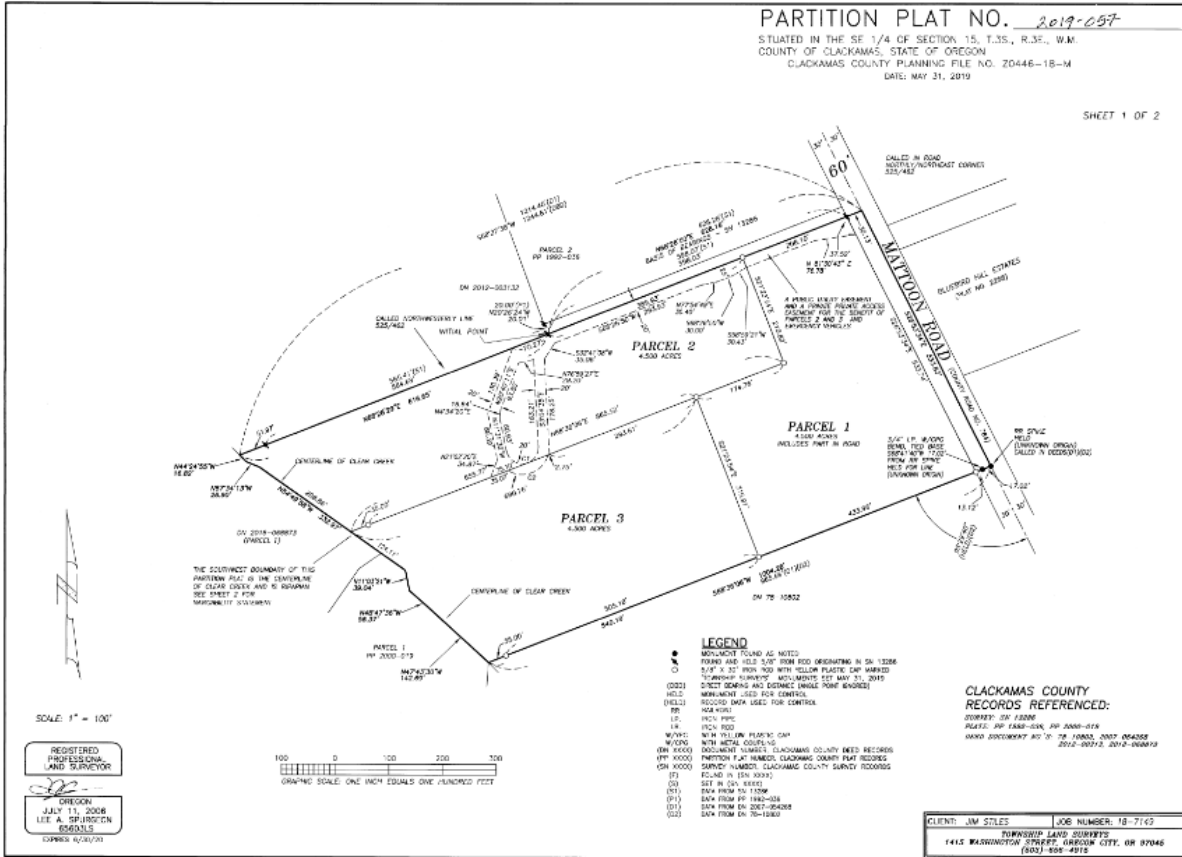


Exhibit C - Partition Plat Map



Site Plan

