



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Denied

Permit Type: Dwelling in Conjunction with Farm Use (High Value Farmland)

File No. Z0496-23

Applicant's Proposal: The applicant is requesting authorization to develop one single-family home due to them having earned income from farming.

Decision Date: April 11, 2024

Deadline for Filing Appeal: April 23, 2024, at 4:00 pm

Issued By: Melissa Lord, Senior Planner, MLord@Clackamas.us

Applicant: Cassandra and Jason Franich

Owner of Property: Cassandra and Jason Franich

Zoning: EFU (Exclusive Farm Use)

Assessor's Map & Tax Lot(s): T2S R3E Section 34 Tax Lot 1100

Site Address: 17683 S Harding Rd., Oregon City, OR 97045

Location Map



Community Planning Organization (CPO) for Area:

Redland – Fischers Mill – Viola, Lance Ward, lanceward@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://acela.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.

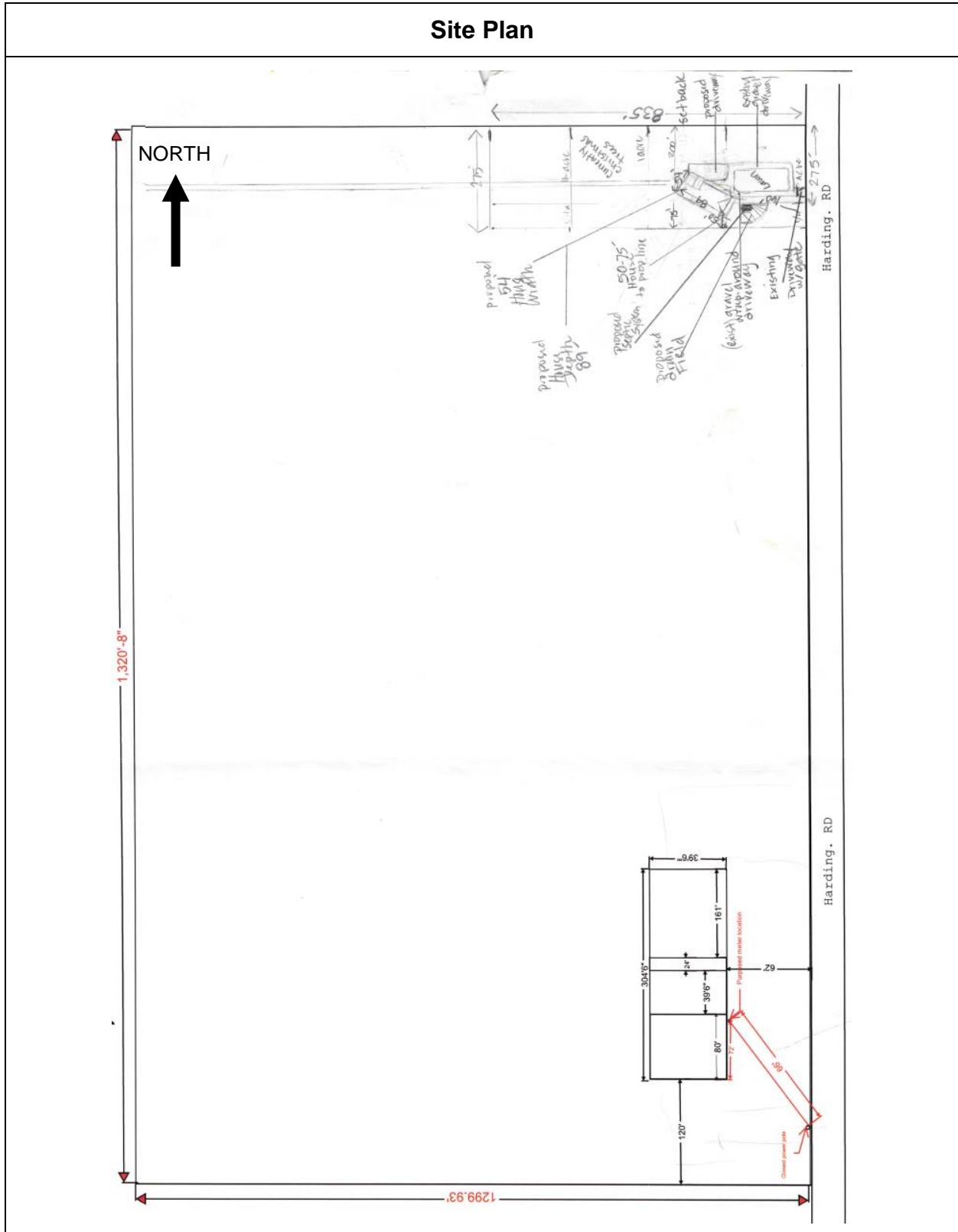
Appeal Rights: **This decision will not become final or effective until the period for filing an appeal with the County has expired without the filing of an appeal.** Any person who is adversely affected or aggrieved or who is entitled to written notice of the decision pursuant to Subsection 1307.09(C) 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.

