

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. 22-038**

**APPLICATION:** Application of Norman Bickell on behalf of David and Margaret Bielenberg for an administrative review replacement dwelling on a 73.69-acre parcel in an EFU (Exclusive Farm Use) zone located at 6617 Cascade Highway NE, Silverton (T6S; R1W; Section 25; Tax Lot 100).

**DECISION:** The Planning Director for Marion County has determined that the residence was legally established and can be replaced.

**EXPIRATION DATE:** This decision is valid only when exercised by **February 10, 2027**, 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 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 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, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. If replaced, the existing dwelling must be removed, demolished, or converted to an allowable non-residential use within three months of occupancy of the replacement dwelling.
3. Prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a Declaratory Farm/Forest Statement 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. (Declaratory Statement enclosed).
4. Prior to issuance of any building permit, the applicant shall sign and submit a Replacement Residence Declaratory Statement 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. (Declaratory Statement enclosed).

**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 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.

6. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

**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 10, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 11, 2023**, 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 at the corner of Cascade Highway NE and Valley View Road NE. The property currently contains three farm buildings. The parcel was the subject of a previous land use case, Administrative Review 11-007, which was approved. Much like Administrative Review 22-038, Administrative Review 11-007 proposed to replace a dwelling previously established. The proposed replacement was approved, however the approval for the replacement dwelling expired, necessitating a new Administrative Review. The deed submitted for Administrative Review 11-007 (Reel: 199, Page: 1011) matches the current deed submitted for this application (Reel: 3637, Page: 0412). Therefore, the property is considered legal for land use purposes.
3. Surrounding uses consist of properties that are zoned EFU in all directions and generally consist of medium to large-scale farm operations with some smaller parcels developed with dwellings.
4. Soil Survey of Marion County Oregon indicates that approximately 100% of the subject property soils are high value.
5. The applicant is proposing to replace a dwelling that was constructed in 1910.
6. The comments regarding this case are found below:

Marion County Land Development, Engineering, and Permits commented:

Engineering Requirements

- A. The subject property will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits.
- B. SR 213 is under the jurisdiction of ODOT with regard to access and utility service extension work.

Marion County Building Inspection commented:

Permits are required for potential development and/or utilities on private property prior to construction or installation.

Marion County Septic commented:

Septic alteration permit 555-17-005383-PRMT was finalized and a Certificate of Satisfactory Completion (CoSC) issued on 9/12/2019. This CoSC is valid for 5 years through 9/12/2024 per OAR 340-071-0175(8) provided the

proposed replacement dwelling does not exceed the permitted flow (450 GPD), and all conditions of the CoSC continue to be met. After 9/12/2024, an authorization notice approval is required for connection of the replacement home to the septic system.

Silverton Fire District commented:

The new dwelling will need to meet Oregon Fire Code as it relates to access and water supply. If the conditions cannot be met, the building official, in accordance with OAR 918-480-0125, will need to apply Uniform Alternative Construction Standards (UACS) to the new dwelling.

All other commenting agencies stated no objection or declined to comment.

7. The replacement dwelling criteria are listed in Section 17.136.030(D) of the Marion County Code (MCC). However, the 2019 Legislature, through House Bill 3024, amended the criteria and the County must apply those criteria directly until the zone can be amended. Criteria are:

1. *A lawfully established dwelling may be altered, restored or replaced under ORS 215.213(1)(q) or 215.283(1)(p) if the county determines that:*
  - (a) *The dwelling to be altered, restored or replaced has, or formerly had:*
    - (A) *Intact exterior walls and roof structure;*
    - (B) *Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
    - (C) *Interior wiring for interior lights; and*
    - (D) *A heating system; and*
  - (b)
    - (A) *If the dwelling was removed, destroyed or demolished:*
      - (i) *The dwelling's tax lot does not have a lien for delinquent and valorem taxes; and*
      - (ii) *Any removal, destruction or demolition occurred on or after January 1, 1973;*
    - (B) *If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for the delinquent ad valorem taxes; or*
    - (C) *A dwelling not described in subparagraph (A) or (B) of this paragraph was assessed as a dwelling for purposes of ad valorem taxation:*
      - (i) *For the previous five property taxes; or*
      - (ii) *From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.*

As stated previously, the proposed replacement dwelling was the subject of Administrative Review 11-007. The land use case was approved, and the applicant was allowed to replace the subject dwelling, but did not do so before the approval expired, after two subsequent extensions, on May 14, 2017. The applicant's representative resubmitted some of the same documentation used in the previously approved Administrative Review. The key documentation includes photos of the, now, removed dwelling dated March 28, 2011, and an Assessor's record showing the former dwelling.

The two photos that were submitted show the removed residence. In the photos, it is clear from both that the former dwelling had intact exterior wall and a roof structure. The photos also indicate that the dwelling had electricity and a heating system. Specifically, from one of the photos an electrical meter can be seen on the outside of the dwelling and in the other photo a telecommunications hub can be seen on the outside of the dwelling opposite the electrical meter. One of the photos also reveals a chimney which confirms that the dwelling had a heating system.

The Assessor's record also reveals the existence of and confirms some of the required elements of this criteria. The record shows the existence of a single bathroom in the dwelling. This would indicate that the former dwelling contained indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities that were connected to a waste disposal system.

According to the applicant, the dwelling has been removed. Additionally, the former dwelling's tax lot does not have a lien for delinquent and valorem taxes and was removed after the approval of Administrative Review 11-007, which is after January 1, 1973. Therefore, this criterion is met.

2. *For replacement of a lawfully established dwelling under this section:*

*(a) 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 the discretion of the county, 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 county that is not less than 90 days after the replacement permit is issued.*

*(b) The replacement dwelling:*

*(A) May be sited on any part of the same lot or parcel.*

*(B) Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.*

*(c) 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 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 this section and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.*

The dwelling has been removed at some point after AR11-007 was approved. The applicant is proposing to build the proposed replacement dwelling on the same parcel and comply with the applicable siting standards; this will be made a condition of approval. Additionally, the proposed replacement dwelling will be located on the subject parcel which is entirely zoned EFU. Therefore, the criterion is met.

3. *Notwithstanding subsection (2)(b)(A) of this section, a replacement dwelling under this section must be sited on the same lot or parcel:*

*(a) Using all or part of the footprint of the replaced dwelling or near 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.*

The proposed replacement dwelling will be sited on the same parcel. The applicant is proposing to use all or part of the footprint of the former dwelling. Additionally, the proposed site of the replacement dwelling will be located near Cascade Highway, roughly 55 feet from the original dwelling site. This newly proposed site will also minimize the potential adverse impacts on resource use of land in the area. Therefore, this criterion is met.

8. At the time of replacement, the applicant will be required to sign and record a Farm/Forest Declaratory Statement as a condition of approval. This acknowledges that farm and forest practices conducted in the area may have an adverse impact on a residence.

9. 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.

Brandon Reich  
Planning Division Director/Zoning Administrator

Date: January 26, 2022

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173

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.