Exhibit D - Contactor's Site Plan

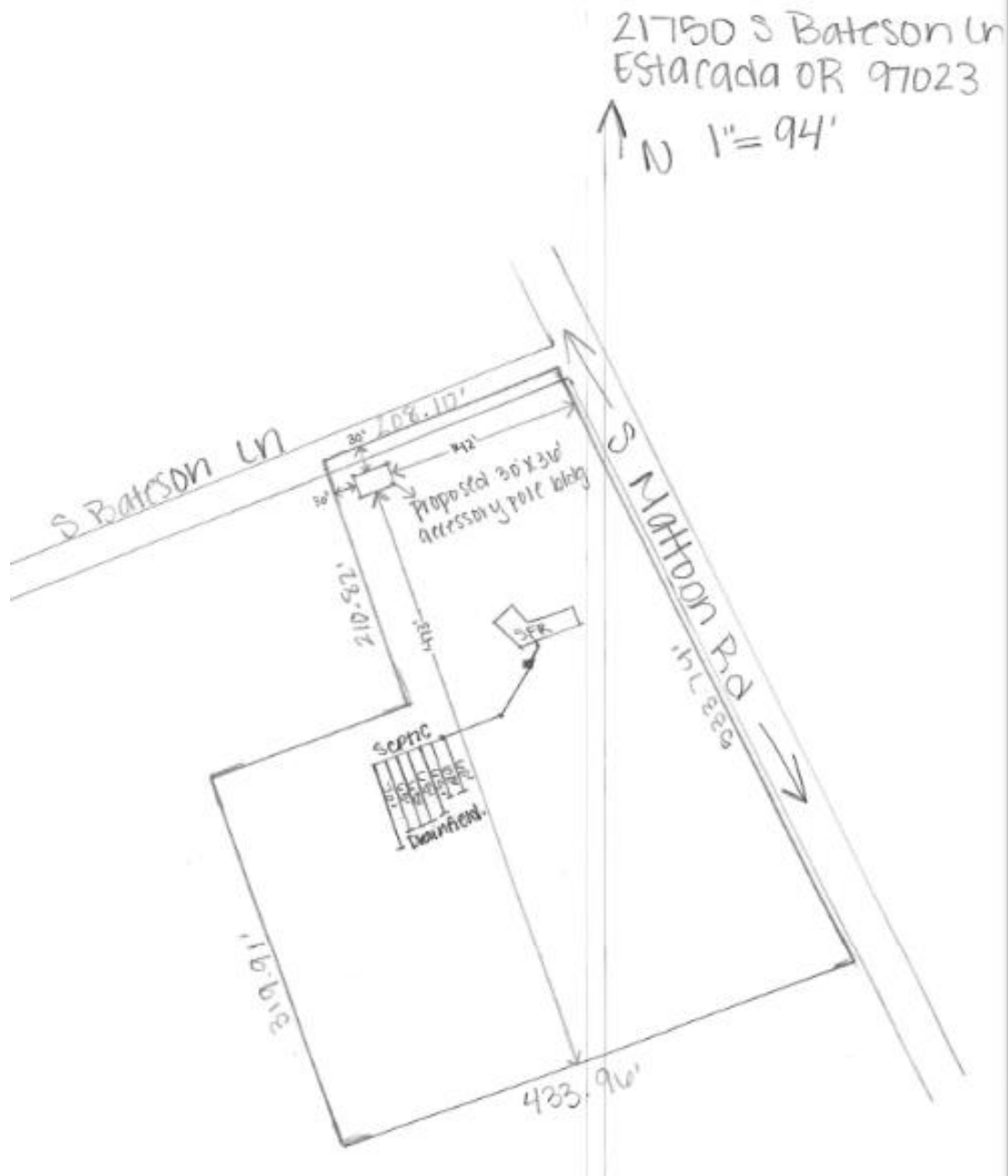


Exhibit E - Applicant's Site Plan

