

Attention Property Owner: A land use proposal has been submitted for property near where you live or property you own elsewhere. State law requires the county notify property owners within a certain distance from this property. The proposal and address of the property is described in "Application" section. 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
ADMINISTRATIVE REVIEW CASE NO. 18-001

APPLICATION: Application of Patricia Cochran for an administrative review to replace a dwelling previously removed from a 14.88 acre parcel in an EFU (Exclusive Farm Use) zone located at 5414 Valley View Road NE, Silverton. (T6S; R1E; Section 36D; tax lot 200).

DECISION: The Planning Director for Marion County has determined that the residence was a legally established dwelling and can be replaced, subject to conditions.

EXPIRATION DATE: This decision is valid only when exercised by **January 1, 2024.**

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should check with the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS:

1. The applicant shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Prior to issuance of a building permit, the applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

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 Finding #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

3. The applicant should contact the Silverton Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

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 deny the application. Anyone who disagrees with the Director's decision may appeal the decision to the Marion County Hearings Officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) 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 **February 20, 2018.** If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 21, 2017** unless appealed.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use). The intent of both designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is located on the northwest corner of the intersection of Evans Valley Road NE and Valley View Road NE. The property contains four accessory buildings, well and septic system and is described in deeds going back as far as September 26, 1972, and is considered a legally created parcel for land use purposes.
3. Surrounding uses consists of a mixture of small parcels containing dwellings and larger parcels in various types of farm use. All surrounding properties are zoned EFU.
4. The applicants are proposing to replace a dwelling that previously existed on the property. Information submitted by the applicant, historical aerial photographs and Building Inspection records demonstrate a dwelling was established on the property prior to 1980 when the existing septic system was repaired. The Silverton Fire District reports that the dwelling was destroyed by fire on February 19, 2005.
5. Soil Survey of Marion County Oregon indicates that the subject property is composed entirely of high-value farm soils.
6. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

Marion County Building Inspection commented that building permits will be required for new construction or placement of a mobile home.

Marion County Building Inspection Onsite Wastewater Specialist commented that a septic authorization is required.

Silverton Fire District commented that the applicant must meet the requirements of the Oregon Fire Code in regards to access & water supply prior to any approvals for occupancy for the new dwelling from the Silverton Fire District.

All other contacted agencies either failed to respond, or stated no objection to the proposal.

7. Chapter 17.136.030(D) of the Marion County Code (MCC) allows the alteration, restoration, or replacement of a lawfully established dwelling, with filing of the declaratory statement in MCC 17.136.100(C), when the dwelling:
 - A. *The dwelling to be altered, restored or replaced has or formerly had:*
 1. *Intact exterior walls and roof structure;*
 2. *Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
 3. *Interior wiring for interior lights; and*
 4. *A heating system;*

The applicant supplied documentation that the structure had all the elements above prior to the fire in 2005. The fire report indicates that the dwelling was occupied at the time of the fire. This criterion is met.

- B. *The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from the time the dwelling was established; and*

The dwelling was assessed for taxes from at least 1980 until 2008, when it was removed from the tax roll - this standard is met.

- C. *If the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling had to have been assessed as a dwelling until such time as the value of the dwelling was eliminated:*
1. *The destruction (i.e., by fire or natural hazard), or demolition in the case of restoration, of the dwelling; or*
 2. *The applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll;*

The dwelling was assessed as a dwelling until it was destroyed by fire in February of 2005. This standard is met.

- D. *The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:*
- a. *Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or*
 - b. *If the dwelling to be replaced is in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and*
 - c. *If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.*

The dwelling was totally destroyed by fire in February 2005. This standard is met.

- E.. *The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted to a non-residential use.*

The dwelling has been removed from the property - this standard does not apply.

- F. *As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, Chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling;*

The entire property is zoned EFU - this standard does not apply.

- G. *When a dwelling formerly had the features described in subsection (A) of this section or was removed from the tax roll as described in subsection (C)(1) of this section, then the replacement dwelling must be sited on the same lot or parcel consistent with the following:*
- a. *Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and*
 - b. *If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure;*
- H. *Replacement dwellings that currently have the features described in subsection (D)(1) of this section and that have been on the tax roll as described in subsection (D)(2) of this section may be sited on any part of the same lot or parcel;*

The dwelling was destroyed by fire, therefore the siting standards in (G) above apply. The applicant states that he intends to build the replacement dwelling on the same foundation as the dwelling that burned. Placement on or near the footprint of the replaced dwelling meets this criterion.

I. The approval to replace a dwelling under this section shall expire on January 1, 2024.

This will be made a condition of approval.

8. If approved, the applicants will be required to sign and record a Farm/Forest Declaratory Statement prior to placing a new dwelling on the property as a condition of approval. This acknowledges the impacts of farm and forest management practices conducted in the area.
9. Based on the above findings, it has been determined that the dwelling was legally established and may be replaced, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: February 5, 2018

If you have any questions regarding this decision contact Lisa Milliman 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.