



VARIANCE REQUEST #851-21-000296-PLNG: KAVANAUGH

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ORS 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE,
IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER*

NOTICE OF ADMINISTRATIVE REVIEW

Date of Notice: October 13, 2021

Notice is hereby given that the Tillamook County Department of Community Development is considering the following:

#851-21-000296-PLNG: A Variance request to reduce the required 15-foot street-side yard setback to 8-feet for the construction of a single-family dwelling on a property located in the Unincorporated Community of Neahkahnie. The subject property is accessed via Beeswax Trail, a County road, is zoned Neahkahnie Urban Residential (NK-15) and is designated as Tax Lot 2401 of Section 20CB, Township 3 North, Range 10 West, W.M., Tillamook County, Oregon. The applicants and property owners are David and Shirley Kavanaugh.

Written comments received by the Department of Community Development prior to 4:00 p.m. on October 27, 2021, will be considered in rendering a decision. Comments should address the criteria upon which the Department must base its decision. A decision will be rendered no sooner than the next business day, October 28, 2021. Notice of the application, a map of the subject area, and the applicable criteria are being mailed to all property owners within 250 feet of the exterior boundaries of the subject parcel for which an application has been made and other appropriate agencies at least 14 days prior to this Department rendering a decision on the request.

A copy of the application, along with a map of the request area and the applicable criteria for review are available for inspection at the Department of Community Development office located at 1510-B Third Street, Tillamook, Oregon 97141. They are also available on the Tillamook County Department of Community Development website: <http://www.co.tillamook.or.us/gov/ComDev/planning/default.htm>.

If you have any questions about this application, please contact the Department of Community Development at (503) 842-3408 ext. 3317 or sabsher@co.tillamook.or.us.

Sincerely,

A handwritten signature in blue ink that reads "Sarah Absher".

Sarah Absher, CFM, Director

Enc. Maps and applicable ordinance criteria

REVIEW CRITERIA

ARTICLE VIII - VARIANCE PROCEDURES AND CRITERIA

SECTION 8.030: REVIEW CRITERIA: A VARIANCE shall be granted, according to the procedures set forth in Section 8.020, if the applicant adequately demonstrates that the proposed VARIANCE satisfies all of the following criteria:

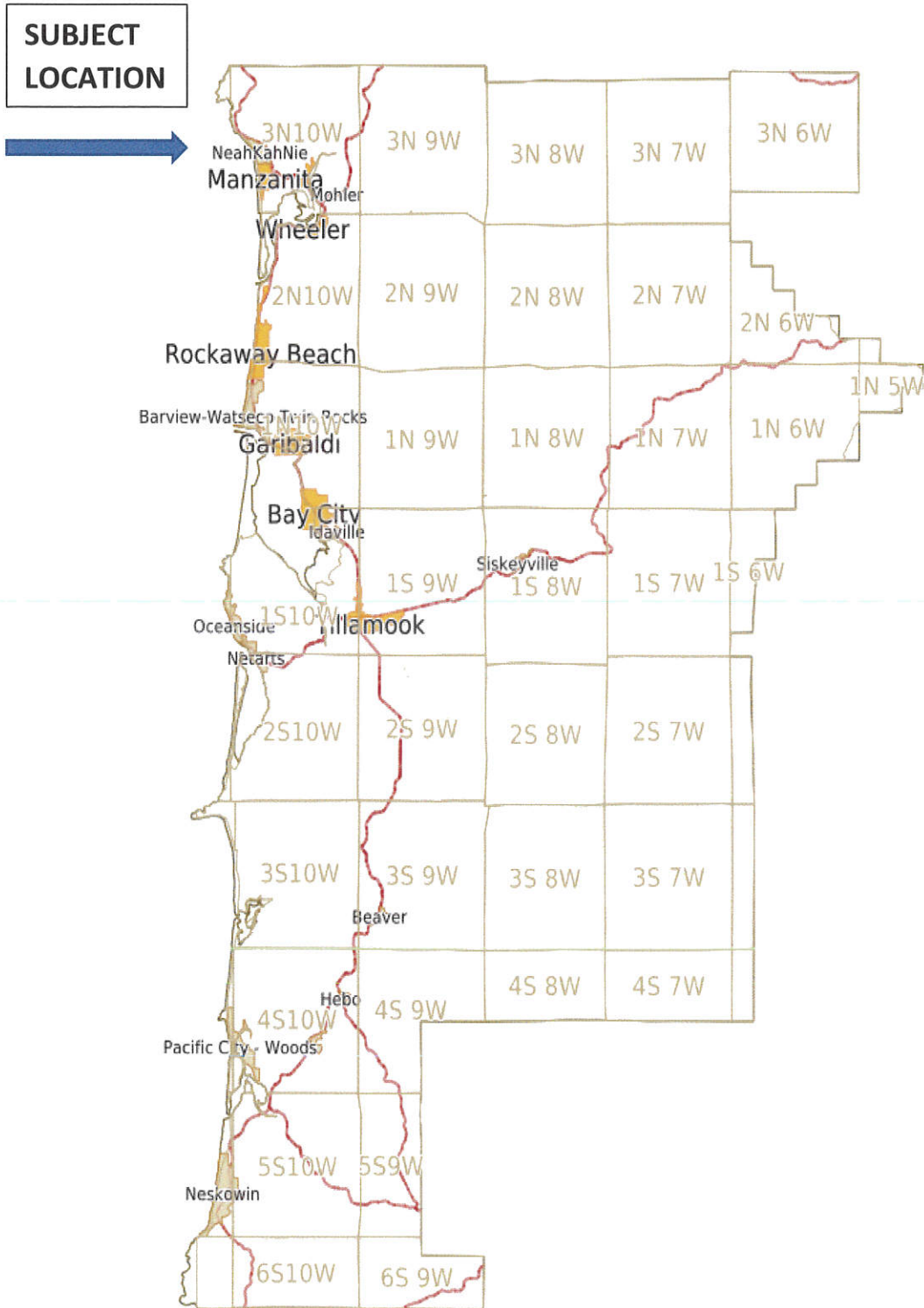
- (1) Circumstances attributable either to the dimensional, topographic, or hazardous characteristics of a legally existing lot, or to the placement of structures thereupon, would effectively preclude the enjoyment of a substantial property right enjoyed by the majority of landowners in the vicinity, if all applicable standards were to be met. Such circumstances may not be self-created.
- (2) A VARIANCE is necessary to accommodate a use or accessory use on the parcel which can be reasonably expected to occur within the zone or vicinity.
- (3) The proposed VARIANCE will comply with the purposes of relevant development standards as enumerated in Section 4.005 and will preserve the right of adjoining property owners to use and enjoy their land for legal purposes.
- (4) There are no reasonable alternatives requiring either a lesser or no VARIANCE.