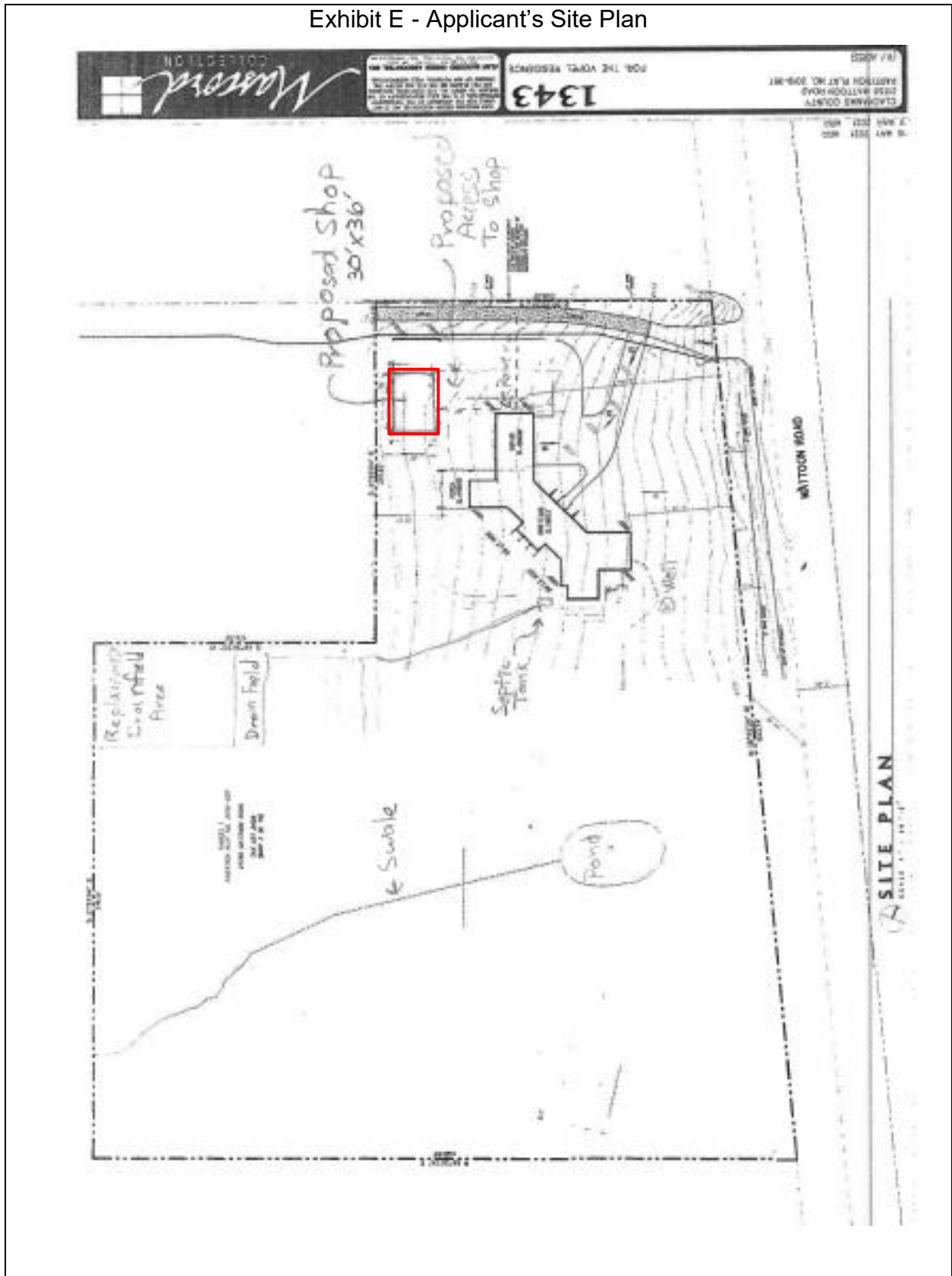
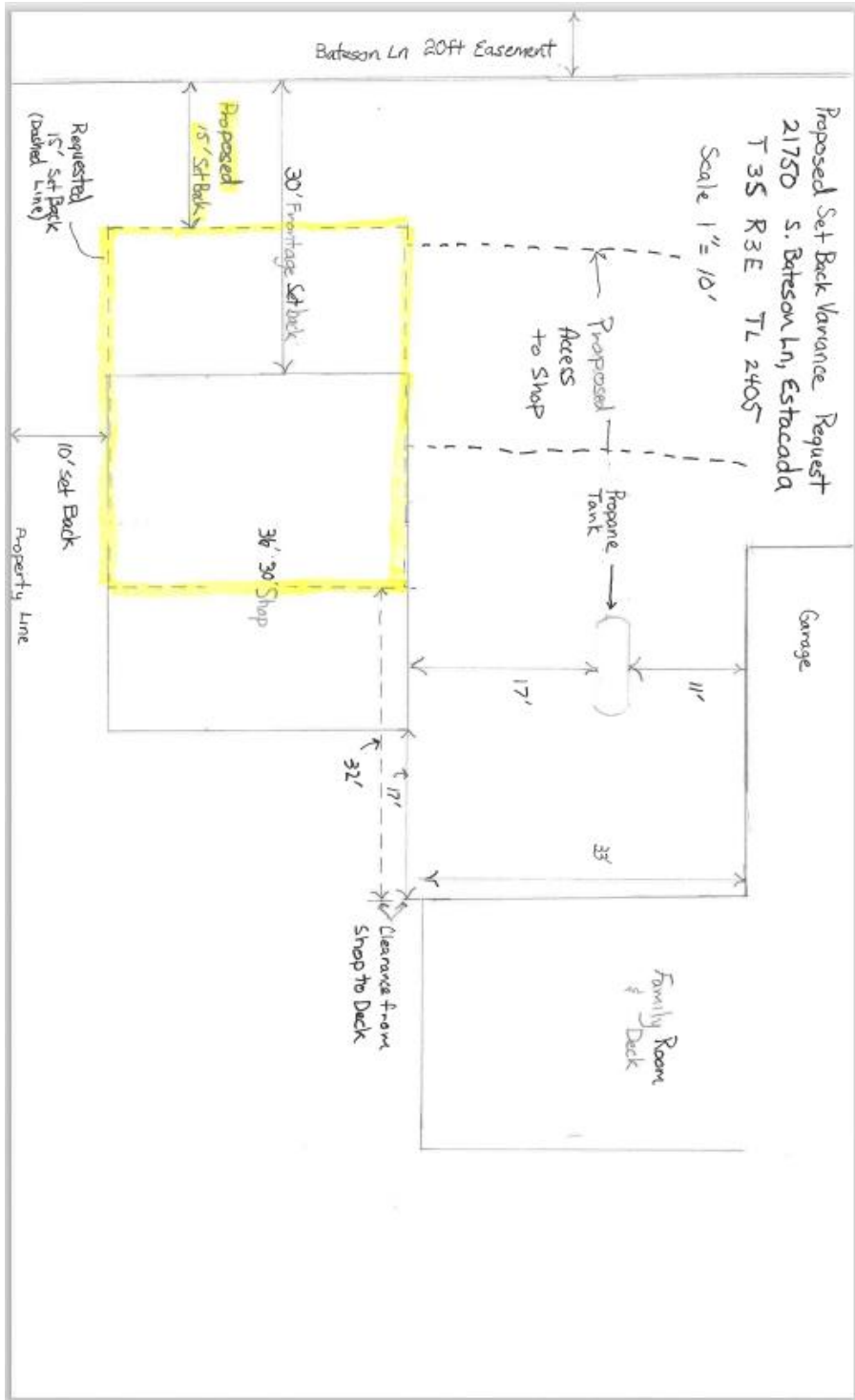


