

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. 22-008**

**APPLICATION:** Application of Norman Bickell on behalf of Neils Jensen for an administrative review to replace a dwelling on a 0.33-acre parcel in an EFU (Exclusive Farm Use) zone located at 5948 Pearson Road SE, Jefferson (T9S; R2W; Section 21C; Tax Lot 700).

**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 **May 13, 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. 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).

**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:

4. The applicants should contact the Jefferson 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 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 **May 13, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 14, 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 245 feet west of the intersection of Duck Flat Rd and Pearson Rd. The property previously contained 2 dwellings which have both since been removed. One dwelling was site built in 1930 and the other was a manufactured home placed in 1966. The property is described by deed in Volume 780 Page 477 on June 17, 1974 and is considered a legal lot.
3. Surrounding uses consist of properties that are zoned EFU in all directions and generally consist of large-scale farm operations with some smaller parcels developed with homesites mixed in. The area is extremely flat and has many hydric soils. The property is now vacant after the two homes were removed.
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 manufactured home and a stick-built home that were previously removed from the parcel with one new dwelling.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

### **ENGINEERING REQUIREMENT**

1. *The subject property is within the unincorporated area of Marion County and may be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits per Marion County Ordinances. Credit can be given for existing uses within one-year from date of removal*

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

Marion County Septic commented: "The applicant must apply for an authorization to connect the replacement dwelling to the existing septic system under OAR340-071-0205."

All other commenting agencies stated no objection or declined to comment.

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.*

A review of aerial photos, tax statements and evidence submitted by the applicant indicate that the dwellings both contained the features listed in (A) through (D). The are currently still listed on the tax assessor's website as dwellings as they were only recently removed, much after Jan 1, 1973. There are no liens against the property and the structures have been taxed as dwellings as long as records show. 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.*

Both previously existing dwellings are already removed. The applicant statement describes the small parcel size leading to only one real option to place the home, which will be in accordance with our standards. 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 parcel is smaller at (0.33) acres to which a dwelling can only sited in such a way that allows for a septic and drain field. The siting will still be using part of the footprint of the old dwelling. 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 Division Director/Zoning Administrator

Date: April 28, 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.