



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Approved with Conditions

Permit Type: Replacement Dwelling

File No. Z0048-24

Applicant's Proposal: Applicant propose to transport an existing historic dwelling located on tax lot 500 to adjacent tax lot 404.

Decision Date: April 15, 2024

Deadline for Filing Appeal: April 29, 2024, at 4:00 pm.

Issued By: Roman Sierra, Planner I, RSierra@clackamas.us, 503-742-4516

Applicant: Preston Roth

Owner of Property: Preston D Roth Trust

Zoning: Exclusive Farm Use District (EFU)

Assessor's Map & Tax Lot(s): 33E04 00500, 00404, 33E05 00100, 00190

Site Address: 18077 S Strowbridge Rd

Location Map



Community Planning Organization (CPO) for Area:

REDLAND-VIOLA-FISCHER'S Lance Ward 503-631-2550 lancecward@aol.com

Community Planning Organizations (CPOs) are part of the county's community involvement program. They are advisory to the Board of County Commissioners, Planning Commission and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact Clackamas County Community Engagement at 503-655-8751.

Opportunity to Review the Record and Decision: The complete decision, including findings and conditions of approval, and the submitted application are available for review online at <https://accela.clackamas.us/citizenaccess/>. Select the **Planning** tab and enter the file number to search. Select **Record Info** and then select **Attachments** from the dropdown list, where you will find the submitted application. A copy of the decision, application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost by contacting the Planner listed above. Copies of all documents may be purchased at a cost established by the County fee schedule.

Appeal Rights: **This decision will not become final or effective until the period for filing an appeal with the County has expired without the filing of an appeal.** Any person who is adversely affected or aggrieved or who is entitled to written notice of the decision pursuant to Subsection 1307.09(C) of the Clackamas County Zoning and Development Ordinance may appeal this decision to the Clackamas County Land Use Hearings Officer by filing a written appeal. An appeal must include a completed Appeal Form available at www.clackamas.us/planning/supplemental.html and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified above.

Appeals may be submitted in person during office hours (8:00 am to 4:00 pm Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

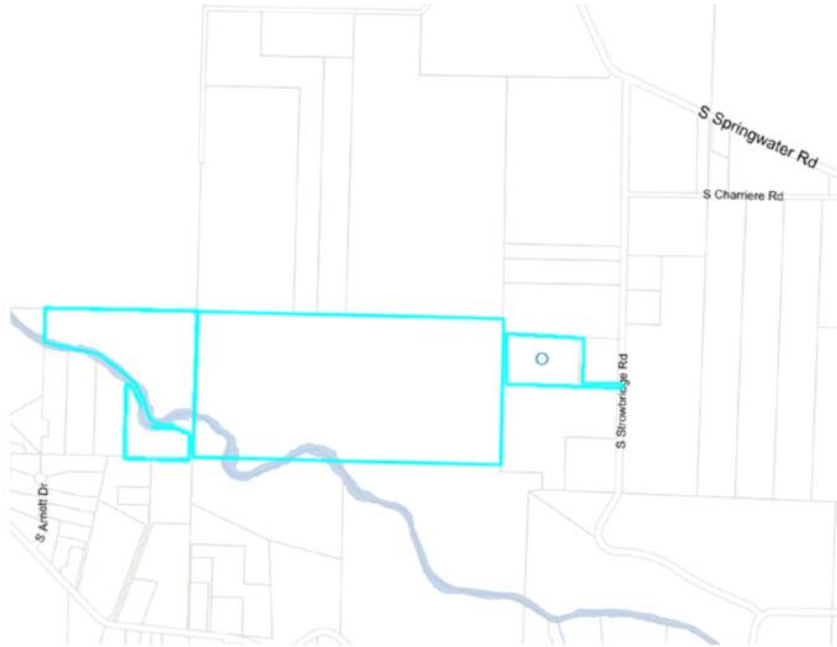
A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

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.

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

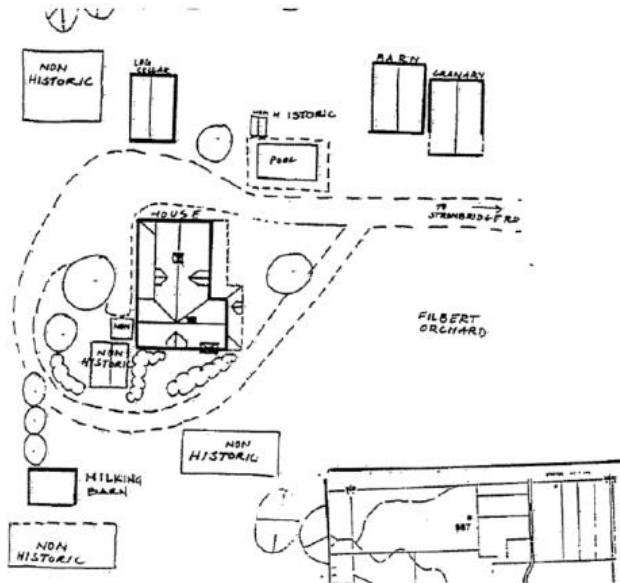
503-742-4545: ¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cán Biên dịch hoặc Phiên dịch? | 번역 또는 통?

