

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. 18-007**

APPLICATION: Application of Thomas and Alicia McGarvey for an administrative review to replace an existing dwelling on an 11 acre parcel in a TC (Timber Conservation) zone located at 362 Phelps Mountain Ln SE, Silverton. (T7S; R1E; Section 36; tax lot 300).

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 **March 30, 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.

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 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 **March 30, 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 31, 2018** unless appealed.

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

1. The subject property is designated Timber in the Marion County Comprehensive Plan and zoned TC (Timber Conservation).
2. The subject property is located on Phelps Mountain Lane SE, a Forest Service road that extends approximately two miles east to the dwelling site, from a point in the 20,300 block of Bridge Creek Road SE. The property contains a 1977 Redman manufactured home with site built additions, Tax Id number M132155. This dwelling was placed over the property line between tax lots 300 and 700 and was originally assessed with tax lot 700 by the Marion County Tax Assessor's office. Property Line Adjustment #PLA12-017 approved reconfiguring tax lots 300 and 700 so that the dwelling and the septic system serving the dwelling is now entirely on tax lot 300. The existing dwelling is served by a spring located on an adjacent parcel. The applicants stated that they intend to install a well to serve the proposed dwelling. The property was subject of PLA12-017 and is considered a legal lot for land use purposes.
3. All surrounding properties are zoned TC, some of which contain residences. The parcels in the area are in rural residential and forest uses.

<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
MCCULLY	10.4	171	1,778.4
KINNEY	0.1	182	18.2

5. The applicant is proposing to replace an existing dwelling.
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 17.138.030(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 17.138.020(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 currently on the tax roll as a dwelling and has been assessed with tax lot 300 since at least 2007. A review of the information submitted in the application, tax records, and building records demonstrates that it was lawfully established on the property and that it contained the necessary components to be eligible for replacement. The proposal meets the standards outlined in 7(a) through (e) above.

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 within 100 feet of Phelps Mountain Lane SE and within 300 feet of the point where the driveway enters the buildable portion of the property. The applicant indicated that the new dwelling will be placed on the same footprint as the existing dwelling. The siting requirement in MCC17.138.060(A)(2) and the criterion in 7(f) above are satisfied.

The applicant did not request a deferred replacement, therefore, the criterion in #7(g) is not applicable.

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: March 15, 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.