



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Approved with Conditions

Permit Type: EFU Replacement Dwelling

File No. Z0172-23

Proposal: The application is for a replacement dwelling in to remove the existing manufactured dwelling and replace it with a new dwelling in the same location.

Decision Date: July 18, 2023

Deadline for Filing Appeal: July 31, 2023, at 4:00 pm

Unless appealed, this decision is effective on July 18, 2023 at 4:00 pm.

Issued By : Aldo Rodriguez, Planner I, ARodriguez@clackamas.us

Assessor's Map & Tax Lot(s): T2S R3E Section 22 Tax Lot 02301

Site Address: 16018 S. Harding Rd

Applicant: Petr Zagaryuk

Owner of Property: Larisa Vitaly Zagaryuk

Zoning: EFU (Exclusive Farm Use)

Community Planning Organization (CPO) for Area:

REDLAND-VIOLA-FISCHER'S CPO

WARD LANCE 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: The submitted application is 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. The complete application file is available for inspection at no cost by contacting the Planner listed on the first page of this decision. Copies of all documents may be purchased at the rate of \$2.00 per page for 8 1/2" x 11" or 11" x 14" documents, \$2.50 per page for 11" x 17" documents, \$3.50 per page for 18" x 24" documents and \$0.75 per sq ft with a \$5.00 minimum for large format documents.

APPEAL RIGHTS: Any party disagreeing with this decision, or the conditions of approval, may appeal this decision to the Clackamas County Land Use Hearings Officer. An appeal must include a completed County Appeal Form and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified on the first page of this decision.

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

The County Appeal Form is available at www.clackamas.us/planning/supplemental.html .Any party or parties appealing this decision may withdraw their appeal at any time prior to the hearing or final decision by the Hearings Officer. A party wishing to maintain individual appeal rights may file an individual appeal and pay the \$250.00 fee, even if an appeal by another party or parties has been filed.

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.

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.

Staff received no comments.

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.

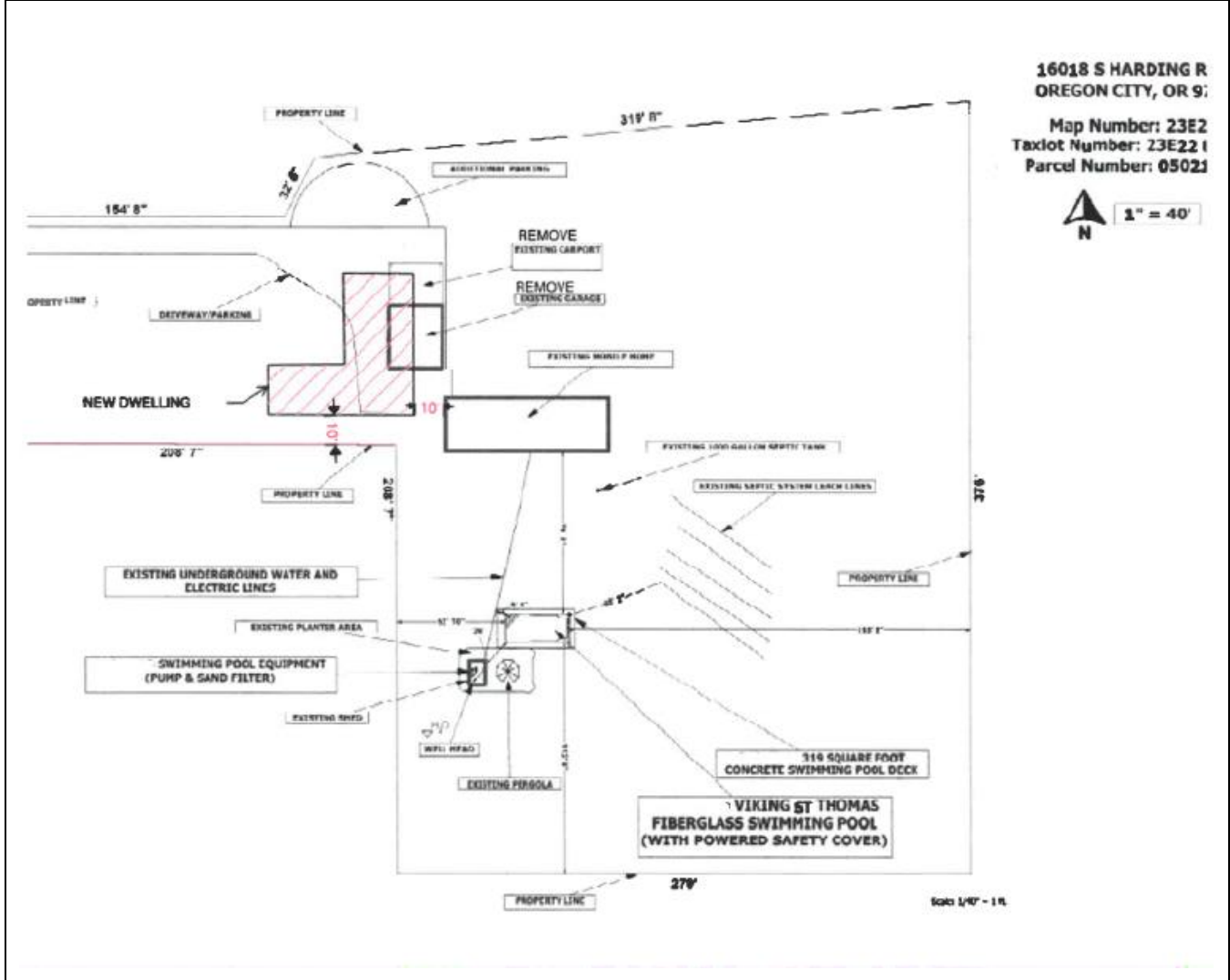
Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