Exhibit F – Applicant's "Close – Up" of Site Plan Location



FINDINGS

The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

PROJECT OVERVIEW:

The subject property is an estimated 4.500 acres and is identified as Parcel 1 per Partition Plat 2019-057. The property was a vacant parcel with relatively even terrain. In 2021 a 3,300 square foot single family dwelling was built under Building Permit B014842, which is located toward the northern part of the property, near S Bateson Ln and S Mattoon Rd. The Oregon Statewide Wetlands Inventory shows a Riverine running across the southern portion of the property.

The applicant proposes to construct a new 30'x36 detached accessory pole building under building permit B0356722, towards the northwest portion of the property. The applicant submitted this variance application to reduce the minimum front setback from 30 feet to 15 feet, from the north edge of S Bateson Ln and an additional 20 feet into the subject property (as shown in P.P. 2019-057). The north (S Bateson Ln) and west (S Mattoon Rd) property line are both considered front property lines per ZDO Section 202, *Definitions*. The access onto the property, along with the immediate adjacent properties are shown as Parcel 2 and Parcel 3, per P.P. 2019-057, gain access via Bateson Ln, which is identified as a Table 516-2 in ZDO Section 516, *Rural Residential Farm Forest 5 – Acre District*, provides that the minimum front setback standard is 30 feet.