SECTION 4.005: RESIDENTIAL AND COMMERCIAL ZONE STANDARDS

In all RESIDENTIAL AND COMMERCIAL ZONES, the purpose of land use standards is the following:

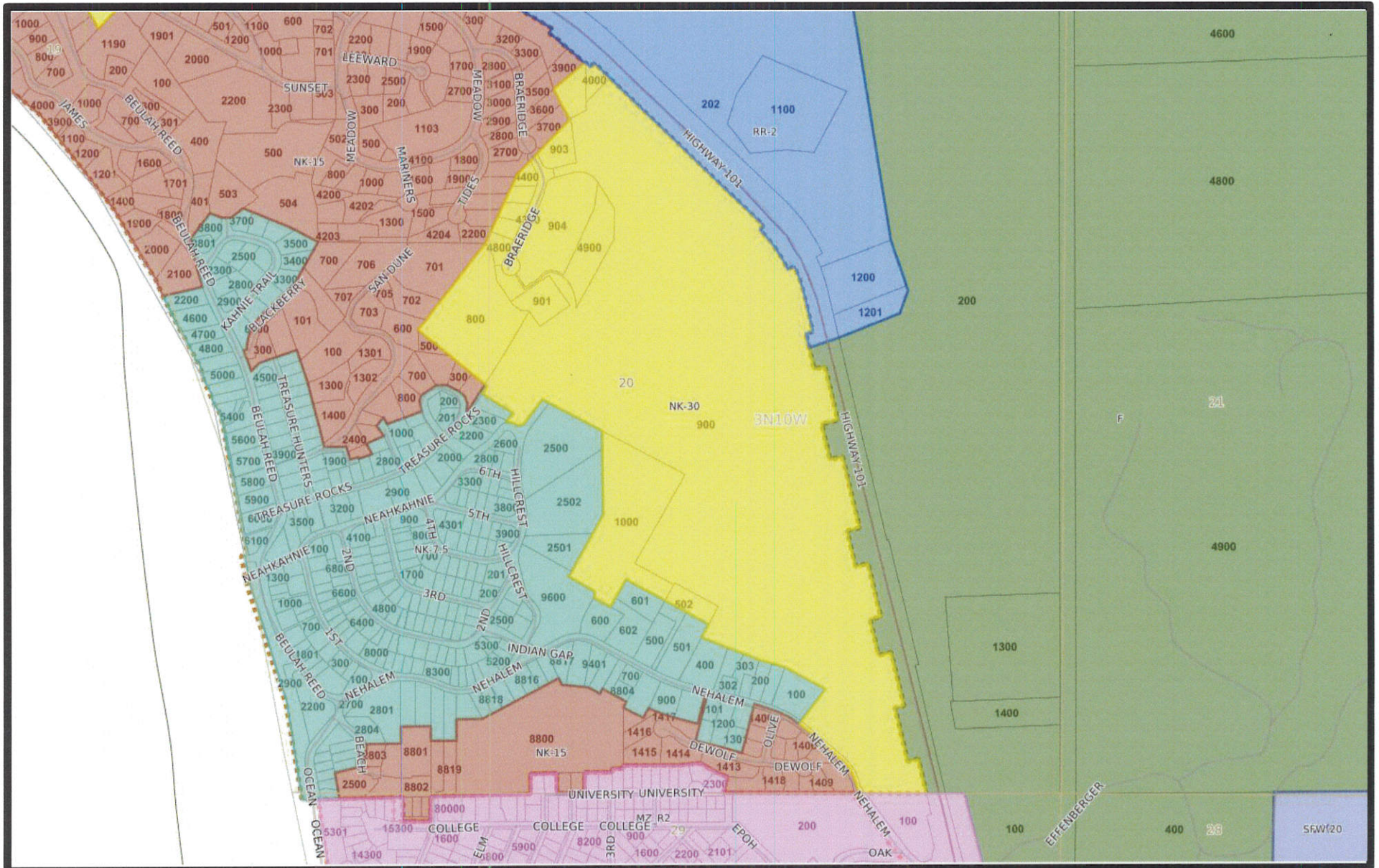
- (1) To ensure the availability of private open space;
- (2) To ensure that adequate light and air are available to residential and commercial structures;
- (3) To adequately separate structures for emergency access;
- (4) To enhance privacy for occupants of residences;
- (5) To ensure that all private land uses that can be reasonably expected to occur on private land can be entirely accommodated on private land, including but not limited to dwellings, shops, garages, driveways, parking, areas for maneuvering vehicles for safe access to common roads, alternative energy facilities, and private open spaces;
- (6) To ensure that driver visibility on adjacent roads will not be obstructed;
- (7) To ensure safe access to and from common roads;
- (8) To ensure that pleasing views are neither unreasonably obstructed nor obtained;
- (9) To separate potentially incompatible land uses;
- (10) To ensure access to solar radiation for the purpose of alternative energy production.

