

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
CONDITIONAL USE CASE NO. 18-040**

APPLICATION: Application of Luis and Irene Perez for a conditional use to establish a contracting business as a home occupation on a 4.56 acre parcel in an EFU (Exclusive Farm Use) zone located at 5531 Bear Ln SE, Turner. (T9S; R2W; Section 04; tax lot 700).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to certain conditions.

EXPIRATION DATE: This conditional use permit is valid only when exercised by **August 15, 2020**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels 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: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain all necessary building and septic permits from Marion County Building Inspection Division.
2. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition has been satisfied:

Condition A – Within 60 calendar days following approval of the proposed use, under an Access Permit, permanently close the existing Bear Lane access, and re-establish a paved access approach toward the east edge of the existing shop (approximately denoted as Access F on the land use Application site plan / location to be approved by MCPW Engineering), and conduct roadside vegetation clearing about the roadway curve in support of adequate Intersection Sight Distance.

ADDITIONAL CONDITIONS: Once the approved use is established, the following conditions must be continually satisfied:

3. The home occupation shall be operated in full compliance with the criteria in MCC 17.136.060(C) that are listed in #6 of the Findings and Conclusions section of this decision.
4. One vehicle used with a home occupation and one vehicle used in other employment, along with personal use vehicles, may be parked on the premises. All other vehicles used for the home occupation must be kept off premises.
5. The applicants shall sign and submit a Declaratory/Farm-Forest Statement (enclosed) 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.

6. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation can be appealed to a county hearings officer for a public hearing.

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 agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits.

7. The applicant should contact the Turner 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. The Turner Fire District can be contacted at (503) 743-2190.

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 request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200.00) 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. Requests for reconsideration, or consideration by a hearings officer, 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 **August 15, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the above address. This decision is effective **August 16, 2018** unless further consideration is requested.

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

1. The property is designated Primary Agriculture in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote and protect commercial agricultural operations. Non-farm uses, such as home occupations, can be approved where they do not have a significant adverse impact on farming operations in the area.
2. The subject parcel is located in the northeast corner of the intersection of 55th Avenue SE and Bear Lane SE. The property contains a dwelling, accessory structures, well, and septic system. The property is described in deeds going back prior to 1977 and is considered a legal parcel for land use purposes.
3. Surrounding properties in all directions consist of land being farmed in an EFU zone.
4. The applicant is requesting to establish a contracting business as a home occupation in an enclosed accessory building on the subject property.
5. Public Works Land Development and Engineering Permits (LDEP) requests that the following conditions are included in the approval of the land use case. LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file.

*“**Condition A** – Within 60 calendar days following approval of the proposed use, under an Access Permit, permanently close the existing Bear Lane access, and re-establish a paved access approach toward the east edge of the existing shop (approximately denoted as Access F on the land use Application site plan / location to be approved by MCPW Engineering), and conduct roadside vegetation clearing about the roadway curve in support of adequate Intersection Sight Distance.*

Access work is typically an Engineering Requirement; however, it is being made a Condition to stipulate timing for completion. Driveways must meet sight distance, design, spacing, and safety standards [MCC 11.10]. The

location of the existing access(es) on Bear Lane does not afford adequate Intersection Sight Distance toward the roadway curve.”

Marion County Building Inspection commented that permits for a Change in Use or Occupancy and/or any new construction may be required.

All other agencies contacted stated no objection to the proposal.

6. Marion County Code (MCC) 17.136.050 permits a home occupation subject to the criteria in MCC 17.136.060(A) and (C) with the filing of a declaratory statement regarding nearby farm and forest practices. The recording of a declaratory statement can be made a condition of any approval.
7. MCC 17.136.060 (C) provides specific criteria for approval of a home occupation:
 - A. *A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation (“person” includes volunteer, nonresident employee, partner or any other person).*
 - B. *It shall be operated substantially in:*
 - a. *The dwelling; or*
 - b. *Other buildings normally associated with uses permitted in the zone in which the property is located.*
 - C. *It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.*
 - D. *A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.*
 - E. *A sign shall meet the standards in Chapter 17.191 MCC.*
 - F. *The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.*
 - G. *Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.*

Information provided by the applicants, Luis and Irene Perez, indicates they will operate LP Metal Works LLC, a roofing contracting business and are the residents of the property. Existing accessory buildings would be used for the home occupation and a home office would be established in the dwelling. The use will take place entirely within existing buildings. The proposed use is not anticipated to interfere with uses on surrounding properties. Any sign will be required to meet the standard in MCC 17.191. The business includes additional employees who report directly to the work site and are not dispatched from the property. No sales are proposed from the property. The proposal meets the criteria above.

8. Section 17.126.020(D)(3) of the Marion County Code (MCC) allows one vehicle used with a home occupation and one vehicle used in other employment, along with personal use vehicles to be parked on the premises. All other vehicles used for the home occupation must be kept off premises.
9. In addition to the specific criteria, MCC 17.136.060(A) contains general criteria that apply to any conditional use:
 - A. *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*
 - B. *Adequate fire protection and other rural services are, or will be, available when the use is established.*
 - C. *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
 - D. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

E. The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.

The proposed use will take place entirely within existing non-resource buildings on the property. There is no anticipated impact from the use on surrounding farm or forest practices. Turner Fire District provides fire protection to the property and the Marion County Sheriff provides police protection. Other rural services are available to the property, such as a well and septic system. There are no identified watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality issues on the property. No significant noise is anticipated from the property because of the proposed use. There are no identified potential water impoundments or mineral and aggregate sites on the property or nearby that would be affected by this proposed use. These criteria are met by the proposal.

10. MCC 17.110.680 states that:

“No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, or is being used or has been divided in violation of the provisions of this title unless issuance of the permit would correct the violation.”

In this case, an active code enforcement case is present on the subject parcel. Approval of this conditional use would resolve the code enforcement currently in progress on the property. Therefore, this application corrects the violation and can be approved.

11. Based on the above findings it has been determined that the applicant’s request can meet all applicable criteria to establish a roofing contracting business as a home occupation and is, therefore, **APPROVED** subject to conditions.

Joe Fennimore
Director-Planning Division

Date: July 31, 2018

If you have any questions please contact Lisa Milliman 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.