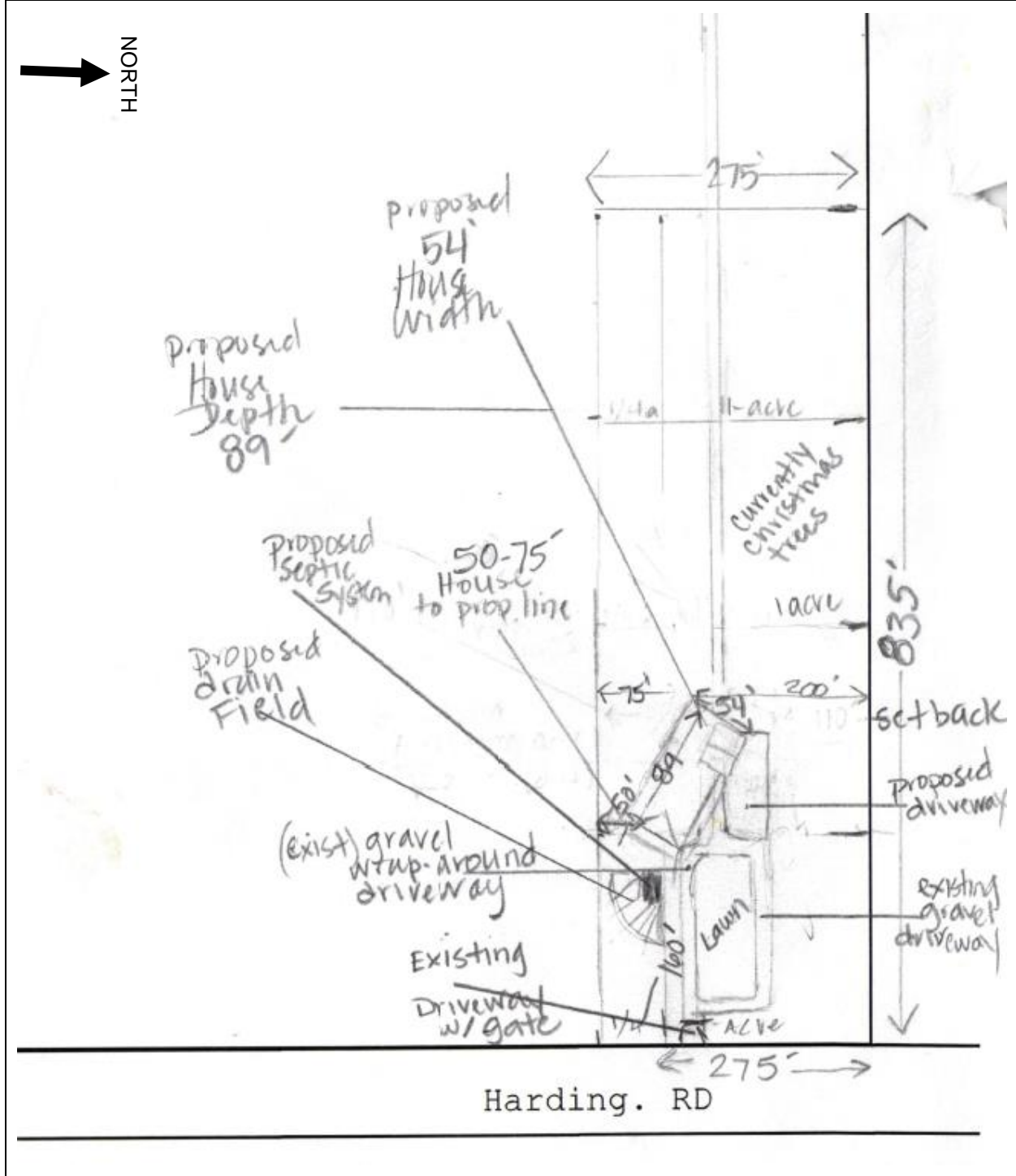
A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