Location Map

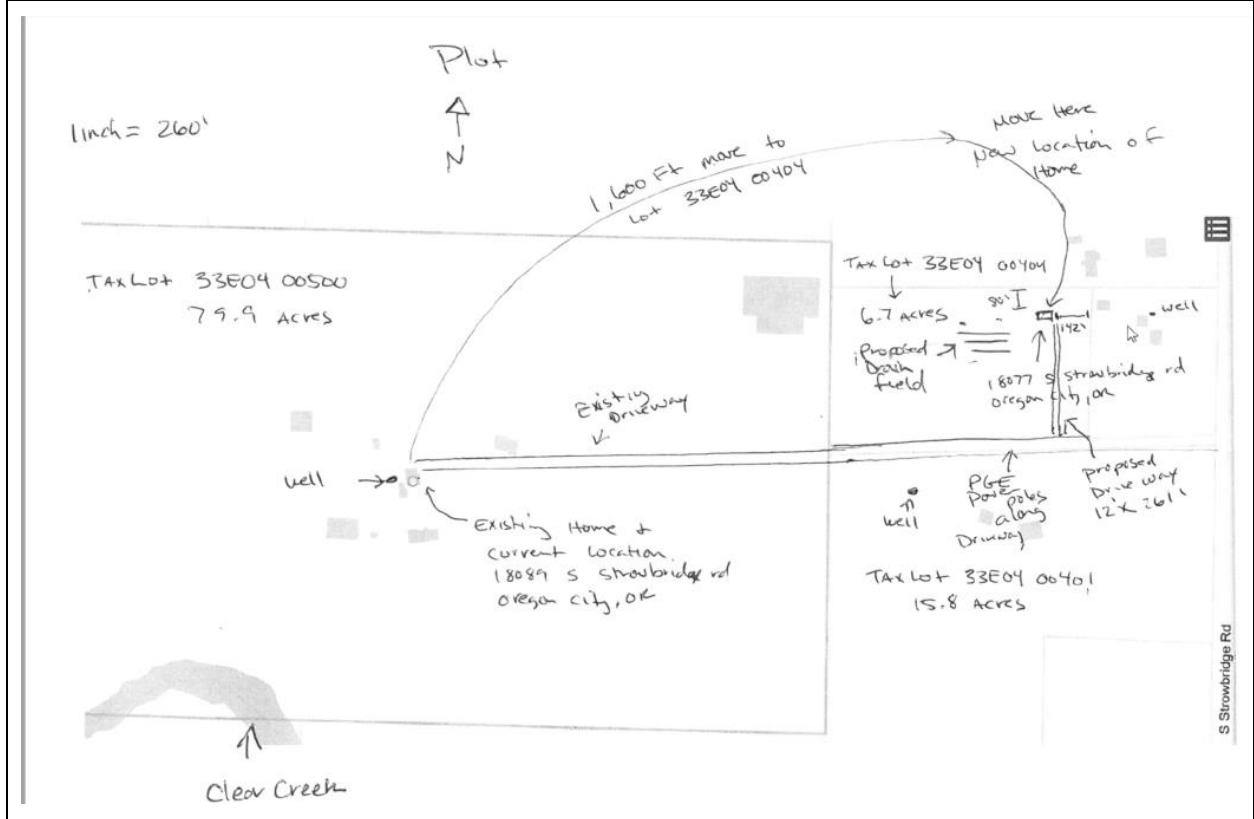


The four tax lots that are combined as a legal lot of record are outlined in blue in the a map above.

From Historic Landmark Designation file:



Site Plan



PERMIT EXPIRATION

This approval is valid for four years from the date of the final written decision. Unless an appeal is filed, the date of the final written decision is the “decision date” listed above.

Prior to expiration of this approval, the applicant may be able to apply for a two-year time extension, approval of which would be subject to compliance with the regulations in effect at that time.

