

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. 23-003**

APPLICATION: Application of Sean and Allison Conner for an administrative review to replace a dwelling on a 2.35-acre parcel in an EFU (Exclusive Farm Use) zone located at the 20,000 block of Riverside Drive NE, St. Paul (T4S; R3W; Section 13D; Tax Lot 500).

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 **April 29, 2027**, 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 proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed use. 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: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division. Please see the comments provided by the Building and Septic teams in the Findings and Conclusions.
2. Per the requirements in Marion County Code 17.136.030(D)(8), the new dwelling shall be placed either 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 parcel. Furthermore, if possible, for the purpose of minimizing the adverse impacts on resource use of the land, the new dwelling should be clustered with other structures or within 500 yards of another structure.
3. Per the requirement in Marion County Code 17.136.100(C), the applicant shall sign and submit a Farm/Forest 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. This statement can be obtained from Marion County Planning.
4. Per Marion County LDEP, the following requirements will apply:

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits, an access review will be conducted. As part of that review process evidence of legal access (access easement) from Riverside Drive to the subject property will be required.
- B. At the time of application for building permits Transportation & System Development & Parks Charges (SDCs) will be assessed.
- C. Utility service extensions in the public right-of-way require permits from MCPW Engineering.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or another 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 the Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

5. The applicants should contact the St Paul 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 condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) 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. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Road NE, Salem, by 5:00 p.m. on **May 1, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 2, 2023**, unless further consideration is requested.

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

1. The subject properties are designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The property is located behind 20713 Riverside Drive NE, which is approximately 1000 feet south of the intersection between Riverside Drive NE and Mission Road NE. The property does not front a public right-of-way, but instead historically had access via two driveways alongside 20713 and 20733 Riverside Drive NE. The property is characterized by a level wooded portion atop a bluff. The property drops down to farmland and the Willamette River floodplain below. All surrounding properties are also zoned Exclusive Farm Use (EFU), and the development pattern consists of medium- to large-scale farms with some homesites mixed in.
3. The property has existed as **one legal parcel** since before September 1, 1977, but was not described on its own until later. In 1922, a rectangular portion which overlaps with the current parcel's perimeter was deeded to Gerald Connor, as recorded in Volume 171, Page 27 of the Deed Records of Marion County. In 1925, the other portion of the current parcel was deeded to Gerald Connor as recorded in Volume 194, Page 340 of the Deed Records of Marion County. Eventually, a different flag lot was created from these parcels by deed in 1968 found in Volume 651, Page 601 of the Deed Records of Marion County. The resulting remnant was then subject to land use case Lot Line Adjustment 84-013 (along with other parcels), which adjusted the lines of multiple parcels. Therefore, the parcel can be considered a legal parcel for land use purposes per the definition in Marion County Code 17.110.427.
4. Soil Survey of Marion County Oregon indicates that approximately 61.5% of the subject property soils are high value.
5. The applicant is proposing to replace a dwelling which was destroyed sometime in the early 1980's per the applicant. The applicant has stated in their written statement and in conversations that the dwelling was constructed sometime around the 1940's. The property has been in the family for multiple generations and the dwelling was used by a great-uncle of the current owner/applicant.

6. Marion County Building Division commented: No Building Inspection issues and/or concerns. Permits are required to be obtained prior to any proposed development and/or utilities on private property.
7. Marion County LDEP Division commented:

ENGINEERING REQUIREMENTS

- D. At the time of application for building permits, an access review will be conducted. As part of that review process evidence of legal access (access easement) from Riverside Drive to the subject property will be required.
 - E. At the time of application for building permits Transportation & System Development & Parks Charges (SDCs) will be assessed.
 - F. Utility service extensions in the public right-of-way require permits from MCPW Engineering.
8. Marion County Septic Team commented: An authorization notice approval is required for reconnection of a dwelling to an existing system per OAR 340-071-0205. It is unclear if the septic system shown on the site plan is existing or proposed, however, OAR 340-071-0220(1)(h) prohibits vehicle traffic over a septic system, it appears the system on the site plan is located within the driveway access to the dwelling. If the applicant proposes to replace the septic system, a major alteration or site evaluation and construction/installation permit is required.
 9. Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies failed to comment.
 10. The replacement dwelling criteria for the EFU zone are listed in Section 17.136.030(D) of the Marion County Code (MCC). That section, however, is not fully updated to reflect the latest changes in ORS 215.291. The 2019 Legislature, through House Bill 3024, amended the criteria and the County must apply those criteria directly until the Marion County Zoning Code can be amended. The criteria from ORS 215.291 are used below:

