

**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  
VARIANCE CASE NO. 18-002**

**APPLICATION:** Application of Darwin Schaber for a variance from the temporal requirement for the replacement dwelling standard on a 3.35 acre parcel in an EFU (Exclusive Farm Use) zone located in the 19200 block of Allinson Road NE, Hubbard. (T4S; R1W; Section 29A; tax lot 800).

**DECISION:** The Planning Director for Marion County has **DENIED** the above-described Variance application.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that Variance 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 **May 8, 2018.**

**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. The major purpose of this designation and the corresponding EFU (EXCLUSIVE FARM USE) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the west side of Allinson Road NE, approximately one half mile south of its intersection with Feller Road NE. The property is currently undeveloped and was the subject of Administrative Review Case 17-022, which was a request to replace a dwelling that was destroyed by fire in 1967. On December 1, 2017, the planning director issued a decision denying the request. That decision was not appealed and became final on December 19, 2017.
3. Surrounding properties in every direction are zoned EFU and consist of various sized parcels, many which are in farm use.
4. Soil Survey of Marion County Oregon indicates that the property is composed entirely of high-value farm soils.
5. On variance application the applicant is requesting, "to obtain a variance to the temporal requirement of the Replacement Dwelling Standard." After reviewing the applicant's statement it appears that the request is for a variance to allow the former dwelling to be re-established without meeting the standards and criteria in the code.
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 and septic permits are required for new construction.

Marion County On-site Wastewater Specialist commented that a site evaluation is required to determine septic feasibility.

All other contacted agencies either failed to comment or stated no objection to proposal.

7. Chapter 17.122 of the Marion County Code (MCC), contains provisions for variances. Under Section 17.122.010 it states:

***17.122.010 Power to grant variances.***

*Subject to the restrictions and provisions contained in this title, the director, planning commission, hearings officer or board shall have the power to vary or modify the strict application of any of the standards of this title in any case where such strict application would result in practical difficulties or unnecessary hardships with reference to requirements governing: lot area, lot width, percentage of lot coverage and number of dwelling units or structures permitted on a lot, height of structures, location, yards, signs, parking and loading space, vision clearance and other standards when limits for an adjustment in MCC 17.116.030 are exceeded. Variances to allow uses or new uses not otherwise allowed are prohibited. Variances to criteria and definitions are also prohibited.*

8. The property is zoned EFU and there are standards and criteria that must be met in order to establish or replace a dwelling (see MCC 17.136.030, MCC 17.136.050(A)). Under MCC 122.010 a variance cannot be used to establish a use not otherwise allowed. Furthermore, it is not possible to get a variance to a criterion, only to standards under which a use is established. Under this provision, there is no authority in the Marion County Code to approve the variance proposed by the applicant.
9. Based on the above findings, the applicant's request does not meet all applicable criteria and is, therefore, **DENIED.**

Joe Fennimore  
Planning Director

Date: April 23, 2018

If you have any questions regarding this decision contact Joe Fennimore 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.