

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. 20-028**

APPLICATION: Application of Frank J. Bronec Qtip Trust and Columbia Trust Company, for an administrative review to replace a dwelling previously removed from the property on a 13.36 acre parcel in an EFU (Exclusive Farm Use) zone located in the 17880 Boones Ferry Rd NE, Hubbard (T4S; R1W; Section 32D; tax lot 100).

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

EXPIRATION DATE: This decision is valid only when exercised by **November 9, 2024** (four years) unless an extension is granted. The effective period may be extended, 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. 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:

3. 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.
4. The applicants should contact the Woodburn 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 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 **November 9, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 10, 2020** 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 Boones Ferry Road, approximately 1/3 miles south of its intersection with Broadacres Road NE. The property is currently undeveloped. According to Marion County

Assessor records the property has not been assessed for any improvements since 1996. The property was the subject of Lot Line Adjustment 84-6, which was a request to adjust lot lines of three properties including the subject parcel.

3. Surrounding properties are all zoned EFU and devoted to a mix various types of farm use and small rural residential properties.
4. The applicant is proposing to replace a previously existing dwelling on the property that was removed in 1996.
5. *Soil Survey of Marion County Oregon* indicates that the property is composed entirely of high-value farm soils.
6. Public Works Land Development and Engineering Permits (LDEP) comments included an engineering requirement and advisory, which include:

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits an Access Permit will be required. Under the Permit, in addition to access work itself, it will be required to completely remove dilapidated wooden fencing and a damaged/bent metal gate from within the 30-foot public right-of-way half-width. Need for roadside vegetation trimming in support of sufficient Intersection Sight Distance may also be required.
- 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.
- C. Utility work such as electrical, gas and communication services in the public right-of-way requires Utility Permits from MCPW Engineering.

Marion County Building Inspection commented that permits are required for new construction or placement of a manufactured home.

North Marion School District commented that if the site will be prepared for future housing, the North Marion School District strongly encourages all future development proposals for families in the area to include broadband/fiber optic infrastructure for educational and community safety purposes.

Woodburn Fire Department commented, notes are in the file.

All other contacted agencies either failed to respond or stated no objections 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 removed in 1996 appears to have had the attributes identified above, according to a photograph and statement submitted by the applicant as well as Marion County Assessors records. 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 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 applicant's statement states that the dwelling was removed via demolition in 1996 but did not mentioned what remained after demolition regarding; well, septic system, or other utilities. Staff interprets the criterion in 1. (b)(A)(ii) to require that all of the elements in 1. (a) be present on or after January 1, 1973. According to the applicant's statement, not all of those elements were present after the 1996 demolition. The property does not have a lien for delinquent and valorem taxes. These criteria are met.

There nothing left of the former dwelling therefore there is no structure to occupy, safely or unsafely, and there is really nothing present on the property that could be attractive so as to cause a nuisance. Marion County Code Enforcement has not received a complaint about the property that would document that there is an attractive nuisance present. These Criteria are met. Part 1. (b) (A) and (B) above are satisfied in this instance.

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 already been removed and the entire property is zoned EFU, these criteria are 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.*

In this instance, these standards do not apply.

8. Based on the above findings, it has been determined that the proposal does not comply with the criteria in the Marion County Code and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Division Director

Date: October 23, 2020

If you have any questions regarding this decision contact Lindsey King 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.