

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. 23-034**

APPLICATION: Application of Jason and Zorka Saleeby RLT for an administrative review to replace an existing dwelling on a 7.27-acre parcel in a TC (Timber Conservation) zone located at 20878 Hazelnut Ridge Road NE, Scotts Mills (T6S; R3E; Section 25; Tax lot 1200).

DECISION: The Planning Director for Marion County has determined that the dwelling was **lawfully established** and therefore can be altered, restored or replaced.

EXPIRATION DATE: This decision is valid only when exercised by **November 18, 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 building permits for the replacement dwelling, the applicants shall sign and submit a combination Farm/Forest and Replacement Residence 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. Pursuant to Marion County Code (MCC) 17.138.020(E)(2), the existing dwelling shall be removed, demolished or converted within 90 days of occupancy of the new residence.

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 the Findings and Conclusions section, #6, 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.

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 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 **November 20, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 21, 2023**, unless appealed.

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

1. The subject property is designated Forest in the Marion County Comprehensive Plan and is correspondingly zoned TC (Timber Conservation). The primary intent of both this designation and zone is to conserve forest lands by maintaining the forest land base and to protect the forest economy.
2. The subject property is located south of Hazelnut Ridge Rd NE, approximately 1.15 miles east of the intersection of Crooked Finger Rd NE and Hazelnut Ridge Rd NE. The property has one legal dwelling built in 1930 and several accessory/farm structures. The parcel is located within the Big Game Overlay.
3. The subject property has existed in its current configuration since at least February 8, 1971, when a contract sale was recorded in Vol. 697 Page 700. It was also subject to an approved land use case, Conditional Use 90-105, and is therefore considered legal for planning purposes.
4. Surrounding properties are small to large sized parcels zoned TC, with the smaller parcels being developed with homesites and the larger parcels being in timber production.
5. Soil Survey of Marion County, Oregon indicates that approximately 70.9% of the subject property's soils are classified as high value.
6. The applicant is proposing to replace their 1930 home and is requesting an allowance for a new homesite location due to septic and well replacement. The applicants will also be living in their current home while the new one is built, precluding the use of the existing homesite.
7. 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 contacted agencies either failed to comment or stated no objection/comment to the proposal.

8. The TC zone allows for the replacement of a dwelling per MCC 17.138.020(E):

Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.138.060(B), when the dwelling:

A recorded Farm/Forest declaratory statement, as specified in MCC 17.138.060(B), shall be made a condition of approval. The criterion is met.

(1) Is assessed in the current county assessor's records as a site-built dwelling or manufactured home.

The dwelling, a stick built 1930 home of 1,314 square feet, is currently being assessed by the Assessor's Office. The criterion is met.

(2) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

- a. *With in 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 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 applicant is undecided at this time which option they prefer and per applicant statement leaves the decision to staff. There are no known condemnation or safety issues with the dwelling. Staff conditions the approval that the applicant shall comply with MCC 17.138.020(E)(2) within the appropriate time frame for the subsection (a, b, or c) that they choose. The criteria is met.

- (3) *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 to a nonresidential use.*

The applicant will be residing in the existing dwelling while the new one is being built. A Replacement Dwelling declaratory statement shall be made a condition of approval. The criterion is met.

- (4) *In the case of replacement, the replacement dwelling shall be situated in the same location as the existing dwelling as possible.*

The applicants are proposing to live in the current dwelling while the new home is being built. Per the applicant statement there is also a need for a new septic system and a desire to change their water source from a spring to a drilled well. The proposed site for the replacement dwelling is approximately 200 feet south of the existing dwelling. This proposed site will continue to allow for 200-foot setbacks from all property lines, thereby maintaining a buffer from the neighboring parcels in timber production. Staff finds the requested location for the replacement dwelling acceptable due to hardship of the current homesite and the need to have a new homesite since they will be living in the existing dwelling while the replacement is built. The criterion is met.

- (5) *Re placement under this section includes a dwelling replaced pursuant to MCC 17.138.070(C) when a fire report is provided at the time building permits are applied for.*

The proposed replacement is not due to a fire. The criterion does not apply.

- 9. Based on the above findings, it has been determined that the dwelling was **lawfully established** and can therefore be altered, restored or replaced in the proposed location.

Brandon Reich
Planning Director/Zoning Administrator

Date: November 3, 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.