VICINITY MAP



#851-21-000296-PLNG: KAVANAUGH

Map



Generated with the GeoMOOSE Printing Utilities



Tillamook County Department of Community Development
 1510-B Third Street, Tillamook, OR 97141 | Tel: 503-842-3408 Fax: 503-842-1819
www.co.tillamook.or.us

PLANNING APPLICATION

Applicant (Check Box if Same as Property Owner)

Name: David & Shirley Kavanaugh Phone: 503-480-9052
 Address: 4328 Croisan Ridge Way, S.
 City: Salem State: OR Zip: 97302
 Email: dkavanaugh@comcast.net

Property Owner

Name: Same as Above Phone:
 Address:
 City: State: Zip:
 Email:

OFFICE USE ONLY	
Date Stamp	RECEIVED JUL 27 2021
BY:	Counter
<input type="checkbox"/> Approved <input type="checkbox"/> Denied	
Received by:	MS
Receipt #:	
Fees:	1,089
Permit No:	851-21-000296PLNG

Request: Variance to the setback development standards

Type II

- Farm/Forest Review
- Conditional Use Review
- Variance
- Exception to Resource or Riparian Setback
- Nonconforming Review (Major or Minor)
- Development Permit Review for Estuary Development
- Non-farm dwelling in Farm Zone
- Fore-dune Grading Permit Review
- Neskowin Coastal Hazards Area

Type III

- Appeal of Director's Decision
- Extension of Time
- Detailed Hazard Report
- Conditional Use (As deemed by Director)
- Ordinance Amendment
- Map Amendment
- Goal Exception

Type IV

- Appeal of Planning Commission Decision
- Ordinance Amendment
- Large-Scale Zoning Map Amendment
- Plan and/or Code Text Amendment

Location:

Site Address: Treasure Mountain Woods, Lot 3

Map Number:	3N	10W	20 CB	02401
	Township	Range	Section	Tax Lot(s)

Clerk's Instrument #: _____

Authorization

This permit application does not assure permit approval. The applicant and/or property owner shall be responsible for obtaining any other necessary federal, state, and local permits. The applicant verifies that the information submitted is complete, accurate, and consistent with other information submitted with this application.

<i>David Kavanaugh</i>	July 23, 2021
Property Owner Signature (Required)	Date
<i>David Kavanaugh</i>	July 23, 2021
Applicant Signature	Date

**IN A MATTER BEFORE THE TILLAMOOK COUNTY COMMUNITY
DEVELOPMENT DEPARTMENT**

BURDEN OF PROOF STATEMENT

**APPLICANT/
OWNER:** David and Shirley Kavanaugh
4328 Croisan Ridge Way, S.
Salem, OR 97302

ENGINEER: Chance Steffey, P.E., CWRE
Steffey Engineering & Consulting, LLC
1545 Black Sands Way
Tillamook, OR 97141

LOCATION: The subject property is Lot 3, Block 5, Treasure Mountain Woods
Subdivision, also identified as Tax Lot 02401 on the Tillamook County
Tax Map 3N1020CB.

REQUEST: Approval of the application for a variance to side yard setback limits,
reducing them from 15 ft to 8 ft along SW property corner, and 15 ft to 5
ft along the 10 ft section adjacent to the end of Road ROW.

I. APPLICABLE STANDARDS, CRITERIA & PROCEDURES:

Tillamook County Land Use Ordinance (LUO)

Article 3 – Zone Regulations

Section 3.300 Neahkahnie Urban Residential Zone (NK-7.5, NK-15, NK-30)

Article 4 – Development Standards

Section 4.005 Residential and Commercial Zones

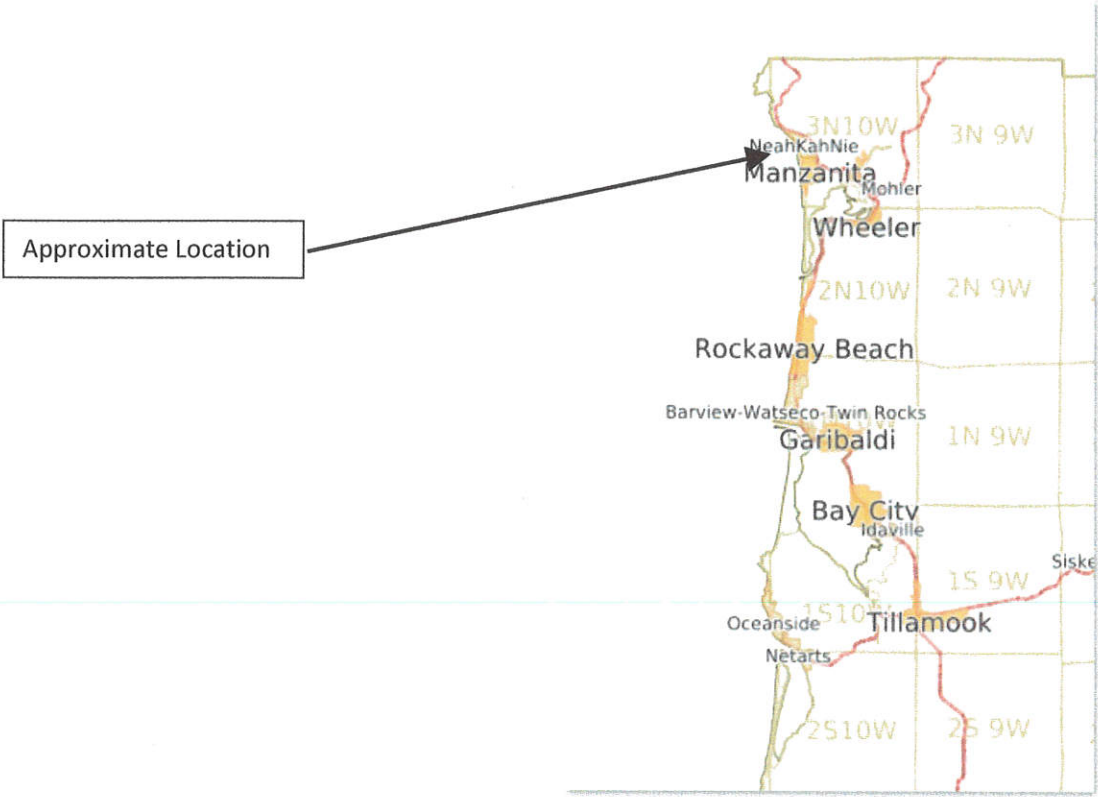
Section 4.110 Exceptions to Yard Setback Requirements

