

**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. 23-021**

**APPLICATION:** Application of Jory Creek Acres LLC for an administrative review to replace a dwelling on a 5.85-acre portion of tract in an SA (Special Agriculture) zone located at 1421 Jory Hill Road S, Salem (T8S; R3W; Section 21B; Tax Lot 500 and an easterly portion of 100).

**DECISION:** *PLEASE READ ALL CONDITIONS BELOW.* 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 **September 28, 2027** (four years), 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. Prior to issuance of any building permit for a new dwelling, the applicants 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. (Declaratory Statement enclosed).
3. The dwelling location shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval 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. 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 Salem Suburban 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 **September 28, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 29, 2023**, unless appealed.

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

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan and zoned SA (Special Agriculture). The primary intent of both this designation and zone is to promote and protect farm operations or areas with a mixture of good and poor farm soils.
2. The subject property is located directly northwest of the intersection of Jory Hill Rd S and Liberty Rd S. The existing tax lot lines do not match the legal lots. What is current day tax lot 500 is part of a larger parcel. Tax lot 500 was created when a section was sold off via Vol. 180 Page 414 on March 25, 1925, however, it was later reabsorbed into the parent parcel (prior to Marion County Zoning adoption, effective September 1, 1977).

The parent parcel, tax lot 100, represents two separate legal lots. One legal lot is roughly the westerly 51-52 acres, while the other legal lot is both the easterly 63-64 acres (approximately) of tax lot 100 and tax lot 500. The dividing line for the two legal lots according to deed references is the north-south line which divides the NW Quarter of Section 21, Township 8 South, Range 3 West into halves (an eastern half and a western half). This line coincides with the historical line seen on the Tax Assessor's Plot Map and runs as a northerly extension of the easterly definition of the jog along the Jory Hill Rd S frontage (roughly 115.5 feet in width).

*For the purposes of this case, the subject property means: the easterly 63-64 acres (approximately) of tax lot 100 and all of tax lot 500 together as one parcel.*

The subject property is currently bare land but has had a recent land use case, Administrative Review 22-027, which found one prior legal dwelling (now demolished) and approved it being rebuilt. The approval of this case, AR23-021, grants a second legal dwelling on the subject property. The westerly legal lot currently included as part of tax lot 100 is not granted a dwelling via this decision. The configuration of the legal lot has not changed since Reel 39 Page 1236 (recorded on March 18, 1976). Therefore, per the definitions in Marion County Code 17.110.427 and 17.110.680, this parcel is legal for land use purposes.

3. Surrounding properties in all directions except for southeast are also zoned SA. Parcels to the south (across Jory Hill Rd S) consist of small acreage homesites. Properties to the north and east are large tracts of land, with the east property being farmed. Properties to the southeast of the subject property are zoned AR (Acreage Residential) and are mostly developed with homesites.
4. Soil Survey of Marion County Oregon indicates that 100% of the subject property soils are high value.
5. The applicant is proposing to replace a demolished dwelling on the subject property.
6. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Building Inspection commented: "No Building Inspection concerns. Permits are required to be obtained prior to development and/or utilities installation on private property."

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

7. The replacement dwelling criteria are listed in Section 17.136.030(E) of the Marion County Code (MCC):

1. *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;*

d. *A heating system; and*

As stated in Finding #2, research into the subject property found a deed, Vol. 180 Page 414, recorded on March 25, 1925, for what is current day tax lot 500, approximately 5.85 acres. The property was sold by Olevia Blanche Jory Miles to Jessie A. Miles. In this time frame it would be common for a relative to sell off a homesite sized portion of their land to sell to a relative, and for said relative to build a home on the smaller piece.

A Marion County Survey of Record 14128, which is dated September 9, 1965, notes a home in the same location as 1955 and 1967 aerial photographs depict a building (photographs provided by the applicant). The building has the outline and appearance of a dwelling and is confirmed in a Marion County aerial photograph taken on May 15, 1976 (Flight 4, Tile 11). Flight 4 Tile 11 also clearly shows the dwelling deemed legal and rebuildable in land use case AR 22-027 as a separate building in a very different location, making for two potential dwellings on the eastern legal lot.

