

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. 20-013

APPLICATION: Application of Sidney and Angela Wurdinger for an administrative review to place a dwelling, using the template test, on a 0.59 acre parcel in a FT (Farm Timber) zone located in the 3600 block of Briar Knob Loop NE, Silverton. (T7S; R1E; Section 02; tax lot 1600).

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 **May 13, 2024** (four years) unless an extension is granted. The effective period may be extended up to five times for two years each, subject to approval of an extension (form available from the Planning Division). Request for an extension must be submitted to the Planning Division prior to expiration of the approval.

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 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 required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permits, the applicants shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division (enclosed). 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. The proposed dwelling shall be located substantially as indicated on the site plan submitted with the application. Minor variations may be allowed upon review and approval by the Planning Director.
4. The owners shall maintain a fire hazard reduction plan as recommended by the Oregon Department of Forestry.
5. The proposed dwelling shall meet the fire protection and hazard reductions as listed in MCC 17.139.070.
6. The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).

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 any restrictions or conditions. The applicant is advised of the following:

7. The applicant 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, 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 to 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 13, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 14, 2020** 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). The purpose of the Farm/Timber zone is to maintain properties for farm and timber use. Dwellings may be approved subject to the criteria in the zone.
2. The subject property is located approximately 600 feet south east of the intersection of Briar Knob Loop NE and Abiqua Rd NE, on the northern side of Briar Knob Loop NE. The property is undeveloped is shown on County zoning maps at least as far back as prior to 1977 and is, therefore, considered a legal parcel for land use purposes.
3. Properties on all sides are zoned FT (Farm/Timber) and are either in farm use or devoted to timber production.
4.

<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
Hullt Clay Loam	.59	171	100.89
5. The applicant is proposing to place a dwelling on the property using the template test.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING REQUIREMENTS

A. Driveways must meet PW Engineering design standards. The following numbered sub-requirements are access-related:

- 1) At the time of application for building permits an Access Permit will be required.
- 2) The existing driveway culvert will need to be replaced with approved material.

B. Transportation System Development and Parks charges will be assessed at the time of building permit application.

C. PW Engineering utility permitting is required to bring electrical power and any other desired dry utilities into the site from point of interconnection within the public right-of-way

Marion County Building Inspection commented that a building permit would be required for new construction or placement of a manufactured home.

Marion County Septic Inspection commented that a site evaluation will be required.

Silverton Fire District commented: The proposed dwelling shall comply with provisions of Oregon Fire Code regarding access and water supply and fire safety standards as acknowledged in the applicant statement. Regarding (g) Road and Drainage Standards section (2) Oregon Fire Code D103.2 Grade, states, Fire apparatus access roads shall not exceed 10 percent in grade. When fire sprinklers are installed, a maximum grade of 15% may be allowed.

All contacted agencies either failed to comment or stated no objection to the proposal.

7. In order to place a dwelling in the FT zone it must first be determined whether predominate use of the property on January 1, 1993 was for forest land or farm land. In this instance, aerial photographs and Assessor records indicate predominate use of the property was forest land.

According to Chapter 17.139.030(B) of the Marion County Code (MCC) a single family dwelling subject to the special use and siting requirements in MCC 17.139.070 may be allowed provided:

(a) The tract on which the dwelling will be sited does not include a dwelling. "Tract" means all contiguous lands in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

The subject property is currently owned by Sidney and Angela Wurdinger, there are no contiguous parcels in the same ownership, the standard is met.

(b) No dwellings are allowed on other lots or parcels that make up the tract, and the other lots or parcels in the tract cannot be used to justify another forest dwelling. Evidence must be provided that covenants, conditions and restrictions have been recorded with the county clerk of the county or counties where the property is located for any other lot or parcel within the subject tract.

There are no other parcels in the tract, this standard is met.

(c) The lot or parcel is:

- (1) Predominantly composed of soils that are capable of producing zero to 49 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least three other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; or*
- (2) Predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least seven other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; or*
- (3) Predominantly composed of soils that are capable of producing more than 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least eleven other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; and*
- (4) If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and
If a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160-acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160-acre rectangle; or*
- (5) If the tract abuts a road that existed on January 1, 1993 and subsection (D) of this section does not apply, the measurements may be made using a 160-acre rectangle that is one mile long and*

one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road.

- (6) *Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection.*

The property is composed soils capable of producing more than 85 cu. ft/ac of wood fiber per year. Therefore, staff used the most restrictive template standard as listed in (C)(3) above and reviewed the proposal under those template provisions. Under these standards, there must be at least 11 other lots and three dwellings existing within the study area on January 1, 1993. The report found that there were 14 other lots with at least 10 dwellings within the 160 acre square. The standard is met.

