

**NOTICE OF DECISION
FLOODPLAIN DEVELOPMENT PERMIT CASE NO. 17-004**

APPLICATION: Application of Carl and Laurie Gretzinger for a floodplain development permit to construct a shop in the identified 100 year floodplain of Mill Creek on a 2.07 acre parcel in a SA (Special Agriculture) zone located at 6223 Mill Creek Rd SE, Turner (T8S; R2W; Section 28D; Tax lot 1900).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Floodplain Development application subject to certain conditions.

EXPIRATION DATE: This Floodplain Development Permit is valid only when exercised by **February 1, 2020**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

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

All development in the floodplain is subject to federal, local and state regulations and standards at the time development is begun. These regulations and standards are in the process of being revised and the development proposed in this application may be subject to additional regulations and standards at the time construction of structures or placement of fill on the property begins.

Based on preliminary information provided by the National Marine Fisheries Service on April 14, 2016, federal law might only recognize as legal work on an existing permit that has begun prior to September 15, 2016 and is completed prior to March 15, 2017. Work begun after September 15, 2016 or completed after March 15, 2017 may be in violation of federal law and thus invalidate this local permit.

Construction related to this permit is approved only within the existing developed area of the property. Construction of new structures, fill or other development of the property should not occur outside the existing developed area without prior consultation with the Marion County Planning Division. Federal regulations may require additional approvals for development outside the existing developed area of the property.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. Prior to issuance of building permits, a registered civil engineer or architect shall certify the construction meets the requirements of Marion County Code:
 - MCC 17.178.050(D),
 - MCC 17.178.060(A)(8),
 - MCC 17.178.060(D), (E) and (F).
3. Prior to issuance of building permits, the applicants shall sign and record a Flood Hazard Declaratory Statement.
4. The first floor of the structure shall be elevated to a minimum of two feet above the base flood elevation. An Elevation Certificate shall be supplied for the addition at the following times during the permitting process:
 - (a) Prior to construction (based on construction drawings), and
 - (b) Once the floor elevation can be determined (based on the building under construction), and
 - (c) Prior to occupancy (based on finished construction).

5. The accessory structure shall be limited to vehicle parking and storage of items having low damage potential when submerged by water (no workshops, offices, recreation rooms, etc.).
6. The accessory structure shall not be used for human habitation.
7. A declaratory statement shall be recorded acknowledging compliance with the standards in MCC 17.178.060 (A)(8)(d) through (h).

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.

8. The applicants should contact the Turner Fire District to obtain a copy of the District's Recommended Building Access, water supply and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
9. The applicants should consult FEMA Technical Bulletin 7-93 for additional information on wet floodproofing requirements.
10. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited unless stored within a structure or on land elevated above the base flood level. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) 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. Requests for reconsideration, or consideration by a hearings officer, must be in writing and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **February 1, 2018**. If you have any questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 2, 2018** unless further consideration is requested.

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

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan and correspondingly zoned SA (Special Agriculture). The property is located within the identified 100 year floodplain of Mill Creek.
2. The subject property is located on the north side of Mill Creek Road SE approximately 650 feet east of its intersection with Marion Road SE. The property contains a dwelling, well and septic system.
3. Properties in all directions are zoned SA and a mixture of farm use and rural homesites.
4. Soil Survey for Marion County, Oregon indicates 100% of the soils on the property are high-value farmland.
5. The applicant proposes to place a new shop building in the 100 year floodplain of Mill Creek. The applicants propose to construct a building using the wet floodproofing method. MCC 17.178 defines wet floodproofing as: "a method of construction using building materials capable of withstanding direct and prolonged (72 hours)

contact with floodwaters without sustaining significant damage (any damage requiring more than low-cost cosmetic repair, such as painting), consistent with FEMA Technical Bulletin 7-93.”

6. Marion County Building Inspection commented that building permits are required.
7. The purpose of the Floodplain Overlay Zone is to promote public health, safety and general welfare to minimize public and private losses due to flood conditions. In order to ensure that the development is reasonably safe from flooding, the County requires the development comply with the criteria and standards listed in Section 17.178.050 and 17.178.060 of the Marion County Code (MCC).
8. Marion County Flood Insurance Rate Map #41047C0683G indicates that the development site is in an AE zone. Based on the flood profile in the Flood Insurance Study for Marion County, the Base Flood Elevation (BFE) at the development site is 297.7 feet mean sea level.

9. MCC 17.178.050 (C) requires:

“Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowners successors in interest acknowledging that the property and the approved development are located in a floodplain.”

Recording of this statement can be made a condition of any approval.