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 통역?

Location Map



Site Plan



CONDITIONS OF APPROVAL

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on 4/20/2023 and additional documents submitted on 5/19/2023. 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 issuance of a building permit the applicant/property owner shall complete the following:**
 - a. 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 ORS 30.936 or 30.937. (ZDO 401.05(A)(3))
3. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use within one year from the date the replacement dwelling is certified for occupancy (or in the case of a manufactured home, within one year from the date of final inspection) by the Building Codes Division pursuant to ORS 455.055. Within 30 days of removal, demolition or conversion, 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 and must provide a copy of the recorded statement to the County Planning and Zoning Division. (ZDO 405.05(C)(1)(c)(ii))
4. A replacement dwelling must comply with all applicable siting requirements of the Exclusive Farm Use Zone (setbacks) at the time of construction. (ZDO 401.07)
5. A replacement dwelling under Subsection 401.05(C) 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. (ZDO 401.05(C)(1)(e))
6. This land use decision for an EFU replacement dwelling permit is not subject to expiration. (Oregon Administrative Rule 660-033-0130(8)(a))
7. The applicant shall execute and cause to be recorded in the deed records a deed restriction prohibiting the siting of another dwelling on that portion of the lot of record.

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. **PROJECT OVERVIEW:** The applicant proposes to replace a lawfully established dwelling on the same lot of record and in a similar footprint location as the existing dwelling. The existing home was built in 1976. The subject property contains the existing 1976 manufactured home along with accessory structures and has access off of S. Harding Rd. The subject lot is a lot of record created by a partition plat (PP2009-55).
2. **ZDO SECTION 401: EXCLUSIVE FARM USE DISTRICT (EFU):**

ZDO 401.05(A)(3): The landowner for the dwelling shall sign and record in the deed records for the County a document binding the land owner, 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.

