

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.20-025**

APPLICATION: Application of Application of Orville and Janet Busby for an administrative review to replace a dwelling previously removed from a property on a 3.88 acre parcel in a SA (Special Agriculture) zone located at 6753 Shaw Hwy SE, Aumsville (T8S, R2W, Section 24, Tax lot 1100).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Administrative Review.

EXPIRATION DATE: This decision is valid only when exercised by **October 14, 2024** (four years) unless an extension is granted. The effective period may be extended up to five times for two years each, subject to approval of an extension (form available from the Planning Division). Request for an extension must be submitted to the Planning Division prior to expiration of the approval.

WARNING: A decision approving the proposed uses is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposed activities. 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:

1. The applicants shall obtain all permits 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, the applicants shall sign and submit a Declaratory/Farm-Forest Statement (enclosed) 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. The applicant is advised of the following:

4. The applicants should contact the Aumsville 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.
5. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements, 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 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 be received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **October 14, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 15, 2020** unless appealed.

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

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan and zoned SA (Special Agriculture). The intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is located directly north of the intersection (western on ramp) of Shaw Hwy SE and Hwy 22 (North Santiam Hwy). The property contains 3 buildings.
3. Properties on all sides are zoned SA and contain parcels in agriculture use with home sites.
4. The applicants are proposing to replace a dwelling previously removed from a property.
5. Soil Survey of Marion County Oregon indicates 98.8% of the subject property is composed of high-value farm soils.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Requirements:

- A.) At the time of application for building permits an Access Permit will be required to document the change-in-use from the previously permitted field access serving #6743 Shaw Hwy under Permit #D94-027, to also include the proposed residential use for the subject property under similar ownership. The access approach was evidently subsequently paved as part of municipal road improvements; therefore, it is not anticipated that any improvements to it will be necessary, although that will be confirmed through field inspection at the time of application.
- 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 credit (grandfathering) is not available for the prior dwelling, since removed, due to the extended duration of non-habitation.
- C.) Utility work in the Shaw Hwy public right-of-way requires Utility Permits from MCPW Engineering.

Marion County Building Department commented that a building permit is required for construction or placement of a new home.

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. The 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*

The dwelling that was located on the property until it was burned by Aumsville Fire Department in a burn to learn, had the attributes identified above, according to a previous Marion County Planning ruling that only disqualified the structure as a dwelling when it was illegally moved to a different location on the property. It appeared to have all the above attributes and this is further shown by picture evidence submitted by the applicant after vandalism had already taken place. These criteria are met.

(b)

- (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 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.*

Based on information provided by the applicant, as well as aerial photos, the house was moved to another location on the subject parcel after January 1st, 1973. The Marion County Tax Assessor's office was notified of this proposed land use action and did not identify any liens for delinquent ad valorem taxes. Based on these facts, the criteria in b(A) are met. The dwelling was previously removed from the property; therefore criterion b (B) does not apply. As the dwelling to be replaced is described in subparagraph (A), criterion b(C) does not apply.

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 has submitted evidence to show that the previously established dwelling is no longer present on the property. Based on this fact, criterion 2(a) is met. As a condition of approval, the location of the dwelling shall significantly conform to the site plan submitted as part of the application. Minor variances

due to development or siting standards are allowed. Based on these facts and permit conditions, criterion 2(b) is met. The entire property is zoned Special Agriculture, so criterion 2(c) is not applicable.

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 location of the proposed dwelling is near the road and property line and minimizes the risk to resource land. As a condition of approval, the location of the dwelling shall significantly conform to the site plan submitted with the application. Minor variances due to development or siting standards are allowed. Based on these facts, as well as the conditions of approval, this criterion is met.

9. Although the replacement dwelling is approved, the applicants will be required to sign and record a Farm/Forest Declaratory Statement as a condition of approval. This acknowledges the impacts of farm and forest management practices conducted in the area.
10. Based on the above findings, it has been determined that the proposal complies, with the criteria in the Marion County Code and is therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: September 29, 2020

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.