

**NOTICE OF DECISION  
CONDITIONAL USE CASE NO. 18-060**

**APPLICATION:** Application of Richard Kansky, on property owned by Steve and Mary Patterson, to operate a landscape contracting business in association with a nursery on a 4.23 acre parcel in an SA (special Agriculture) zone located at 5711 Gaffin Road SE, Salem (T8S; R2W; Section 04C; tax lot 1200).

**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 **November 30, 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 proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed use. 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 applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.
2. The applicant shall provide evidence to the satisfaction of the Planning Director that the nursery has been established on the subject property.
3. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition has been satisfied:

***Condition A** – Prior to operation of the nursery and landscaping businesses, confirm that Gaffin Road right-of-way along the subject property frontage is at minimum a 36-foot half-width. If right-of-way half-width is found to be less than 36 feet, dedicate any deficient width to the satisfaction of the City of Salem.*

4. Prior to issuance of a building permit, the applicant shall sign and submit a Farm/Forest Declaratory 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.

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

5. The applicant shall continuously operate the landscape contracting business in conjunction with the growing and marketing of nursery stock on the subject property and shall maintain current licenses to operate a nursery and landscape contracting business.
6. Failure to continuously comply with the Conditions of Approval may result in this approval being revoked. Any revocation can be appealed to a Marion 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. The applicants should contact Marion County Fire District #1 to obtain a copy of the District's Recommended Building Access, water supply and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards. Contact Paula Smith at MCFD#1 at (503) 588-6513 for more information.

**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) 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 **November 30, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 1, 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 Special Agriculture in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding SA (Special Agriculture) zone is to promote and protect commercial agricultural operations.
2. The property is located on the north side of Gaffin Road approximately 1,400 feet west of the intersection of Gaffin Road SE and Deer Park Drive SE. The property contains a feed store building and a feed storage building. The property was subject of a previous land use case, Conditional Use 02-28, which approved a feed store. The property is considered a legal parcel for land use purposes.
3. Adjacent property to the west contains a veterinary hospital, while property to the east is undeveloped. Both are zoned SA. Properties to the northeast consist of small parcels being farmed or in residential use in an SA zone. Properties to the northwest and south are located inside Salem's City Limits and are in industrial use and a large property to the south is owned by the Oregon Corrections Department. Soils on the property are predominantly high value for agriculture.
4. The applicant is proposing to operate a landscape contracting business in association with a nursery.
5. Public Works Land Development and Engineering Permits requested that Condition A be included in the land use decision. LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file. LDEP will not approve the final use until the following condition has been met:

*“**Condition A** - Prior to operation of the nursery and landscaping businesses, confirm that Gaffin Road right-of-way along the subject property frontage is at minimum a 36-foot half-width. If right-of-way half-width is found to be less than 36 feet, dedicate any deficient width to the satisfaction of the City of Salem.*”

Nexus for this Condition is to accommodate future road improvements to a city-maintained Minor Arterial road in need of widening and urbanization, to include sidewalks and bike lanes for pedestrian and bicyclist safety, as authorized under MCC 17.119.060. The proposed business has the likelihood of adding additional traffic to the road. Per the 2017 City of Salem Transportation System Plan, Gaffin Road is designated as a City Minor Arterial, with a minimum right-of-way requirement of 72 feet.”

Marion County Building Inspection commented that permits for a Change in Use or Occupancy may be required.

6. Chapter 17.137.050 (D) (6) of the Marion County Code (MCC) permits, in an SA zone, a landscape contracting business as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

ORS 671.520 (2) defines a "Landscape contracting business" as a business that for compensation or with the intent to be compensated arranges, submits a bid, or otherwise offers or contracts, for the performance of activities described in subsection (1) of this section. Subsection (1) defines a (1) "Landscape construction professional" means an individual who for compensation or with the intent to be compensated performs or supervises activities requiring the art, ability, experience, knowledge, science and skill to:

- (a) Plan or install lawns, shrubs, vines, trees or nursery stock;
- (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;
- (c) Construct or repair ornamental water features, drainage systems or irrigation systems;
- (d) Maintain irrigation systems with the use of compressed air; or
- (e) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls..

7. The applicant stated he intends to sell and install nursery stock and landscaping supplies as part of a landscape/nursery business consistent with the description in ORS 671.520. The applicant provided documentation that a nursery license has been obtained from the Oregon Department of Agriculture for Green Acres Landscape Nursery, Inc. MCC requires that the landscape business be in conjunction with a nursery on the property and it would be appropriate to require nursery stock be in place prior to operating the landscaping business. The site plan and the applicant statement indicate that there is an area on the north side of the property where nursery stock will be grown. It seems reasonable to require that the applicant provide evidence that a nursery has been established on the property prior to establishment of the landscape contracting business. This can be made a condition of any approval. Subject to conditions, the criteria in #7 above are met.

8. 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.*

The proposal is being done in conjunction with the growing of nursery stock on the property, which is a farm use. No additional land will be taken out of production from farming because of this use. The use will not raise the cost of farming in the area. This criterion is met.

B. *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The property is served by Marion County Fire District #1 and law enforcement is provided by Marion County. This criterion is met.

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.*

There are no streams, wildlife habitat area, or geological hazards identified on the property and, therefore, the proposal will have little or no impact on these resources. The scale of the landscaping business should not affect air quality. This criterion can be met with a condition of approval.

D. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

There is no evidence indicating that noise generated by the proposal will be heard off the property or have any impact on surrounding 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.*

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.

9. Based on the above findings it has been determined the applicant's request meets, or can be conditioned to meet, all applicable criteria to operate a landscape contracting business in conjunction with the growing and marketing of nursery stock and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore  
Planning Director

Date: November 15, 2018

If you have any questions regarding this decision 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.