ZDO Section 1205 Variances:

Section 1205 is adopted to provide standards, criteria, and procedures under which a variance to a dimensional standard of this Ordinance may be approved. However, a variance is prohibited to the following dimensional standards:

- A. The minimum lot size standards in the RA-2, RR, FU-10, EFU, TBR, and AG/F Districts;
- B. The minimum lot size standard or, in the case of a flexible-lot-size or planned unit development, the minimum average lot size standard if the variance would result in reducing the minimum by more than 10 percent. Subsection 1205.01(B) is not applicable to partitions of lots of record that are divided by a public road;
- C. The 20-acre minimum lot size standard inside the Portland Metropolitan Urban Growth Boundary in the RA-1, RA-2, RRFF-5, FF-10, RC, and RI Districts;
- D. The fuel-free break standards of Subsection 406.08;

- E. The maximum building floor space standards in the MRR, RTC, RC, and RI Districts;
- F. Standards applicable in the CI District pursuant to Subsections 601.08(C) through (F); and
- G. Dimensional standards established in Sections 703 through 710, 712, and 713.

Finding: *The applicant is requesting a reduction to the front setback from 30 feet to 15 feet off S Bateson Ln. The subject property is not in the Portland Metropolitan Urban Growth Boundary. The applicant is not applying for a variance to a dimensional standard listed in ZDO Sections 703 through 710, 712, or 713. This criterion is met.*

III. ZDO Section 1205.02 Approval Criteria:

A variance to a dimensional standard of this Ordinance requires review as a Type II application pursuant to Section 1307 Procedures and shall be subject to the following standards and criteria:

- A. Compliance with the applicable requirement or standard of this Ordinance would create a hardship due to one or more of the following conditions:
 - 1. The physical characteristics of the land, improvements, or uses are not typical of the area. When the requested variance is needed to correct an existing violation, that violation shall not be considered as a condition “not typical of the area.”

Finding: *The applicant states that the property is unique as it has a seasonal pond and swale that bisects the property and this natural feature limits development on the lot. The applicant also states that it is cost prohibitive to develop the eastern section of the property due to the length of the road and need for a culvert to cross the swale area.*

Staff review verifies that there is a riverine identified on the southern portion of the property, which is roughly one third of the estimated 4.500 acre parcel (per Oregon Statewide Inventory Map), which is a natural feature unique to the property. The improvements made on the property include construction of the 2021 single family dwelling, onsite septic and wastewater system and well. No other pre-existing development was located on the property prior to the creation of this lot per Partition Plat 2019-057. The remaining roughly two thirds of the property does not show any other natural features that prevents development of pole building in another location (refer to Exhibits D & E) or construction of a pole building of a different size/dimension that would meet the minimum 30 foot front setback (refer to Exhibit F). Other properties in the

area that are zoned Rural Residential Farm Forest 5 – Acre within ½ mile meet the minimum front setback requirements (as shown on the aerial image). The properties that are west of S Mattoon Rd have terrains that are mostly flat, while properties to the east of S Mattoon are more likely to experience steep slopes. Staff finds that the physical characteristics of the land, improvements, or uses are typical of the area and that the proposed structure can be constructed to meet the 30 foot front yard setback. **This criterion is not met.**

2. The property cannot be developed to an extent comparable with other similar properties in the area if the standard is satisfied.

Finding: The applicant provides that the subject property has a seasonal pond and swale that limits access to the eastern part of the property much of the year. They also state that the drain field is in the southern part of the property and the reasonable flat area to place a pole barn is next to the house. If they were to build to meet the dimensional standards for the 30 foot front setback, they would not have suitable access to the backyard or drain field with a tractor or mower and the proposed location will have minimal impact to other property owners off S Bateson Ln.

