

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
ADMINISTRATIVE REVIEW CASE NO. 18-002**

APPLICATION: Application of Johnny Wayne Strauch RT for an administrative review to replace an existing dwelling on a 57.74 acre parcel in an FT (Farm Timber) zone located at 15008 Winters Hill Rd SE, Silverton. (T8S; R1E; Section 02; tax lot 100).

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

EXPIRATION DATE: This decision is valid only when exercised by **February 28, 2022** unless an extension is granted. The effective period may be extended for two years subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

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

This decision does not include approval of a building permit.

CONDITIONS:

1. The applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permit, the applicants shall sign and submit a Declaratory/Farm-Forest Statement and a Replacement Dwelling Declaratory Statement to the Planning Division. These statements shall be recorded by the applicant with the Marion County Clerk after they have been reviewed and signed by the Planning Director.
3. The following fire hazard reduction measures are required:
 - a. *The owners of a dwelling, or structure occupying more than 200 square feet, shall maintain a primary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provision in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991 and published by the Oregon Department of Forestry.*
 - b. *The dwelling shall have a fire retardant roof.*
 - c. *The dwelling shall not be sited on a slope of greater than 40 percent.*
 - d. *If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.*
4. Prior to issuance of any building permit for any new dwelling, the applicants shall provide evidence of domestic water supply for the subject property.

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:

5. The applicants should contact the Drakes Crossing 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 a Marion County hearings officer. The applicant may also request reconsideration (one time only and a fee of \$200.00) 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 28, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 1, 2018** unless appealed.

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

1. The subject property is designated Farm Timber in the Marion County Comprehensive Plan and zoned FT (Farm Timber).
2. The subject property is located at the southern terminus of Winters Hill Rd SE. The property contains a dwelling, well, septic system, accessory buildings and farm structures. The property is described in deeds prior to September 1, 1977 and is considered a legal lot for land use purposes.
3. All surrounding properties are zoned FT, some of which contain residences. The parcels in the area are in a variety of farm and forest uses.
4.

<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
MCCULLY	57.74	171	9,873.54
5. The applicant is proposing to replace an existing dwelling and convert the existing dwelling to a farm office.
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 Division commented that building permits are required for placement of a dwelling on the property.

Marion County Wastewater Specialist commented that septic system permits will be required.

7. Chapter 17.139.030(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 17.139.070(B), other than as permitted in MCC 17.139.020(E), when the dwelling:
 - (a) *Has intact exterior walls and roof structure;*
 - (b) *Has indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;*
 - (c) *Has interior wiring for interior lights;*
 - (d) *Has a heating system; and*
 - (e) *In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable non-residential use within three months of the occupancy of the replacement dwelling.*
 - (f) *In the case of replacement, the replacement dwelling shall meet the siting requirements set forth in MCC17.139.070(A)(2) or (3), which states:*

2. *Siting standards for dwellings and other buildings.*
 - a. *Dwellings shall be at least 200 feet from any abutting parcel in farm use or timber production. Buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production.*
 - b. *The special setback in subsection (A)(2)(a) of this section shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 to 195.336 nor should the special setback in subsection (A)(2)(a) of this section prohibit a claimant's application for homesites under ORS 195.300 to 195.336.*
 - c. *The dwelling or other building shall be located within 300 feet of the driveway entrance on an abutting public road; or, if the property does not abut a public road for a distance of at least 60 feet, the dwelling or other building shall be located within 300 feet of the point where the driveway enters the buildable portion of the property.*
3. *Review criteria for alternative sites. Sites for dwellings or buildings that do not meet the siting requirements in subsection (A)(2) of this section may be approved if the proposed site will meet the following criteria:*
 - a. *The site will have the least impact on nearby or adjoining forest or agricultural lands;*
 - b. *The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*
 - c. *The amount of agricultural and forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and*
 - d. *The risks associated with wildfire are minimized.*

8. The existing dwelling is still on the tax roll as a dwelling, and the applicant submitted photographs that show that the dwelling contains all the elements listed in Finding #7(a) through (d). The applicant proposes to convert the dwelling to a farm office, which is an allowable non-residential use, meeting the criterion in Finding #7(e). The applicant's site plan indicates the placement of the new dwelling is more than 200 feet from any adjacent properties in resource use and that it is located over 300 feet of the driveway entrance to the property. The siting requirements in MCC17.139.070(A)(3) apply.