Article 8 – Variance Procedures and Criteria

Section 8.030, Review Criteria

II. FINDING OF FACT:

1. LOCATION: The subject property is identified on the Tillamook County Tax Map
3N1020CB02401.

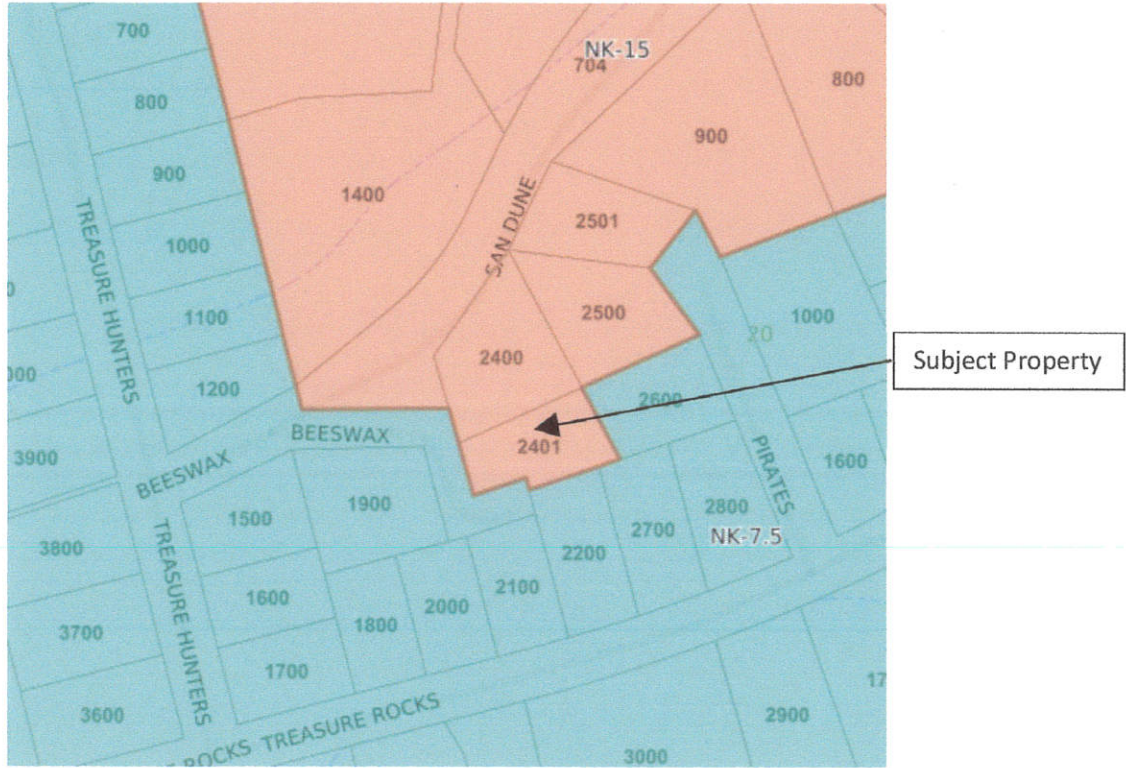


Vicinity Map



Location Map

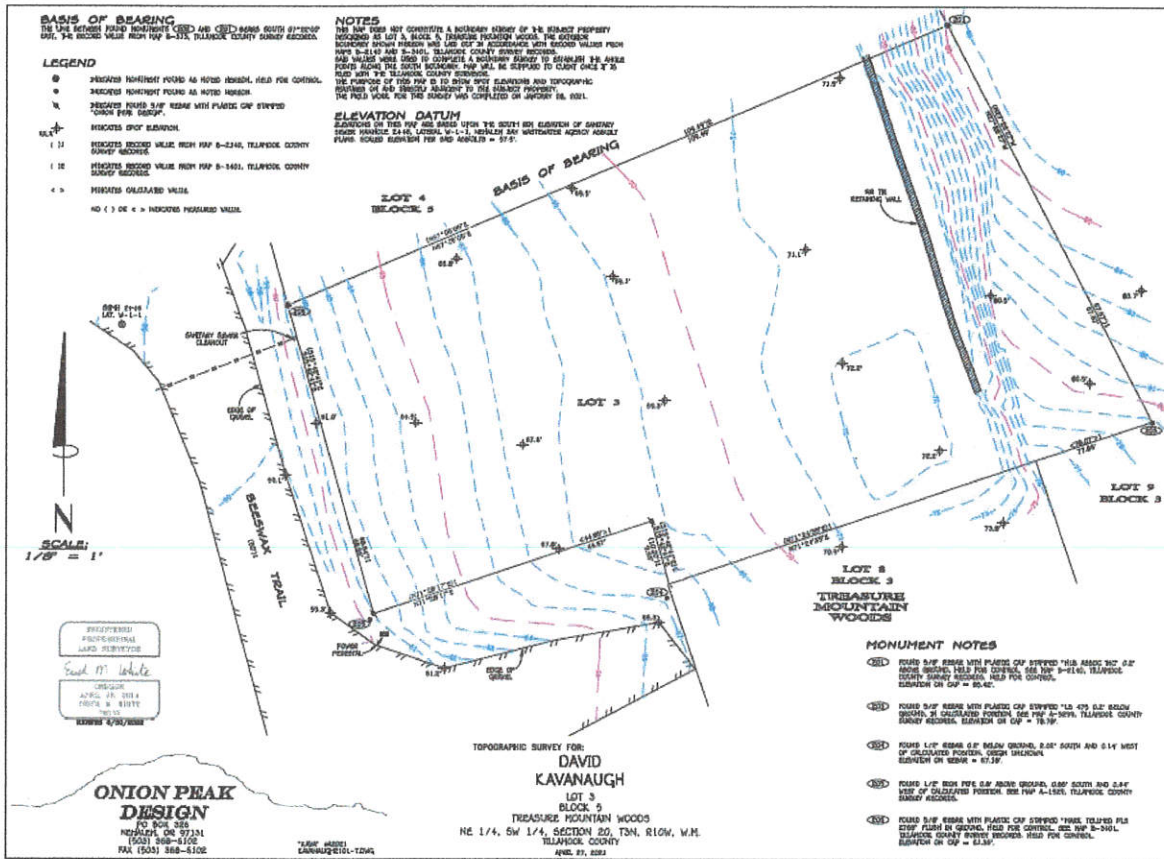
2. **EXISTING ZONING:** The subject property is zoned NK-15.



