

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.21-035**

APPLICATION: Application of Matthew and Rachele Barber to replace a dwelling on a 20.45 acre parcel in a Farm/Timber (F/T) zone located at 4963 Crooked Finger Road NE, Scotts Mills. (T7S, R1E, Section 1B, Tax Lot 400 and 500).

DECISION: The Planning Director for Marion County has determined that the residence is legally established and can be repaired, altered or replaced.

EXPIRATION DATE: This decision is valid only when exercised by **December 29, 2025** (four years) unless an extension is granted. The effective period may be extended for one year 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 building, septic evaluations and installation permits required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permit for the new dwelling, 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.
3. Prior to issuance of any building permit for the new dwelling, the applicants shall sign and submit a Replacement Residence Declaratory 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.
4. The dwelling shall be located as indicated on the site plan submitted with the application. Minor variations may be allowed upon review and approval by the Planning Director.
5. The owners shall maintain a fire hazard reduction plan as recommended by the Oregon Department of Forestry.
6. The proposed dwelling shall meet the fire protection and hazard reductions as listed in MCC 17.139.070.

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:

7. The applicants should contact the Silverton 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.

8. 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 a 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 29, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective on **December 30, 2021** unless appealed.

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

1. The subject property is designated Farm Timber in the Marion County Comprehensive Plan and zoned FT (Farm Timber).
2. The subject property is located on the south side of Crooked Finger Road NE, approximately 0.04 miles south of the intersection of Ettlín Loop NE and Crooked Finger Road NE. The property is currently developed with a dwelling built in 1951 and two outbuildings. Tax lot 400 and 500 together were previously the subject of Major Partition 78-89 which determined that the current configuration of tax lot 400 and 500 together are one legal unit of land.
3. Surrounding properties are zoned FT in all directions and contain parcels with dwellings and some in timber operation.

Soil Name	Total Acres	CU.FT/AC/YR	Total CU.FT./YR
McCully clay loam, 12-20% (McD)	4.3	118	507.40
McCully clay loam, 30-50% (MUF)	5.9	118	696.2
McCully clay loam 50-70% slopes (MUG)	2.7	118	318.6
McCully stony clay loam, 2-20% slopes (MID)	1.1	118	129.8
Nekia stony silty clay loam 12-20% slopes (NkC)	7.7	115	885.5
Total	21.69		2,537.5

5. The applicant is proposing to replace the home that currently exists on the property with a new dwelling.
6. Agency Comments:

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 pave the driveway approach access apron with Hot Mix Asphalt or regrade due to slope exceeding 5%. The paving or regrading is intended to facilitate adequate tire purchase.
- b. Utility work in the public right-of-way requires separate PW Engineering permits.

Marion County Building Inspection commented that a building permit is required for construction of a new dwelling.

Marion County Septic commented that a septic installation permit is required before a building permit is issued.

Silverton Fire District commented that the dwelling will need to meet the Oregon Fire Code as it relates to access and water supply. If the conditions cannot be met, the building official, in accordance with OAR 918-480-0125, will need to apply Uniform Alternative Construction Standards (UACS) to the new dwelling.

All other commenting agencies stated no objection to the proposal.

7. Chapter 17.139.030(D) of the Marion County Code (MCC) allows the alteration, restoration, or replacement of a lawfully established dwelling in the forest area with filing of the declaratory statement in MCC 17.139.070(B), other than as permitted in MCC 17.139.020(E), when the dwelling:

1. *Has intact exterior walls and roof structure*
2. *Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
3. *Has interior wiring for interior lights;*
4. *Has a heating system; and*

Based on photographs provided by the applicants, the dwelling has intact exterior walls and roof structure. The property also has the necessary plumbing, interior wiring, and a heating system. Based on these facts, the criterion is met.

5. *In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the occupancy of the replacement dwelling.*

As a condition of approval, the applicant will be required to sign a declaratory statement acknowledging this requirement. This criterion can be met with conditions of approval.

6. *In the replacement, the replacement dwelling shall meet siting standard requirements set forth in MCC 17.139.070(A)(2) or (3).*

As discussed below this criterion is met.

8. The special standards in 17.139.070(A) include:

1. *Dwellings and structures shall comply with the special requirements in subsection (A)(2) or (3) of this section. Compliance with the provisions in subsection (A)(2) of this section and subsections (B), (F) and (G) of this section satisfies the criteria in (A)(3) of this section. Alternative sites that meet the criteria in subsection (A)(3) of this section may be approved concurrently with any land use application or as provided in Chapter 17.116 MCC.*
2. *Siting Standards for Dwellings and Other Buildings.*
 - a. *Dwellings shall be at least 200 feet from any abutting parcel in farm use or timber production. Buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production.*
 - b. *The special setback in subsection (A)(2)(a) of this section shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 through 195.336 nor should the special setback in subsection (A)(2)(a) of this section prohibit a claimant's application for homesites under ORS 195.300 through 195.336.*

c. The dwelling or other building shall be located within 300 feet of the driveway entrance on an abutting public road; or, if the property does not abut a public road for a distance of at least 60 feet, the dwelling or other building shall be located within 300 feet of the point where the driveway enters the buildable portion of the property.

3. *Review Criteria for Alternative Sites. Sites for dwellings or buildings that do not meet the siting requirements in subsection (A)(2) of this section may be approved if the proposed site will meet the following criteria:*

a. The site will have the least impact on nearby or adjoining forest or agricultural lands.

b. The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.

c. The amount of agricultural and forest lands used to site access roads, service corridors, the dwelling and structures is minimized.

d. The risks associated with wildfire are minimized.

The applicant submitted a site plan that shows a proposed dwelling that is 200 feet from all property lines, but not within 300 feet of the driveway entrance. The location is therefore not consistent with 8(2)(c) above.

Because the applicant is not compliant with 8(2)(c) above, they must meet the requirements in 8(3)(A-D). The applicant states that the site will have the least impact on nearby or adjoining farm or forest land as the proposed dwelling will be more than 200 feet away from all property lines. The applicant also states that this buffer will ensure that there are no adverse impacts on forest operations and accepted farming practices. The applicant states that they will be using an existing driveway in the property and that the area selected for the dwelling is fairly level and clear already. This minimizes the amount of agricultural or forest land used to site the development, including roads. The risks associated with wildfire are minimized as the proposed location provides adequate space for firebreaks. Based on these facts, criteria 8(3)(a-d) are met.

8. Based on the above findings, it has been determined that the proposed dwelling satisfies all applicable criteria and may be altered, restored and/or replaced.
9. 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.

Brandon Reich
Planning Division Director

Date: December 14, 2021

If you have any questions regarding this decision contact Alyssa Schrems 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.