- (d) *The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.836.*

MCC 17.110.830 through 17.110.836 provide protection for specific resources in the County. The parcel is not limited groundwater area or identified floodplain. Portions of the property are in an excessive slope or geologic hazard area, however, these are areas of low risk which do not require a geological assessment. There are no mineral and aggregate resources, scenic and natural areas, historic sites and structures, that will be adversely affected by the placement of a dwelling on the subject parcel as shown in the site plan. A residence would not create significant noise impacts. Any county requirements for storm water runoff will be applied during the building permit process. The applicant's proposal complies with this criterion.

- (e) *The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.*

The dwelling is located in a peripheral big game habitat area and has a standard of one dwelling per 40 acres. Turnstone Environmental provided an analysis of the density within a centered, 640 acre study area around the property, described as the "safe harbor" method, as no density calculating method is outlined in Marion County's Comprehensive Plan. The analysis revealed that there were 15 dwellings located in the 640 acre study area, and this addition of one dwelling would equal 16, bringing the density to one dwelling/40 acre. The standard is met.

8. The special standards in MCC 17.139.070 include:

- (a) *Special Siting Requirements:*

(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) satisfies the criteria in (a)(3) of this section. Alternative sites that meet the criteria in subsection (3) of this section and may be approved as provided in MCC 17.110.680.*

- (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 to 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 to 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 forestlands used to site access roads, service corridors, the dwelling and structures is minimized.*
- D. *The risks associated with wildfire are minimized.*

As the property is only approximately 75 feet wide at its widest point, the alternative siting criteria will be used. The applicant is proposing to place his home in the widest part of the property, minimizing its conflicts with adjacent properties. The dwelling will access directly off of Briar Knob Loop NE and use the least amount of driveway necessary. By complying with the Silverton Fire Districts provisions, the applicants will minimize their wild fire risk. The siting standards are met.

- (b) *Declaratory Statement. The owner of property for which a dwelling, structure or other specified use has been approved shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the subject lots or parcels:
 "The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and I/We acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices I/We will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937."*

Requiring a declaratory statement to be recorded will be made a condition of approval.

- (c) *Domestic Water Supply.*
 - (1) *The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).*
 - (2) *Evidence of a domestic water supply means verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or a water use permit issued by the Water Resources Department for the use described in the application; or verification from the Water Resources Department that a water use permit is not required for the use.*
 - (3) *If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report upon completion of the well.*

Evidence of a domestic water supply can be made a condition of approval

- (d) *Road Access. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the U.S. Forest Service, the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.*

The property will have direct access to Briar Knob Loop NE.

- (e) *Tree Planting Requirements for Lots or Parcels over 10 Acres:*
 - (1) *Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in MCC 17.139.030(A), (B) or (C), on a tract of more than 10 acres in size, the landowner shall plant a*

sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.

(2) At the time required by the Department of Forestry rules the owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met.

The parcel is less than 10 acres, therefore this criteria does not apply.

(f) Fire Protection.

(1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.

(2) If inclusion within a fire protection district or contracting for residential fire protection is impracticable, an alternative means for protecting the dwelling from fire hazards may be approved, pursuant to the procedures set forth in MCC 17.110.680, subject to the requirements of subsection (F)(3) of this section.

(3) Alternative means of fire protection may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions. The following requirements apply:

A. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use.

B. Road access to the water supply required in subsection (F)(3)(A) of this section shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posed along the access route to indicate the location of the emergency water source.

Fire protection is provided by the Silverton Fire District, the applicant shall meet the District's access standards. Other provisions listed above should not apply unless required by the Fire District.

(g) Fire Hazard Reduction.

(1) The owners of a dwelling, or structure occupying more than 200 square feet, shall maintain a primary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provision in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.

(2) The dwelling shall have a fire retardant roof.

(3) The dwelling shall not be sited on a slope of greater than 40 percent.

(4) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

Compliance with the fire hazard reduction standards listed above shall be a condition of approval.

(h) Road and Drainage Standards.

(1) Public road access to structures of more than 200 square feet in area or a dwelling shall comply with Section 4 of the Marion County Department of Public Works Engineering Standards adopted by the board of county commissioners April 11, 1990.

(2) Except for private roads and bridges accessing only commercial forest uses, private road or driveway access to structures of more than 200 square feet in area or a dwelling shall meet the requirements of the local fire protection district or forest protection district, except that the county maximum

grade standard for a private road is 15 percent. A greater grade may be approved by the fire district or, if the site is not in a fire district, by the State Department of Forestry.
(3) Drainage standards for private roadways shall be those in Section 5 of the Public Works Engineering standards except that corrugated metal culverts of equivalent size and strength may be used.

Owner will be required to obtain a driveway access permit from LDEP, this criterion is met.

9. Based on the above findings, it has been determined that subject to conditions the proposed dwelling request will comply with the standards for placement of a forest template dwelling in the FT zone and is **APPROVED**, subject to conditions

Joe Fennimore
Planning Director

Date: April 29, 2020

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.