Zoning Map

3. **SITE DESCRIPTION & SURROUNDING USES:** The subject property is located in the Neahkahnie urban residential zone NK-15 and is an empty lot containing approximately 0.15 acres (approx. 6,530 SF). The property is generally rectangular in shape with 48.9 feet of frontage, a 10-foot section of the southwest corner was carved out to accommodate the 90 degree turn in Beeswax Trail to the dead end making for an shortened frontage. The existing gravel road (Beeswax Trail) abutting the west and southwest corner of the property serves as an access for this property, lot 2400 to the north and lot 2100 to the south. Lot 2100 and lot 2200 which is an undeveloped lot to the south of the subject property, may access through this road, but they also have road frontage on Treasure Rocks Road. Like many lots in this area the topography of the site is situated on a hillside with approximately 24 feet of elevation change from the east to the west of the property. The property has significant sloping topography on its east side, levels out across most of the lot, then slopes with a drop from the west property line to the adjacent beeswax trail. There is a retaining wall near the east property line that was installed sometime in the past to stabilize the steep embankment on the east side of the property. The lots within the NK-15 zone are generally larger in size than the subject property and is more similar in size and shape to the lots in the adjacent NK-

7.5 zone, which are less impacted by the topography. Both the NK-15 and NK-7.5 are primarily used for single-family residential homes at the varying densities to accommodate the topography.



Topographic Survey

4. **PROPOSAL:** Type II application for variance request to side yard setback adjacent to the road right-of way to reduce from 15 feet to 8 feet along SW property corner, and 15 ft to 5 ft along the 10' section adjacent to the end of Road ROW. The purpose is to develop the lot for a single-family residential dwelling. The proposed encroachment into the side yard setback is necessary to make use of the property and build a single level living situation that will allow the owners to age-in-place due to the deficiency of lot size and restrictive topography.

III. APPLICATION OF CRITERIA:

CONFORMANCE WITH THE TILLAMOOK COUNTY LAND USE ORDINANCES

Article 8, Section 8.030, lays out four criteria for review of a request for variance. Each of these will be addressed below.

Burden of Proof Statement

Section 8.030, REVIEW CRITERIA

A VARIANCE shall be granted, according to the procedures set forth in Section 8.020, if the applicant adequately demonstrates that the proposed VARIANCE satisfies all of the following criteria:

(1) Circumstances attributable either to the dimensional, topographic, or hazardous characteristics of a legally existing lot, or to the placement of structures thereupon, would effectively preclude the enjoyment of a substantial property right enjoyed by the majority of landowners in the vicinity, if all applicable standards were to be met. Such circumstances may not be self-created.

RESPONSE: The subject property is located in the NK-15 residential zone, which was intended for lots with minimum size of 15,000 SF in order to accommodate the steep slopes in this area. With the size and configuration of this lot it would have been better to place it within the adjacent zone NK-7.5 for lots 7,500 SF or larger, but even that is still a higher standard than the actual size of this lot at approximately 6,530 SF. With respect to the size of lots 7,500 SF and lower, it has been acknowledged that the standard setbacks are limiting and within the regulations there is an exemption which has been adopted to allow additional space for building, although this only gives relief for front and rear yard setbacks. The other unique feature for this particular lot is the narrow street frontage and unusual configuration of the road right-of-way that ends partially into this lot and not "to and through". Although Community Development Staff have acknowledged that this lot is not a corner lot, that is-even though it does not sit at the corner of two intersecting street, CDD Staff have interpreted and are requiring setbacks that are similar to standards for corner lots in this situation, applying the setback distance of 15 ft adjacent to the road Right-of-Way, instead of the standard 5 ft side yard setback. The property frontage at approximately 49 feet is already narrower than the required minimum for this zone (60 feet), and with this constraint makes the buildable area even narrower. No other lots in this subdivision or zone have such a constrained situation. These circumstances were not self-created and preclude the owners from the enjoyment of their property rights and a variance on the side yard setback adjacent to the road right-of-way does not impact the other property owners in the vicinity.

(2) A VARIANCE is necessary to accommodate a use or accessory use on the parcel which can be reasonably expected to occur within the zone or vicinity.