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 DRehard@clackamas.us.
503-742-4545: ¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통?*



Site Plan (Zoomed in to Northeast corner)



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. No comments were received.

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 is requesting authorization to develop one single-family home in the northeastern corner of the property due to them having earned income from farming Christmas trees on the 40-acre site.
2. **ZDO SECTION 401: EXCLUSIVE FARM USE DISTRICT**

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 ORS 30.936 or 30.937.*

Finding: There is no evidence that a deed restriction as mentioned in the criterion has been recorded or submitted to this file. If the application were approved, this criterion could be met with a condition of approval; however, due to the denial of this application, no such condition is warranted. This criterion is not applicable due to the denial of this application.

401.05(C)(5): *Dwelling in conjunction with a farm use on High Value Farm Land: A primary farm dwelling for the farm operator may be allowed subject to the following criteria:*

Finding: Staff confirmed the predominant soil types of the subject property by using the Clackamas County High Value and Low Value Farmland Soils mapping system by ArcGIS, where data is provided by the Web Soil Survey produced by the Natural Resources Conservation Service. The subject property contains a mix of soils, Cottrell silty clay loam and Bornstedt silt loam, which are both High Value farm land soils. The applicant has submitted the correct land use application type because the subject property consists of high value farmland soils.

401.05(C)(5)(a): *The subject tract is currently employed in farm use on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years.*

Finding: The applicants Cassandra and Jason Franich (farm operators) submitted IRS Schedule 'F' Profit or Loss from Farming statements from 2021 and 2022 in order to demonstrate that they earned at least \$80,000 of gross annual income from the sale of farm products in each of the last two years.

The subject property was employed for farm use as a Christmas tree farm in 2021. The applicant, submitted a copy of their Schedule 'F' statement from 2021 which demonstrated that they earned \$85,000 of gross income from the sale of farm products. They submitted photos of the subject property showing that Christmas trees are planted on the property.

The subject property was employed for farm use as a Christmas tree farm in 2022. The applicant, submitted a copy of their Schedule 'F' statement from 2022 which demonstrated that they earned \$77,300 of gross income from the sale of farm products. Additional income of \$7,200 was earned by the farm as reported on the Schedule 'F' as "other income, including federal and state gasoline or fuel tax credit". This "other income" such as gas or fuel tax credits is not the same as income earned from the sale of farm products and therefore cannot be "counted" towards the minimum \$80,000 requirement necessary to determine that this criterion is met.

