

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. 24-026**

**APPLICATION:** Application of Clayton and Rhonda McCulloch for and administrative review to replace a dwelling on a 21.94-acre parcel in the EFU (Exclusive Farm Use) in the 9300 block of 82nd Ave NE Salem (T6S; R2W; Section 14A; Tax lot 300).

**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 **December 9<sup>th</sup>, 2028 (4 years)** 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 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. (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 Marion County No. 1 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 **December 9<sup>th</sup>, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 10<sup>th</sup>, 2024** 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 east side of a small section of 82<sup>nd</sup> Ave NE where it connects Stratford DR NE and Roanoke DR NE. The parcel contains two farm fields that are separated by a small grass and woodlot area where the structures are located. In the 2023 aerial imagery, there are three visible structures on the parcel, one of which is the subject of this replacement residence case, though none are currently assessed as dwellings by the Marion County Tax Assessor. The parcel has been described in its current configuration since at least June 29<sup>th</sup>, 1957 when it was described in a deed found on Volume 502 Page 110 and is legal for land use purposes.
3. Surrounding uses consist of properties engaged in commercial agriculture operations or acreage homesites. One exception is a metal fabrication and farm equipment repair business as a commercial in conjunction with agriculture roughly 1000 feet to the west, although this business is relocating part or all its operations to a new location as a result of another land use case application.
4. Soil Survey of Marion County Oregon indicates that 93.3% of the soils on the subject property are high-value for farming.
5. The applicants are proposing to replace a dwelling that currently exists on the property with a new dwelling.
6. Various agencies were contacted about the proposal and given an opportunity to comment:

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

### **ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits an Access Permit will be required. The driveway approach will need to be graveled.
- B. Transportation System Development Charges (TSDCs) and Parks fee will be assessed at the time of application for building permits.
- C. Any new utility service extensions such as electric power originating from within the public right-of-way to the property require permits from MCPW Engineering.

Marion County Building Inspection: No Building Inspection concerns. Permit(s) are required to be obtained prior to development of structures and/or utilities installation on private property.

Marion County Septic commented: "Marion County does not have records of the existing septic system. If continued use of the system connected to the existing dwelling is desired, an authorization will be required. If a new system is proposed/required, test pits will be required under a major alteration/major repair permit."

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

7. Dwelling Alteration and Replacement. Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.136.100(C), other than as permitted in MCC 17.136.020(D), when:

*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;*

The applicants provided photographs of the existing structure, both on the exterior and interior. In the photos, the structure's walls and roof are visibly intact, a kitchen sink, light switches and fixtures showing interior wiring, and a heating stove all inside the structure. While the applicants provide no specific evidence that the dwelling contained a form or toilet, bathing facility, or was connected to a sanitary waste disposal system, they argue that the structure's age (the Tax Assessor's information describes it as being built in 1920) would make an outhouse a more likely option than an internal toilet, accounting for the lack of such features in the structure. This argument is contextually sound and, when combined with the other evidence presented, is substantial enough evidence to show the dwelling had all four characteristics required. The criterion is met.

*2. In addition to the provisions of subsection (D)(1) of this section, the dwelling to be replaced meets one of the following conditions:*

- a. If the dwelling was removed, destroyed or demolished:*
  - i. The dwelling's tax lot does not have a lien for delinquent ad 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 delinquent ad valorem taxes; or*
- c. A dwelling not described in subsection (D)(2)(a) or (b) of this section was assessed as a dwelling for the purposes of ad valorem taxation:*
  - i. For the previous five property tax years; 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 structure is still present on the property and the photographic evidence submitted in the application shows the dwelling still possesses all features listed under subsection 1 above, but the structure is no longer assessed as a dwelling on the taxes for the property. The applicant asserts that this is because the structure is in such a state of disrepair that it is unsafe for occupancy. This satisfies subsection 2b above. The criterion is met.

*3. 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.*

Since the applicant argued in criterion 2 that the dwelling constitutes an attractive nuisance or is in a state of disrepair that it is unsafe for occupancy, criterion 3b applies and shall be made a condition of approval. The applicants state that they acknowledge this view and will comply with the timeline of replacement outlined.

4. *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;*
5. *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 entirety of the subject property is zoned EFU. The criterion does not apply.

6. *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;*

Applicable requirements shall be made a condition of approval. The criterion is met.

7. *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 proposed location for the replacement dwelling as shown on the applicants site plan would take up most or all of the original footprint of the original dwelling. This location would site the new dwelling within the grassy woodlot area of the parcel that exists between the two farm fields and would not remove land from farm use. Additionally, this location is within 500 feet of the only other existing structure on the parcel. The proposal is consistent with both the language and intent of this section. 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: November 22, 2024

If you have any questions regarding this decision contact Alexander Seifer 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.



## ZONING MAP

**Input Taxlot(s):** 062W14A000300

**Owner Name:** MCCULLOUGH, CLAYTON L &  
MCCULLOUGH, RHONDA R

**Situs Address:** ( No Situs Address )


**City/State/Zip:**


**Land Use Zone:** EFU

**School District:** GERVAIS

**Fire District:** MARION COUNTY NO.1

### Legend

 Input Taxlots

 Lakes & Rivers

 Highways

 Cities



scale: 1 in = 685 ft

**DISCLAIMER:** This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.