RESPONSE: The development standards require the minimum side yard setback shall be 5 feet, except on the street side of a corner lot where it shall be 15 feet. In order to accommodate the building configuration that meets the needs of the owners to have single floor living space and to age-in-place and allow for adequate space to navigate parking of their vehicles meeting the 15 feet standard is a hardship and impacts the enjoyment of their property. The applicant's proposal is to reduce the setback to 8 feet along SW property corner, and to 5 ft along the 10 ft section adjacent to the end of Road ROW. The 5 feet sideyard setback along the 10 ft section is to allow

for a covered entry at the front doorway. Most of this will remain open space as shown on the site plan. The 5 feet sideyard setback is the standard for all other lots in the vicinity, so this request is not looking to reduce beyond what is already available to neighboring properties in the area.

(3) The proposed VARIANCE will comply with the purposes of relevant development standards as enumerated in Section 4.005 and will preserve the right of adjoining property owners to use and enjoy their land for legal purposes.

RESPONSE: Section 4.005 of the land use ordinances list ten land use standards in general, Section 4.110 provides for exceptions to standards for yard setbacks, and Section 3.300 NK-15 Zone Standards specifically, which will be responded to below:

SECTION 4.005: RESIDENTIAL AND COMMERCIAL ZONE STANDARDS

PURPOSE: In all RESIDENTIAL AND COMMERCIAL ZONES, the purpose of land use standards are the following:

(1) To ensure the availability of private open space;

RESPONSE: The proposed location of the dwelling with the proposed 8 foot setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of road ROW, including house, garage and covered entry is approximately 3,200 SF of covered space, which is 49% of the total lot, allowing 51% of the lot for open space. By allowing the proposed variance the available open space would be similar to other properties in the area and have no impact to their neighbors.

(2) To ensure that adequate light and air are available to residential and commercial structures;

RESPONSE: The proposed location of the dwelling with the proposed 8 foot setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of Road ROW doesn't require removal of trees or any other item that would create additional impacts for adequate light or air for other structures in the vicinity.

(3) To adequately separate structures for emergency access;

RESPONSE: The proposed location of the dwelling with the proposed 8 foot setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of Road ROW still adequately maintains separation between structures on adjacent properties for emergency access.

(4) To enhance privacy for occupants of residences;

RESPONSE: The proposed location of the dwelling with the proposed 8 foot setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of Road ROW has no additional effect on privacy. Other than the garage in the back of the building, increases privacy

by allowing the cars to be parked in the garage instead of out in the open in the driveway or street.

(5) To ensure that all private land uses that can be reasonably expected to occur on private land can be entirely accommodated on private land, including but not limited to dwellings, shops, garages, driveways, parking, areas for maneuvering vehicles for safe access to common roads, alternative energy facilities, and private open spaces;

RESPONSE: The proposed location of the dwelling with the proposed 8 foot setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of Road ROW ensures that parking and hobby work occur in the garage and tools and other equipment can be stored within the garage.

(6) To ensure that driver visibility on adjacent roads will not be obstructed;

RESPONSE: The proposed location of the dwelling with the proposed 8 foot setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of Road ROW doesn't impact driver visibility on the adjacent roads, actually by locating the driveway along the southern property line it will open up the space along the road right away for greater visibility along the road.

(7) To ensure safe access to and from common roads;

RESPONSE: The proposed location of the dwelling with the proposed 8 foot setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of Road ROW along with the proposed driveway location aligned perpendicular to the street frontage will provide for the safest access.

(8) To ensure that pleasing views are neither unreasonably obstructed nor obtained;

RESPONSE: The proposed location of the dwelling with the proposed 8 foot setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of Road ROW doesn't obstruct views to any of the neighboring properties.

(9) To separate potentially incompatible land uses;

RESPONSE: The proposed location of the dwelling with the proposed 8 foot setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of Road ROW doesn't impact other land uses.

(10) To ensure access to solar radiation for the purpose of alternative energy production.

RESPONSE: The proposed location of the dwelling with the proposed 8 foot setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of Road ROW doesn't block solar access and has no impact on other properties in the vicinity.

SECTION 4.110: EXCEPTIONS TO YARD SETBACK REQUIREMENTS

- (1) PURPOSE:** The purpose of the EXCEPTIONS described in this Section is to provide a measure of ministerial relief from the requirements for yards in certain areas or zones when those requirements are unnecessarily restrictive.
- (5) SMALL LOT EXCEPTIONS:** In the RR, CSFR, RC, CC, CR-1, CR-2, CR-3, RMH and RMD zones and including those communities with adopted community growth boundaries, a front or rear yard, but not both, may be ten feet, provided the following apply to the subject parcel:
- (a)** The parcel is 7500 square feet or less in size.
 - (b)** At least one side yard is ten feet or more wide.
 - (c)** Required off-street parking is provided.
 - (d)** The right-of-way width at the front of the lot is at least thirty feet. In the case of right-of-ways under 30 feet in width, a ten-foot yard may be approved if it is approved by the Public Works Department.
 - (e)** The lot is not a corner lot. If the lot is a corner lot and meets the above criteria, the front yard may be 15 feet.

RESPONSE: The subject property is approximately 6,530 SF, would have off-street parking and is adjacent to a road right-of-way that is 30 feet, and is not a corner lot, so therefore meets the requirements of the of the small lot exception. At this time a small lot exception is not being requested, but would like to point out that exceptions to the setback standards were adopted in order to mitigate requirements that were unnecessarily restrictive for such lots as the subject property.

3.300NEAHKAHNIE URBAN RESIDENTIAL ZONE (NK-7.5, NK-15, NK-30)

- (2) USES PERMITTED OUTRIGHT:** In the NK-7.5, NK-15 and NK-30 zones, the following uses and their accessory uses are permitted outright, subject to all applicable supplementary regulations contained in this ordinance. **(a) Single-family dwellings.**

RESPONSE: the proposed development is a single-family dwelling which is permitted outright.