Planning staff reached out to the applicant by email requesting further information or clarification on the income discrepancy shown on the 2022 Schedule 'F'. An email received from the applicant on April 10, 2024, the applicant stated that *"the primary farm income from the Christmas trees is listed separately from the other farming which you referenced as Livestock income. That's related to misc animal farming, sick as the sale of Beef, chickens/eggs, a horse, goats. It's smaller scale hobby farming within the guidelines that we didn't do the year prior so it was separated to a different column although all of the income on the schedule F is Farming"*. Until this email, no mention of any other farming activity was provided with the land use application materials; the only information and photos submitted pertain to a Christmas tree farm. It is unclear to staff why income earned from farming, such as the sale of beef or eggs, would be reported on the Schedule 'F' form on Line 8 which is for "other income, including federal and state gasoline and fuel tax credit" rather than on Line 2 which is for the "sales of livestock, produce, gains, and other products you raised". A signed statement from a CPA was not provided with the application materials to provide clarification on this matter. Moreover, no evidence has been submitted to the record demonstrating that cows, chickens, a horse and goats are being raised on the subject property with the primary purpose of obtaining a profit in money [reference ORS 215.203, definition of "farm use"].

The applicant successfully demonstrated that they earned at least \$80,000 in gross annual income from the sale of farm products in 2021, but failed to demonstrate that this standard was met in 2022. **This criterion is not met.**

401.05(C)(5)(b): *Lots of record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.*

Finding: A review of the application materials finds that none of the property is

located in Eastern Oregon. This criterion is met.

401.05(C)(5)(c): *Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on lands designated for exclusive farm use or for mixed farm/forest use owned by the farm or ranch operator or on the farm or ranch operation.*

Finding: The subject farm operation does not include any dwellings. The applicant/farm operator owns approximately 70 acres on the east side of Harding Rd. (T2S R3E Section 34 Tax Lot 01300) which is in EFU district. This property does not contain a dwelling, only buildings accessory to farm uses (e.g. barns). Staff research of County Tax Assessment information found no evidence of another dwelling on lands designated for exclusive farm use or mixed farm/forest owned by the farm operator. This criterion is met.

401.05(C)(5)(d): *The lot of record on which the dwelling will be sited was lawfully created.*

Finding: Staff reviewed a Planning division research file from May, 2021 which found that the subject property is a separate lot of record created by deed recorded in Book 607, Page 189. This criterion is met.

401.05(C)(5)(e): *The dwelling will be occupied by a person or persons who produced the commodities which generated the income.*

Finding: The applicant states that the dwelling will be occupied by Cassandra and Jason Franich, property owners and farm operators, who are responsible for producing the income generated by the farm operation. Compliance with this criterion is typically ensured by conditioning the land use decision. Due to the decision of denial, a condition requiring the person who produced the commodities shall be the person obtaining a building permit for the home is not necessary.

401.05(C)(5)(f): *In determining the gross income requirement, the cost of purchased livestock shall be deducted from the total gross annual income attributed to the tract.*

Finding: The farm operators grow Christmas trees, and did not claim to earn income from the raising or selling of livestock. This criterion is not applicable.

401.05(C)(5)(g): *Only gross income from land owned, not leased or rented, shall be counted.*

Finding: The subject property is the only land with farm income claimed by the applicant. The Assessment and Taxation Department shows the subject property has been owned by the applicant since December, 2020 (deed record number 2020-109046). This criterion is met.

401.05(C)(5)(h): *Gross farm income earned from a lot of record which has been used previously to qualify another lot of record for the construction or siting of a primary farm dwelling may not be used.*

Finding: No income was provided by the applicant that involved property that was previously used to qualify another lot of record for a primary farm dwelling.

Staff reviewed land use file records on the subject property and did not find that this lot had been used to qualify another lot of record for a dwelling. This criterion is met.

401.05(C)(5)(i): *Only a lot of record zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.*

Finding: The lot of record is located within Clackamas County and zoned Exclusive Farm Use (EFU), zoned for farm use as defined in ORS 215.203. No other lots of record are being used to meet the gross income requirements. This criterion is met.

401.05(C)(5)(j): *An irrevocable deed restriction shall be recorded in the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used again to qualify another parcel for a primary farm dwelling.*

Finding: Currently, there is no evidence of a deed restriction of this nature existing on the subject property. If the application were approved, this criterion could be met with a condition of approval; however, due to the denial of this application, no such condition is warranted. This criterion is not applicable due to the denial of this application.