10. MCC 17.178.050 (E) requires:

“The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations of all new or substantially improved manufactured homes, dwellings and structures meet the requirements of MCC 17.178.060(A), (B) and (C), where applicable, as follows:

1. *Prior to construction (based on construction drawings), and*
2. *Once the floor elevation can be determined (based on the building under construction), and*
3. *Prior to occupancy (based on finished construction).”*

The provision of these elevation certificates can be made a condition of any approval.

11. MCC 17.178.050 (D) requires:

“Prior to obtaining a building permit, commencing development or placing fill in the floodplain the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.”

The provision of this certification can be made a condition of any approval.

12. MCC 17.178.060 contains additional standards for development in the floodplain:

- A. *Dwellings, Manufactured Homes and Related Accessory Structures. New residential construction, substantial improvement of any residential structures, location of a manufactured home on a lot or in a manufactured home park or park expansion approved after adoption of this title shall:[...]*
8. *A detached residential accessory structure may be constructed to wet floodproofing standards; provided, that:*
 - a. *The accessory structure shall be located on a property with a dwelling;*

There is an existing dwelling on the property. This criterion is met.

- b. *The accessory structure shall meet the criteria for a variance in MCC 17.178.090;*

1. *There is a good and sufficient cause;*
2. *Failure to grant the variance would result in exceptional hardship to the applicant;*
3. *The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws;*
4. *The variance is the minimum necessary, considering the flood hazard, to afford relief;*
5. *The variance will be consistent with the intent and purpose of the provision being varied;*
6. *There has not been a previous land use action approved on the basis that variances would not be allowed; and*
7. *The new construction or substantial improvement is not within any designated regulatory floodway, or if located in a floodway, no increase in base flood discharge will result.*

Allowing a detached residential accessory structure to be wet-floodproofed instead of elevated or dry-floodproofed will realize a significant cost savings for the property owners without causing a significant increase in the risk to damage of life or property or increase in flood insurance claims. The structure would be limited to the uses of parking vehicles and limited storage of personal items and implements that are able to get wet and dry out without causing more than cosmetic damage to the contents. Requiring the structure to be elevated would make it significantly harder to access and may require fill dirt be placed in the floodplain to create a ramp to the structure, which could impact flooding in the area.

Granting of a variance will not result in threats to public safety, extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws. In the event of a flood, the structure and contents would get wet and then dry out without requiring intervention or the rescuing of people (as from a residence). The applicants will be required to demonstrate that the proposal will not increase flood heights or shift flooding onto other properties by this development, as required by MCC 178.050 (D).

Allowing the structure to be wet-floodproofed is the minimum variance required for the structure; all the other requirements for construction in the floodplain will be required to be met. The variance would allow the property owners to construct a useful building, without construction costing a significant amount beyond the value of the structure, the use of which is consistent with the uses allowed in the zone. There have been no previous land use actions that were approved on the basis that a future variance would not be allowed on the property. The proposed structure is not within a floodway.

The proposal meets the criteria for granting a variance to allow the residential accessory structure to be built to wet-floodproofing standards.

- c. *The accessory structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;*
- d. *The accessory structure shall be constructed with unfinished materials, acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;*
- e. *The accessory structure shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must comply with the following standards:*
 - i. *A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;*
 - ii. *The bottom of all openings shall be no higher than one foot above grade;*
 - iii. *Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters;*
- f. *Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site;*
- g. *The accessory structure shall be limited to vehicle parking and storage of items having low damage potential when submerged by water (no workshops, offices, recreation rooms, etc.);*

- h. The accessory structure shall not be used for human habitation;*
- i. A declaratory statement is recorded requiring compliance with the standards in subsections (A)(8)(d) through (h) of this section.*

The provision of the certifications in (c) through (f) can be made a condition of any approval. The recording of the declaratory statement required in (i) can be made a condition of any approval.

D. Anchoring.

- 1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.*

The provision of this certification can be made a condition of any approval.

E. Construction Materials and Methods.

- 1. All new construction and substantial improvements below base flood level shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*
- 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.*

In addition, since the building is being wet floodproofed the applicants should consult FEMA Technical Bulletin 7-93 for wet floodproofing requirements. The provision of these certifications can be made a condition of any approval.

F. Utilities.

- 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system as approved by the State Health Division.*
- 2. New and replacement sanitary sewage systems including on-site waste disposal systems shall be designed and located to minimize floodwater contamination consistent with the requirements of the Oregon State Department of Environmental Quality.*
- 3. Electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site.*

The provision of these certifications can be made a condition of any approval.

- H. Storage of Materials and Equipment. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.*

The compliance with this standard can be made a condition of any approval.

- 13. Based on the above findings, it has been determined that the proposal complies, or can be conditioned to comply, with the criteria in the Marion County Code and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: January 17, 2018

If you have any questions please contact Brandon Reich 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.