A search of permits found an address card for 1421 Jory Hill Rd S which lists a September 22, 1969, permit for Mrs. Guy Williams to have a contractor by the name of Lyle's Furnace do work. A second address card for 6331 Liberty Rd S (the dwelling approved in AR22-027) lists a December 23, 1968, permit for Jessie Williams to have a contractor by the name of Lyle's Furnace do work.

These two separate address cards and permits show that there were two separate buildings, with separate situs addresses, with furnaces as a heat source on the subject property in the late 60s. It was not common in that era for accessory structures to have a furnace, and by extension of having a furnace these two buildings would have needed electrical services, as having a furnace of any kind requires electricity.

A contract sale recorded March 18, 1976, in Reel 39 Pages 1236-1244 note on Page 1241 that:

"It is agreed that the closing of this transaction shall be on or before November 15, 1969, and the parties of the second part shall be entitled to the immediate possession of the premises subject, however, to the right of the party of the first part to remain in the residence upon the premises now occupied by her for a period of three (3) months without obligation to pay rent on account thereof, provided, however, that she shall pay all of the utility bills accruing during the period of her occupancy and shall save the parties of the second part harmless on account thereof."

This contract sale was between grantor Jessie Miles Williams (first part) and grantees Robert and Jane Yancey (second part). It explicitly calls out that Jessie may continue to live in the residence *which she occupied*. The argument can be made that if there was only one dwelling on the property at the time of the sale it would not be necessary to clarify which dwelling, she may continue to live in.

This contract sale is also within one year of the 1968 furnace permit for 6331 Liberty Rd S and within two months of the 1969 furnace permit for 1421 Jory Hill Rd S. As this contract sale had a consolidated legal description (in that current day tax lot 500 was also included) it would make sense to have to clarify which dwelling she was granted three months use of.

This contract also mentions Ms. Miles Williams being responsible for the utility payments. Electricity and heat have been evidenced, and Assessor records on current day tax lot 500 note the presence of On Site Development which, among other things, includes well and septic.

Therefore, based on the balance of the above evidence, it is found to meet the criterion.

2. *In addition to the provisions of subsection (E)(1) of this section, the dwelling to be replaced meets one of the following conditions:*

- 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.*
- 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 subsection (E)(2)(a) or (b) of this section was assessed as a dwelling for the 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.*

Ad valorem taxes are paid current for both tax lot 100 and 500 and, as mentioned in Finding #7(1), the home was still present as of Marion County's 1976 aerial imagery. Therefore criterion 2(a) is met.

3. *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 permitting authority, 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 permitting authority that is not less than 90 days after the replacement permit is issued; and*
- c. *If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location;*

The dwelling is no longer present on the property; therefore, the criteria does not apply.

4. *The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted;*

The dwelling has already been demolished; therefore, the criteria does not apply.

5. *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 2013 Oregon Laws, Chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling;*

The entirety of the parcel is located within a resource zone. Therefore, this criteria does not apply.

6. *A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling;*

This shall be made a condition of approval. The criteria is met.

7. *The replacement dwelling must be sited on the same lot or parcel consistent with the following:*

- 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 applicant's site plan depicts a proposed location for the home and septic/drainfield. The proposed location is within approximately 60 feet of Jory Hill Rd S, 554 feet of 1691 Jory Hill Rd S, 243 feet from 1258 Jory Hill Rd S, 215 feet from 1378 Jory Hill Rd S, and approximately 509 feet from 6553 Jory Hill Rd S, and is located on the same parcel as the prior dwelling. Therefore, the proposed homesite is situated near a road (which is also the southerly property line of the subject parcel) and is within 500 yards of a concentration of structures. Thus, 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/forest practices are conducted in the area and may have an adverse impact on a residence.
9. Based on the above discussion, it has been determined that the existing dwelling was legally established and may be altered, restored and/or replaced.
10. 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: September 13, 2023

If you have any questions regarding this decision contact Nicole Inman 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.