The special siting standards in MCC 17.139.070(a)(3) include:

Review criteria for alternative sites. Sites for dwellings or buildings that do not meet the siting requirements in subsection (a)(2) of this section may be approved if the proposed site will meet the following criteria:

- a. *The site will have the least impact on nearby or adjoining forest or agricultural lands;*
- b. *The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*
- c. *The amount of agricultural and forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and*
- d. *The risks associated with wildfire are minimized.*

The home site is located more than 300 feet from Winters Hill Rd SE, however the dwelling is proposed for a location close to an existing equipment storage area and access will be by an existing service road. The proposed home site is located in an area that is used for equipment storage, and near a small pond, that is not in agricultural or timber production. The proposed home site location is over 200 feet from all property lines. This location should not displace any agricultural or timber production on the property or create any new impact on forest use of adjacent properties. A condition of approval requiring implementation of fire hazard reduction measures can be made part of any approval. The proposal meets the special siting requirements.

- (b) Declaratory Statement. The owner of property for which a dwelling, structure or other specified use has been approved shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the subject lots or parcels:

"The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents,

property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and I/We acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices I/We will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.”

A Declaratory Statement shall be required as a condition of approval.

(c) Domestic Water Supply.

(1) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).

(2) Evidence of a domestic water supply means verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or a water use permit issued by the Water Resources Department for the use described in the application; or verification from the Water Resources Department that a water use permit is not required for the use.

(3) If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report upon completion of the well.

There is an existing well on the property used to supply the existing dwelling that may be used to supply water to the proposed dwelling. A copy of the well log for the well to be used for water supply can be required prior to issuance of a building permit for the dwelling. This criterion is met subject to conditions.

(d) Road Access. *As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the U.S. Forest Service, the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.*

The property has frontage on a public road. This criterion does not apply.

(e) Tree Planting Requirements for Lots or Parcels over 10 Acres:

(1) Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in MCC 17.139.030(A), (B) or (C), on a tract of more than 10 acres in size, the landowner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.

(2) At the time required by the Department of Forestry rules the owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met.

The applicant stated that the property is managed for Christmas trees and is planted in timber. A review of Marion County tax records indicates the property has a special assessment, indicating the stocking requirements have been met. This criterion has been met.

(f) Fire Protection.

(1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. 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.

(2) If inclusion within a fire protection district or contracting for residential fire protection is impracticable, an alternative means for protecting the dwelling from fire hazards may be approved, pursuant to the procedures set forth in MCC 17.110.680, subject to the requirements of subsection (F)(3) of this section.

(3) Alternative means of fire protection may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions. The following requirements apply:

- A. 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.*
- B. Road access to the water supply required in subsection (F)(3)(A) of this section shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posed along the access route to indicate the location of the emergency water source.*

Fire protection is provided by the Drakes Crossing Fire District, and the applicant shall meet the District's access standards. A fire applications guide is posted on the internet that describes specific requirements for providing access to private property for emergency vehicles and fire suppression water supplies and building construction features. Other provisions listed above apply if required by the Fire District.

(g) Fire Hazard Reduction.

- (1) The owners of a dwelling, or structure occupying more than 200 square feet, shall maintain a primary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provision in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.*
- (2) The dwelling shall have a fire retardant roof.*
- (3) The dwelling shall not be sited on a slope of greater than 40 percent.*
- (4) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.*

Compliance with the fire hazard reduction standards listed above shall be a condition of approval.

(h) Road and Drainage Standards.

- (1) Public road access to structures of more than 200 square feet in area or a dwelling shall comply with Section 4 of the Marion County Department of Public Works Engineering Standards adopted by the board of county commissioners April 11, 1990.*
- (2) Except for private roads and bridges accessing only commercial forest uses, private road or driveway access to structures of more than 200 square feet in area or a dwelling shall meet the requirements of the local fire protection district or forest protection district, except that the county maximum grade standard for a private road is 15 percent. A greater grade may be approved by the fire district or, if the site is not in a fire district, by the State Department of Forestry.*
- (3) Drainage standards for private roadways shall be those in Section 5 of the Public Works Engineering standards except that corrugated metal culverts of equivalent size and strength may be used.*

Road and drainage standards will be addressed as part of the building permit process. Prior to building permits, the applicant must obtain any required driveway access permits and meet engineering standards during construction.

- 9. Based on the above findings, it has been determined that the dwelling was legally established and may be altered, restored and/or replaced.

10. Although the replacement dwelling is approved, the applicants will be required to sign and record a Farm/Forest Declaratory Statement as a condition of approval. This acknowledges the impacts of farm and forest management practices conducted in the area.

Joe Fennimore
Planning Director

Date: February 13, 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.