

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.22-004**

**APPLICATION:** Application of Charles J. Sherman on behalf of Red Rock Farm LLC for an administrative review replacement dwelling on a 76.36-acre parcel in an EFU (Exclusive Farm Use) zone located at 15233 Spenner Rd. SE, Stayton (T9S; R1W; Section 1; 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 **March 29, 2026**, 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. **Within three months of occupancy of the replacement dwelling, the existing mobile home must be removed. In lieu of removal, the applicant may:**
  - (a) File a Declaratory Statement restricting use of the replaced dwelling for residential purposes; and
  - (b) Submit a site plan showing location of all structures on the property and identifying which structure is the replaced dwelling.
4. 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.
5. Prior to issuance of any building permit for a new dwelling, the applicants 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.

**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.

**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) based on 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 29, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 30, 2022**, 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 on the northern side of Spenner Rd, approximately 1.2 miles east of its intersection with Boedighemer Rd. The property contains a dwelling built in 1916 and seven accessory structures, the property is currently in farm use: growing Christmas trees, filberts, and grass seed. A review of deed history shows the parcel was described by deed in 1967 on Reel 627 and Page 742 and is considered a legal lot for land use purposes.
3. Parcels in all directions are zoned Exclusive Farm Use (EFU). Surrounding uses consist of properties in farm use in all directions. Most of the surrounding properties are developed with dwellings. Mill Creek runs along the southern portion of the parcel, the proposal replacement dwelling should not have any impact on the perennial creek.
4. Soil Survey of Marion County Oregon indicates 100% of the subject property is high value soils.
5. The applicant is proposing to replace the 1916 stick-built home that currently exists on the property with a new dwelling.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

### **ENGINEERING REQUIREMENTS**

- a) *A preliminary access review was conducted. It was determined that a tree situated adjacent to the mailbox is inhibiting Intersection Sight Distance in that direction. At the very least the tree will need to be limbed-up/back, or possibly removed. An Access Permit will be required at the time of application for building permits if it is found at that time the tree still poses a vision impediment.*
- b) *The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits per Marion County Ordinances. SDC/Parks credit may be given if a complete building permit application is submitted within 12 months from the last verifiable date of occupation of the dwelling to be replaced.*

Sublimity Fire District submitted comments related to the fire access standards of the district. These comments are available in the case file.

Marion County Building Inspection commented that permits are required for construction of a new dwelling.

Marion County Septic Inspection commented that an authorization notice must be filed with Marion County Septic in order to connect the replacement dwelling to the septic system.

All other commenting agencies stated no objection to the proposal.

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.*

The current dwelling was built in 1916 and is therefore lawfully established. It is currently still standing on the property and a review of aerial imagery and building permit history indicates that the dwelling has all the features indicated in 1 (A), (B), (C) and (D). Additionally, the dwelling is still taxed as a dwelling based on information found on the Marion County Assessor's website. The 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 applicant is proposing to remove the dwelling before construction of the new one begins, as they wish to replace it in the existing location. This siting will comply with all siting standards, including setbacks. The removal and removal declaratory statement will be made a condition of approval to ensure the home is property converted or removed. 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 dwelling is proposed to use the exact same footprint. The 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 Director/Zoning Administrator

Date: March 14, 2022

If you have any questions regarding this decision contact Austin Barnes 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.