

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. 23-004**

APPLICATION: Application of Ivan and Sophia Schurter for an administrative review to replace a dwelling on a 28.76-acre parcel in an EFU (Exclusive Farm Use) zone located at 10023 Selah Springs Road NE, Silverton (T7S; R1W; Section 7; Tax Lot 200).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Administrative Review, subject to certain conditions.

EXPIRATION DATE: This decision is valid only when exercised by **April 29, 2027** (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 applicant 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. The applicants shall sign and submit a Declaratory Statement (Replacement Residence Requirements) acknowledging that the new residence is a replacement dwelling and agreeing that the existing structure, if not removed, will not be used for residential purposes (enclosed).

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect 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 restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding # below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. 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.
5. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 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 **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 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).
2. The subject property is located on the north side of Selah Springs Rd NE, 800 feet east of the intersection of Desert Rd NE and Selah Springs Rd NE. The property contains a dwelling built in 1946 and three accessory structures related to farm use. The property is currently in farm production growing grass seed. The property was the subject of PLA14-009 which created its present configuration. The parcel is legal for land use purposes.
3. Surrounding uses are farm uses in all directions. All lands are zoned EFU and most are planted with grass seed or row crops. The area is generally flat with gentle slopes and the pudding river flows to the southeast.
4. The applicants are proposing to replace an existing dwelling at a later date.
5. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING REQUIREMENTS

- A. *At the time of application for building permits a formal Access Review will be conducted. Driveways are required to meet PW Engineering design and construction standards. It was noted during a preliminary inspection that the east driveway gravel apron presumed to serve the replacement dwelling is rutted with potholes that hold standing water, and will need to be leveled-out with crushed rock. This is maintenance-level work that could be done without a permit if completed prior to application for building permits.*
- B. *At the time of application for building permits, Transportation & System Development & Parks Charges (SDCs) will be assessed. Credit may be given if the dwelling to be replaced had been occupied for some duration within 12 months preceding application date.*
- C. *Utility service extensions in the public right-of-way require permits from MCPW Engineering*

Silverton Fire District commented:

“Any future dwelling constructed at this location will need to comply with Oregon Fire Code regarding access and water supply.”

Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies either failed to comment or stated no objection to the proposal.

6. 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*

The dwelling still currently exists on the subject property and has the features described in section (a) above. This was confirmed on a site visit to the property on 3/28/2023 as well as a review of aerial photographs and building permits. The criterion 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 dwelling currently exists on the property and does not have delinquent or valorem taxes. It falls under section (B) above. The owners constitute the dwelling is an attractive nuisance and do not want to attract squatters to the property. 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.*

The applicants propose to remove the home after approval of this application to remove the attractive nuisance for the neighbors. The replacement dwelling will be sited on the same parcel and siting standards will be applied during the building permit process. There is no portion of the parcel not zoned EFU. 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.*

Based on the submitted site plan, the applicants wish to use the same site for the future home. The criterion are met.

7. Based on the above findings, it has been determined that the existing dwelling was legally established and may be altered, restored and/or replaced.

Brandon Reich
Planning Director/Zoning Administrator

Date: April 14, 2023

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.