Finding: *As a condition of approval, the landowner shall be required sign the above mentioned document prior to issuance of building permits for the new replacement home. As conditioned, this criterion is met.*

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

(a): When an application is submitted, the County finds to its satisfaction, based on substantial evidence, that the dwelling to be altered, restored or replaced has, or formerly had:

- i. Intact exterior walls and roof structure;
- ii. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- iii. Interior wiring for interior lights; and
- iv. A heating system; and

Finding: *The dwelling to be replaced was established on the subject property in 1976, as evidenced by County Tax Assessor appraisal records. The subject lot is a lot of record created by PP2009-005. The subject lot contains a lawfully established dwelling, as confirmed by a previous County land use decision (Z0239-08) and County Tax Assessor appraisal data. The County approved a Land Division application via Z0239-08 that partitioned the subject property from the adjacent property (Tax Lot 23E22 02300). In the decision, the existing dwelling was determined to be legally established. Therefore, the dwelling to be replaced was lawfully established.*

County Tax Assessor Appraisal records indicate that the dwelling has a kitchen with oven and range, bathroom facilities, electric 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. Based on the photographs submitted by the applicant, as well as tax assessment records, staff finds this criterion is met.

ZDO 401.05(C)(1)(b): A dwelling to be replaced meets one of the following conditions:

- i. If the dwelling was removed, destroyed or demolished, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes and any removal, destruction or demolition occurred on or after January 1, 1973;
- ii. 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

- iii. A dwelling not described in Subsection 401.05(C)(1)(b)(i) or 401.05(C)(1)(b)(ii) was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years; or 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.

Finding: *The dwelling is currently assessed as a dwelling and was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, as demonstrated by the County Tax Assessment appraisal records. This criterion is met.*

ZDO 401.05(C)(1)(c): For replacement of a lawfully established dwelling:

- i. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use: within one year from the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or, 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, the dwelling to be replaced must be removed within 90 days from the date a replacement permit is issued; and
- ii. 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.

Finding: *The dwelling to be replaced is not in such a state of disrepair that the structure is unsafe for occupancy. A condition of approval has been placed to ensure that within one year after the date of the replacement dwelling is certified for occupancy, the dwelling to be replaced is removed, demolished or converted to an allowable nonresidential use. The condition of approval has been placed to ensure that the applicant will record a deed statement that the dwelling to be replaced has been removed, demolished or converted within one year after the date that the replacement dwelling is certified for occupancy. As conditioned, this criterion is met.*

ZDO 401.05(C)(1)(d): As a condition of approval, if the dwelling to be replaced is located on a portion of the lot of record that is not zoned EFU, the applicant shall execute and cause to be recorded in the deed records a deed restriction prohibiting the siting of another dwelling on that portion of the lot of record. The restriction imposed is irrevocable unless the 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 2019 Oregon Laws, chapter 440, section 1 and ORS 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

Finding: *The proposed replacement dwelling will be sited on part of the same lot as the existing dwelling. The entire subject lot is zoned AG/Forest. The proposed dwelling will be*

located on a portion of the lot not zoned for Exclusive Farm Use, therefore a deed restriction is necessary. As conditioned, this criterion is met.

ZDO 401.05(C)(1)(e): A replacement dwelling under Subsection 401.05(C) 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.

Finding: *The replacement dwelling will be reviewed through the building permit and septic permit process to ensure compliance with building codes, plumbing codes, sanitation codes and other requirements relating to health and safety. A condition of approval has been placed in this decision to ensure compliance with this standard. As conditioned, this criterion is met.*

ZDO 401.05(C)(1)(f): The replacement dwelling must be sited on the same lot or parcel:

- i. 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 of record; and
- ii. 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.

Finding: *The applicant proposes to replace the dwelling on the same lot and using all, or nearly all, of the footprint as the existing dwelling. This criterion is met.*

ZDO 401.05(C)(1)(g): If an applicant is granted a deferred replacement permit, the deferred replacement permit does not expire but, notwithstanding Subsection 401.05(C)(1)(c)(i), 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 the deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

Finding: *The dwelling to be replaced is not in such a state of disrepair that the structure is unsafe for occupancy. The proposed replacement dwelling is not considered a deferred replacement permit, therefore, this criterion is not applicable.*