This is the only notice you will receive of this deadline

CONDITIONS OF APPROVAL

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on 2/14/2024. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. **Prior to Planning and Zoning approval of an onsite wastewater treatment, building, or manufactured dwelling placement permit for the dwelling authorized by this land use permit,** the landowner for the dwelling shall sign and record in the deed records for Clackamas County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. A sample of the required document may be obtained from Planning and Zoning. **A copy of the recorded document shall be submitted to Planning and Zoning.** (ZDO 401.05.A.3)
3. The dwelling to be replaced shall be removed, demolished or converted to an allowable nonresidential use within three months after the date the replacement dwelling is certified for occupancy by the County Building Codes program pursuant to ORS 455.055, or in the case of a manufactured home, within three months after the date of final inspection by Building Codes. (ORS 215.291(2)(a))
4. The dwelling authorized by this land use permit shall comply with the construction provisions of section R327 of the Oregon Residential Specialty Code. (ORS 215.291(2)(b)(C))

5. Construction of the dwelling authorized by this permit shall commence no later than four years after the date of the final decision. Unless an appeal is filed, the date of the final decision is the “decision date” listed above. (ORS 215.291(6))
6. This application is also subject to the Conditions of Approval provided in the decision of land use application Z0575-22.

APPLICABLE APPROVAL CRITERIA

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 401, and 1307.

PUBLIC AND AGENCY COMMENTS

Notice was sent to applicable agencies and owners of property within 750 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section.

FINDINGS

The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

1. **Background/Overview of Applicant’s Proposal:** The applicant proposes to relocate the existing 1904 historic Victorian dwelling from tax lot 500 to tax lot 404. The dwelling has a historic overlay designation and the relocation was previously approved under land use file Z0575-22-HR.. The subject property known as tax lot (500) contains a second dwelling that was placed in close proximity of the historic dwelling in 1966. There are 5 accessory structures built between the 1900s through 2021 including 3 utility sheds. The subject lot of record contains four (4) tax lots known as map and tax lots 33E04 500, and 404 along with 33E05 00100, and 00190 combined are one lot of record created by Book 663 Page 552 in 1965 and tax lot 404 was created by Deed 81-39584 all under the ownership of Gillilan Farms. Previously approved land use review file Z0575-22 and 2007, 2017 and 2023 legal lot or record determinations suggest that all 4 tax lots combined is one legal lot of record.
2. **ZDO Section 401, Exclusive Farm Use District (EFU)**

Section 401 regulates the EFU zone, which includes the subject property. Table 401-1 identifies uses permitted in the EFU zone. This application is for replacement of a lawfully established dwelling. Table 401-1 identifies that use as permitted subject to Subsections 401.05(A)(3) and (C)(1).

401.05(A)(3): *The landowner for the dwelling shall sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under Oregon Revised Statutes (ORS) 30.936 or 30.937.*

Finding: *There is no evidence in the record that the required deed restriction has been recorded. A condition of approval requires the recording of the deed restriction. As conditioned, this criterion is met.*

401.05 (C)(1): *A lawfully established dwelling may be altered, restored or replaced if:*

This subsection goes on to identify various approval criteria; however, state law was amended effective January 2, 2024, and revised criteria now apply to replacement dwellings. Therefore, this decision makes findings against the new provisions in ORS 215.291 and 215.417.

401.07, Dimensional Standards

B. Minimum Front Setback: 30 feet.

C. Minimum Side Setback: 10 feet.

D. Minimum Rear Setback: 30 feet; however, accessory buildings shall have a minimum rear setback of 10 feet.

Finding: *As demonstrated by the applicant's submitted site plan, the proposed replacement dwelling complies with the minimum setback standards of the EFU Zoning District. This criterion is met.*

4. ORS 215.291 Alteration, restoration or replacement of lawfully established dwelling; conditions; siting; deferral.

(1) A lawfully established dwelling may be altered, restored or replaced under ORS 215.213 (1)(q), 215.283 (1)(p) or 215.755 (1) if the county determines that the dwelling to be altered, restored or replaced:

(a) 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

Finding: The dwelling to be relocated from tax lot 500 and to 404 was constructed on the subject property in 1904, as demonstrated by County Department of Assessment and Taxation appraisal records. The County historic maps demonstrates that the subject property was first zoned RA1-5 on 6/9/1970. Therefore, the dwelling to be relocated was lawfully established.

County Tax Assessor Appraisal records indicate that the dwelling currently has a kitchen with oven and range, bathroom facilities, heating and is served by electrical service. The dwelling to be replaced has intact exterior walls and roof structure, indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary system, interior wiring for lights and a heating system as confirmed by County Tax Assessor appraisal records and photographs submitted by the applicant in 2024, staff finds this criterion is met.