Staff review verifies that even with the riverine located to the southern portion of the property, the rest of the property can be developed. The surrounding properties are roughly 5 acres in size within a ½ mile. The submitted site plans show that the proposed pole barn can be sited to the southwest or southeast of the dwelling and onsite septic system if it were to keep the existing size/dimension, while still having room for yard maintenance. Also, shown on the close-up site plan submitted by the applicant, the 30'x36 residential pole barn could be accommodated to meet the minimum front setback from S Bateson Ln. Staff finds that the subject property is able to be development to an extent comparable similar properties in the area while also meeting the front yard setback. **This criterion is not met.**

3. The subject property is an Urban Low Density Residential, RA-1, RFFF-5, FF-10, or HR District, the requested variance is to the minimum lot size standard, and more than 50 percent of the lots of record that are within one-half mile of the subject property and located in the same zoning district as the subject property are smaller than the minimum lot size standard.

Finding: The applicant is not requesting a variance to the minimum lot size or minimum average lot size. **This criterion is not applicable.**

4. Compliance with the standard would eliminate a significant natural feature of the property.

Finding: *The applicant did not address this criterion as they stated how the new front setback reduction would not eliminate a significant natural feature; however, the compliance of the existing 30 foot front setback from S Bateson Ln would not interfere with any significant natural feature on the property as the identified riverine per the Oregon State Wetland Inventory shows it coming across the southern portion of the property. **This criterion is not met.***

5. Compliance with the standard would reduce or impair the use of solar potential on the subject property or adjacent properties.

Finding: *The applicant did not address this criterion as they referred to how the front setback reduction would not reduce or impair the use of solar potential on the subject property or adjacent properties; however, staff finds that the required 30 foot front setback from S Bateson Ln would not reduce or impair the use of solar potential on the subject property as is an estimated 4.500 acre parcel and the adjacent properties within ½ mile are also roughly 5 acres in size. **This criterion is not met.***

- B. Strict adherence to the dimensional standard is unnecessary because the proposed variance from the standard will reasonably satisfy all the following objectives:

1. Will not adversely affect the function or appearance of the development and use on the subject property.

Finding: *The applicant states that the proposed front setback will not adversely affect the function or appearance of the development and use on the subject property.*

*Staff finds that front setback reduction does not adversely affect the function or the appearance of the new residential pole building and the use of the residential single family dwelling on the subject property. **This criterion is met.***

2. Will not impose limitations on other properties and uses in the area, including uses that would be allowed on vacant or underdeveloped properties.

Finding: *The applicant states that reducing the setback will not adversely affect the function or appearance of the development, and will not affect the other two homeowner's use of the private road*

The proposed variance is along the northern property boundary, which two other property gain access via S Bateson Ln. The abutting parcel is zoned RRFF-5. The zoning allows for a single family dwelling as an outright allowed use on the adjacent RRFF 5 property. As described above, the property is not restricted by lot coverage or size and location of accessory buildings. Staff

*finds that approval of the variance will most likely not impose limitations on other properties and uses in the area, including uses that would be allowed on vacant or underdeveloped properties. **This criterion is met.***

3. Will result in the minimum variance needed to alleviate the hardship.

Finding: *The applicant states that the proposed variance will allow improved access to the back of the property and still allow full access to the private road by all users.*

*After staff reviewed the properties within ½ mile and the development on the property since the parcel was created in 2019, it appears that there are other options to construct the residential pole building on the subject property. As previously mentioned, the residential pole building may be constructed to the area south of the dwelling and septic tank and remain the same size/dimensions or it could still be accommodated as shown from the submitted “close-up” of the submitted site plan (refer to Exhibit F). The applicant did not provide documentation demonstrating why the proposed building size is the minimum necessary or discuss why the building size could not be reduced in order to meet the front yard setback. Staff finds that the variance requested does not the minimum necessary to alleviate the hardship. **This criterion is not met.***

- C. The proposed variance is consistent with the applicable goals and policies of the Comprehensive Plan.

Finding: *The subject property has a “Rural” Comprehensive Plan designation. The proposed project and site are subject to Chapter 4, Land Use, of the Comprehensive Plan. Chapter 4 identifies the type of properties appropriate for Rural designation, specifically those with to perpetuate the rural atmosphere while maintaining and improving the quality of air, water and land resources and to continue to provide a buffer between urban and agricultural or forest uses. Staff finds the proposed variance to a reduction of a front setback for rural residential development is consistent with the applicable goals and policies of the Comprehensive Plan. **This criterion is met.***