(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 evidence provided regarding the existence of a dwelling on the property are as follows:

Aerial photos from 1976 and 1983 are unclear but seem to indicate that some sort of structure existed on the property. There were clearly two driveway accesses for the back half of the property where the structure was apparently located.

An oblique aerial photo provided by the applicant from approximately the late 1960's is also unclear, but it seems there was a structure located amongst the trees on the property. This suggests that the home did at one point have intact exterior walls and a roof structure.

Tax records for the property unfortunately did not provide additional information, as records old enough no longer exist.

In order to show that the dwelling met the criteria listed above, the applicant submitted photos of the ruins or remnants of the structure. A site visit was also performed to try to confirm that these items came from the subject parcel.

The first two photos show demolished concrete chunks/blocks which served as a foundation according to the applicant. Staff visited the property and found that these elements are scattered across the area on the property as indicated by the applicant. The ground in the area has been clearly disturbed and feels hard, indicating some work has happened and the possibility that a structure existed before. The applicant verbally confirmed that the area was graded/flattened after the destruction of the home. This suggests that the home did at one point have intact exterior walls.

The third photo is of the old well that served the dwelling. The well exists now on the neighboring parcel (under common ownership), but at the time the dwelling existed, it was all one parcel.

The fourth photo is of an old metal water line that served the dwelling. This suggests that the home had indoor plumbing.

The fifth and sixth photos are of an old septic pipeline that served the dwelling. This also suggests that the home had indoor plumbing.

The adjacent parcel (20733 Riverside Dr NE) was originally a part of the subject parcel for this application. That parcel was separated off from the subject parcel by deed in 1968. When reviewing the permit records for that parcel, there are notes indicating that an existing well and existing septic system were already in place. Because these two parcels were previously combined, these notes further support the idea that some sort of dwelling existed prior to the placement of the mobile home on 20733 Riverside Dr NE.

A home built in the 1940's would have likely relied on heating from sources that are no longer common in residential use, such as a wood fireplace, coal, or oil. Most homes in that decade had electricity as well per data found with a U.S. Census Bureau publication *Historical Statistics of the United States, Colonial Times to 1970*.

Permits were not required for structures in the 1940's, so records for the dwelling itself do not exist. However, altogether, these pieces of evidence support the conclusion that there was a legitimate dwelling on the property that met the definition of a dwelling per this code section. Given that the dwelling existed prior to implementation of Marion County's comprehensive plan, the dwelling was therefore legally established.

(b) If the dwelling was removed, destroyed, or demolished:

(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;*

The property's tax lot does not have a lien for delinquent ad valorem taxes based on the Assessor data available.

Based on the information provided by the applicant, demolition of the dwelling occurred after January 1, 1973. The dwelling existed up until the early 1980's.

(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 subparagraph (A) or (B) of this paragraph was assessed as a dwelling for 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 dwelling is no longer on the property; therefore, this section 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 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 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 no longer exists on the property and will comply with these criteria as a condition of approval. The entire subject parcel is located within an EFU zone.

(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 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 replacement dwelling will comply with these criteria as a condition of approval.

(4) *The county planning director, or the director's designee, shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under subsection (2) of this section, including a copy of the deed restrictions filed under subsection (2)(c) of this section.*

This section does not apply because the subject parcel can qualify for the siting of a new dwelling under subsection (2).

(5) *If an applicant is granted a deferred replacement permit under this section: ...*

This section does not apply because the applicant is not requesting a deferred replacement permit.

11. Based on the above findings, it has been determined that the existing residence was legally established and can be replaced.

Brandon Reich
Planning Director/Zoning Administrator

Date: April 14, 2023

If you have any questions regarding this decision contact Daniel Jansen 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.