(b)(A) Unless the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of ad valorem taxation since the later of:

- (i) Five years before the date of the application; or
- (ii) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment; or

(B) If the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of ad valorem taxation prior to the destruction or demolition and since the later of:

- (i) Five years before the date of the destruction or demolition; or
- (ii) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment.

Finding: Finding: The dwelling to be relocated will continue to be located on the subject property, and as demonstrated by records of the County Department of Assessment and Taxation, its value has not been eliminated as a result of destruction or demolition. This criterion is not applicable

(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 within three months after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055.

Finding: The applicant has submitted a preservation plan to keep the integrity and the historic significance under land use file #Z0575-22-HR. A condition of approval requires compliance with this standard. As conditioned, this criterion is met.

(b) The replacement dwelling:

- (A) May be sited on any part of the same lot or parcel.

Finding: This provision is informational only and does not warrant a finding.

(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.

Finding: The applicable setback standards are discussed above. As explained in the findings, compliance will not prohibit the siting of the replacement dwelling.

This criterion is met.

(C) Must comply with the construction provisions of section R327 of the Oregon Residential Specialty Code, if:
(i) The dwelling is in an area identified as extreme or high wildfire risk on the statewide map of wildfire risk described in ORS 477.490; or
(ii) No statewide map of wildfire risk has been adopted.

Finding: No statewide map of wildfire risk has been adopted, however The Oregon statewide map demonstrates that the subject property is in a low wildfire risk. Therefore a condition of approval requires compliance with this standard. As conditioned, this criterion is met.

(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.

Finding: The subject property is entirely zoned EFU. This criterion is not applicable.

(3) 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.

Finding: This provision is advisory to the County and does not warrant a finding.

- (4) If an applicant is granted a deferred replacement permit under this section:
- (a) The deferred replacement permit:
 - (A) Does not expire but the permit becomes void unless the dwelling to be replaced is removed or demolished within three months after the deferred replacement permit is issued; and
 - (B) May not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.
 - (b) The 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.

Finding: The applicant has not requested a deferred replacement permit. These criteria are not applicable.

- (5) An application under this section must be filed within three years following the date that the dwelling last possessed all the features listed under subsection (1)(a) of this section.

Finding: As demonstrated by photographs submitted by the applicant, the dwelling to be replaced currently possesses all the features listed under ORS 215.291(1)(a). This criterion is met.

- (6) Construction of a replacement dwelling approved under this section must commence no later than four years after the approval of the application under this section becomes final.

Finding: A condition of approval requires compliance with this standard. As conditioned, this criterion is met.

6. ORS 215.417 Time to act under certain approved permits; extension.

- (1) If a permit is approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or under county legislation or regulation, the permit is valid for four years.
- (2) An extension of a permit described in subsection (1) of this section is valid for two years. A county may approve no more than five additional one-year extensions of a permit if:
- (a) The applicant makes a written request for the additional extension prior to the expiration of an extension;
 - (b) The applicable residential development statute has not been amended following the approval of the permit, except the amendments to ORS 215.750 by section 1, chapter 433, Oregon Laws 2019; and

- (c) *An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.*
- (3) *An extension of a permit under subsection (2) of this section is not a land use decision as defined in ORS 197.015.*
- (4) *As used in this section, “residential development” means dwellings provided for under ORS 215.213 (1)(q), (3) and (4), 215.283 (1)(p), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3).*

Finding: These provisions are advisory in nature, so no findings are warranted. In Clackamas County, replacement dwellings on agricultural or forest land are provided for under ORS 215.283(1)(p). Therefore, a replacement dwelling permit—unless deferred under ORS 215.291(4)—is valid for four years and may be extended for two years. The County has not adopted the optional five additional, one-year extensions.

ADVISORY NOTES

Advisory notes are not a part of the decision on this land use permit. The items listed below are not conditions of land use approval and are not subject to appeal. They are advisory and informational only but may represent requirements of other agencies/departments. As such, they may be required by these other agencies/departments in order to complete your proposed development.

1. The County Septic and Onsite Wastewater Program has reviewed the proposal and has provided the following advisory notes:
 - a. A Septic Authorization Notice is required to connect the existing or new system to the new dwelling. For details, contact them at soilsconcern@clackamas.us or (503) 742-4740.
2. All access improvements in, or adjacent, to Clackamas County right-of-way, and all on-site improvements, shall be in compliance with the Clackamas County Roadway Standards. Contact County Development Engineering at engineering@clackamas.us or 503-742-4691 for permitting requirements that may apply to your development.
3. Contact County Building Codes for details on permitting requirements for a new dwelling (building, manufactured dwelling placement, mechanical, electrical, plumbing) at bldservice@clackamas.us or 503-742-4240.