

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. 22-027**

APPLICATION: Application of Terry J. Kelly on behalf of Baxter Family, LLC for an administrative review replacement dwelling on a 115.3-acre parcel in an SA (Special Agriculture) zone located at 6331 Liberty Road S., Salem (T8S; R3W; Section 21B; Tax Lot 100 & 500).

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 **October 25, 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 proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed use. 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: 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, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Per the requirements in Marion County Code 17.137.030(E)(8), the new dwelling shall be placed either using all or part of the footprint of the replaced dwelling, or near a road, ditch, river, property line, forest boundary, or another natural boundary of the parcel. Furthermore, if possible, for the purpose of minimizing the adverse impacts on resource use of the land, the new dwelling should be clustered with other structures or within 500 yards of another structure.
3. Per the requirement in Marion County Code 17.137.100(C), the applicant shall sign and submit a Farm/Forest 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. This statement can be obtained from Marion County Planning.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or another 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 the Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. The applicants should contact the Salem Suburban 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 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 (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Road NE, Salem, by 5:00 p.m. on **October 25, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 26, 2022**, unless further consideration is requested.

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

1. The subject properties are designated Special Agriculture in the Marion County Comprehensive Plan and correspondingly zoned SA (Special Agriculture). The primary intent of both this designation and zone is to promote and protect small farm operations or areas with a mixture of good and poor farm soils.
2. The property is located at the intersection of Liberty Road S and Jory Hill Road S. The property borders both roads, but the historic access is shown to be off Liberty Road S, approximately 900 feet north of the previously mentioned intersection. The property is approximately 120 acres in size. Based on aerial imagery, there are some accessory structures and remnants of structures on the property. The City of Salem borders the property to the north and east. Other than the urbanized areas to the north and east, adjacent properties are zoned SA (Special Agriculture) and FT (Farm/Timber). Some adjacent properties are in active farm use, while others are used as acreage home sites.
3. The property has existed as **two legal parcels** in its current configuration since before September 1, 1977, per a bargain and sale deed recorded in Reel 39, Page 1232 of the Deed Records of Marion County. No further changes to the property were recorded by deed (or otherwise) since, and so the property has remained legal. The property is considered legal for the purposes of land use per Marion County Code 17.110.427. Through the course of the application review, it was discovered that the two parcels include both tax lots 100 and 500. The parcel boundaries do not necessarily correspond with the tax lot boundaries.
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 which was apparently burnt down sometime around 2007 on the property. According to the current tax assessor records, that dwelling was built in 1901.
6. The replacement dwelling criteria for the SA zone are listed in Section 17.137.030(E) of the Marion County Code (MCC):

E. Dwelling Alteration and Replacement. Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.137.100(C), other than as permitted in MCC 17.137.020(D), when the dwelling:

1. *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*

The evidence provided regarding the existence of a dwelling on the property are as follows:

Aerial photos from 1976, 1994, 1995, and 2005 all seem to show that there were multiple structures on the property, including what appear to be barns or shop buildings and one dwelling. Based on the aerial photos, there are indications that people were living on the property, and that the property was actively farmed for many years. The aerial photos at the very least suggest intact exterior walls and a roof structure.

Tax records from the Marion County Tax Assessor's office also indicate that there was a structure classified as a "residence" built in 1901 on the property. The Tax Assessor's office has indicated that the residence was not removed from the tax rolls, as they may not have been made aware of the destruction of the home. The tax records show improvements including baseboard heating, roofing, and a bathroom.

In order to show that the dwelling met the criteria listed above, the applicant submitted a variety of documents including a well log and a Marion County Building division "address card" which contains references to old permits.

The well log from August 1970 indicates that a new well was drilled for "domestic" use. Per the current Oregon Water Resources Well Water Handbook, a well is "domestic" if it serves water for no more than three households for drinking, culinary, or household uses. The well log suggests that the home would have had indoor plumbing.

The address card provided for 6331 Liberty Rd S indicates that there was a permit for heating or mechanical by a contractor listed as "Lyle's Furnace." The permit would imply that the home at the property did indeed have a heating system.

Photo evidence of the remnants of the dwelling were also provided. While these photos do not explicitly prove that the dwelling met those standards, the photos do show that there was a foundation and power (evidenced by an overhead power line with transformer).

Altogether, these pieces of evidence support the conclusion that there was a legitimate dwelling on the property that met the definition of a dwelling per this code section. Given that the dwelling existed prior to implementation of Marion County's comprehensive plan, the dwelling was therefore legally established.

2. The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from the time the dwelling was established; and

The dwelling was assessed as a residence for the purposes of taxation for the previous five years. The dwelling still appears on tax rolls now. The criterion is met.

3. If the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling had to have been assessed as a dwelling until such time as the value of the dwelling was eliminated:

- a. The destruction (i.e., by fire or natural hazard), or demolition in the case of restoration, of the dwelling; or*
- b. The applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll;*

The dwelling in question was apparently destroyed by a fire and is no longer on the property. However, the dwelling has not had its value eliminated and it still is on the Marion County tax roll. Therefore, these criteria do not apply.

4. 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 permitting authority, 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 permitting authority that is not less than 90 days after the replacement permit is issued; and*
- c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location;*

The dwelling to be replaced has already been destroyed. This criterion does not apply.

5. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted;

The dwelling to be replaced has already been destroyed. This criterion does not apply.

6. 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 is 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 2013 Oregon Laws, Chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling;

The dwelling is not located within a non-EFU zone. The entire parcel is within the SA zone. Therefore, this subsection does not apply.

7. A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling;

These criteria will be made a condition of approval. The parcel is large enough that any siting standards will not prohibit the siting of a replacement dwelling. The criteria are met.

8. When a dwelling formerly had the features described in subsection (E)(1) of this section or was removed from the tax roll as described in subsection (E)(3)(b) of this section, then the replacement dwelling must be sited on the same lot or parcel consistent with the following:

- a. Using all or part of the footprint of the replaced dwelling or near a 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 to be replaced was destroyed by fire and had features described in subsection (E)(1). The placement of the parcel will be subject to these criteria as a condition of approval.

9. Replacement dwellings that currently have the features described in subsection (E)(1) of this section and that have been on the tax roll as described in subsection (E)(2) of this section may be sited on any part of the same lot or parcel;

The dwelling that is to be replaced no longer exists. This criterion does not apply.

7. Marion County Building Division commented: No Building Inspection issues and/or concerns. Any future development and/or utilities on private property may require permits prior to commencing work.
8. Marion County LDEP Division commented:

ENGINEERING REQUIREMENTS

- A. Access to the public road must meet MCPW design standards.
 - B. A county erosion permit may be required since the construction area is interpreted to be situated within a mapped hi-risk erosion area. Jory Creek must be protected from construction erosion.
 - C. Transportation System Development & Parks Charges (SDCs) will be assessed upon application for building permits.
 - D. Utility work in the public right-of-way requires permits from MCPW Engineering.
9. Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies failed to comment.
 10. Based on the above findings, it has determined that the existing residence was legally established and can be replaced.

Brandon Reich
Planning Director/Zoning Administrator

Date: October 10, 2022

If you have any questions regarding this decision contact Daniel Jansen 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.