- (4) STANDARDS:** Land divisions in the NK-7.5, NK-15 and NK-30 zones shall conform to the following standards, unless more restrictive supplementary regulations apply:
- (a)** The minimum size for the creation of new lots or parcels shall be 7,500 square feet in the NK-7.5 zone; 15,000 square feet in the NK-15 zone and 30,000 square feet in the NK-30 zone with the following exceptions:
 - 1.** The provisions of the “cluster subdivision” section of the Land Division Ordinance or of the PD Overlay zone in the Land Use Ordinance may be used to

concentrate development on a portion of a contiguous ownership except that no lots shall be created that are less than 7,500 square feet.

2. In the Neahkahnie Special Hazard Area, the minimum lot size shall be determined in accord with the requirements of Section 4.130 of the Land Use Ordinance, but such lots shall not be smaller than the minimums provided in the NK-7.5, NK-15 and NK-30 zones.

(b) The minimum lot width shall be 60 feet.

(c) The minimum lot depth shall be 75 feet.

(d) The minimum front yard setback shall be 20 feet.

(e) The minimum side yard setback shall be 5 feet, except on the street side of a corner lot where it shall be 15 feet.

(f) The minimum rear yard shall be 20 feet, except on a street corner lot where it shall be 5 feet.

(g) The maximum building height shall be 17 feet west of the line shown on the zoning maps and 24 feet east of that line. (That line is approximately 500 feet east of the Beach Zone Line.)

(h) Livestock may be located no closer than 100 feet to a residential building on an adjacent lot.

RESPONSE: The subject property, although located in the NK-15 zone does not meet the minimum standards for this zone: that is minimum 15,000 SF lot size, or 60 feet minimum lot width along the street frontage which were existing conditions and not self-created circumstances, along with the topographic and dimensional issues are unique and constraining features for this development.

IV. CONCLUSION

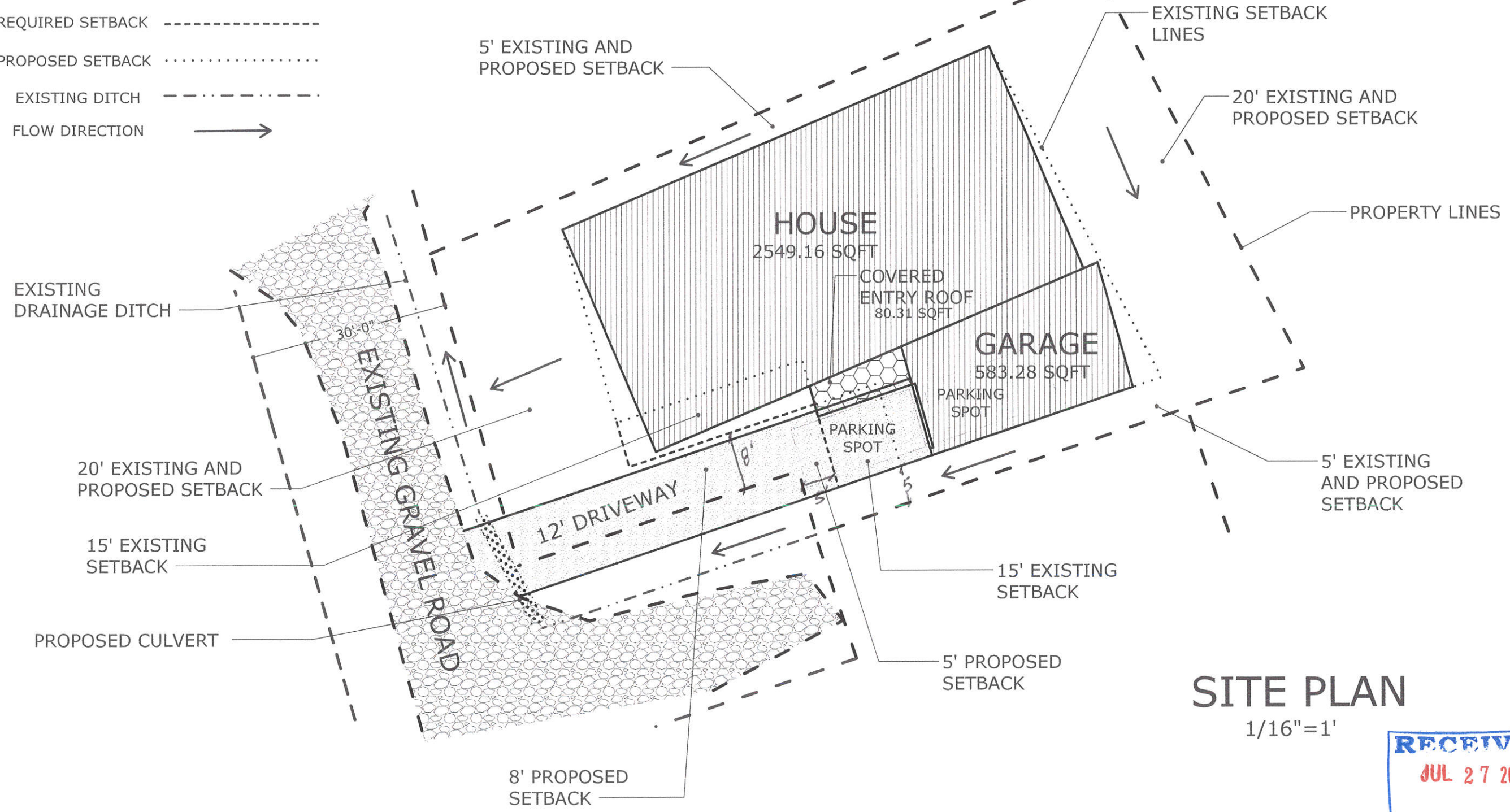
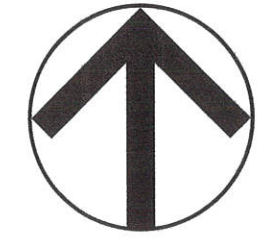
The buildable area for a dwelling within the standard setback distances is very limited and constrained and is further exacerbated by the topography (steep sloping terrain on eastern side of property) size and configuration of the lot relative to the road right-of-way.

Applicant is requesting that the Tillamook County Community Development Department grant a variance to the side yard setback adjacent to the road right-of way to accommodate the reasonable request of developing the lot with a single-family dwelling that will allow the owners to successfully age-in-place. Specifically, approval would allow the applicant to construct a dwelling that is 8 feet setback along SW property corner, and 5 ft setback along the 10 ft section adjacent to the end of the road right-of-way, all other setbacks are to follow standard distances.

Based on the unique existing limitations for the establishment of a dwelling on this particular lot, described above, the Applicant believes the Tillamook County Community Development Department can find that the proposed dwelling has been designed to have the least impact to the neighborhood, and approve the applicant's proposal.

LEGEND

- PROPERTY LINE - - - - -
- REQUIRED SETBACK - - - - -
- PROPOSED SETBACK ······
- EXISTING DITCH - ······
- FLOW DIRECTION →



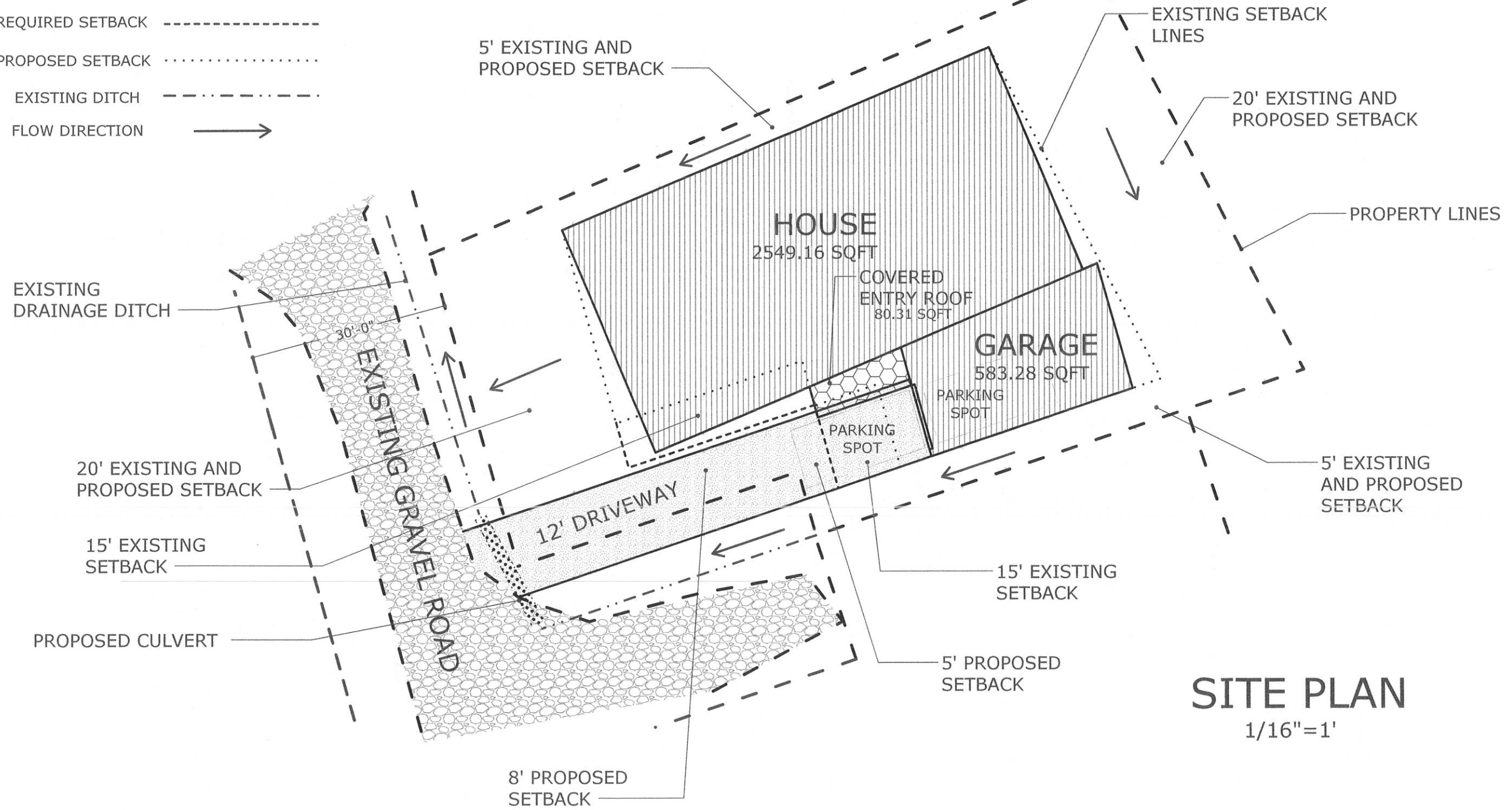
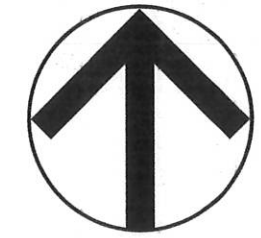
SITE PLAN
1/16"=1'



SCovel DESIGN GROUP
 541-994-4000

LEGEND

- PROPERTY LINE - - - - -
- REQUIRED SETBACK - - - - -
- PROPOSED SETBACK ······
- EXISTING DITCH - ······
- FLOW DIRECTION →



SITE PLAN
1/16"=1'

SCovel DESIGN
 GROUP
 541-994-4000