



MARION COUNTY BOARD OF COMMISSIONERS


Board Session Agenda Review Form

Meeting date: July 24, 2019

Department: Public Works Agenda Planning Date: July 18, 2019 Time required: 15 min.

☐ Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature: 

TITLE Public hearing for Zone Change/Comprehensive Plan/Conditional Use (ZC/CP/CU) Case 18-008/ Apostolic Christian Faith of Silverton.

Issue, Description & Background Apostolic Christian Faith of Silverton submitted an application to change the zone from AR-3 (Acreage Residential – 3 Acre Minimum) to P (Public), change the Comprehensive Plan designation from Rural Residential to Public, and for a Conditional Use to establish a cemetery on a two acre portion of a 7.4 acre parcel at 6691 Peter Road SE, Aumsville.

The hearings officer conducted a public hearing on February 13, 2019, and on June 5, 2019, issued a recommendation that the request be granted subject to meeting certain conditions. In the recommendation the hearings officer found that the proposal satisfied all of the applicable comprehensive plan, zone change, and conditional use criteria.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration:
1. Continue the public hearing.
2. Close the public hearing and leave the record open.
3. Close the public hearing and approve, modify, or deny the request.
4. Remand the matter back to the hearings officer.

Recommendation: The hearings officer recommends the request be approved.

List of attachments: Hearings officer's recommendation

Presenter: Joe Fennimore

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Joe Fennimore - gfennimore@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the)	Case No.	ZC/CP/CU 18-008
)		
Application of:)	Clerk's File No.	
)		
APOSTOLIC CHRISTIAN FAITH OF SILVERTON)	Zone Change/Comprehensive Plan	
)	Amendment/Conditional Use	

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Apostolic Christian Faith of Silverton to change the zone from AR-3 (Acreage Residential – 3 Acre Minimum) to P (Public), change the Comprehensive Plan designation from Rural Residential to Public, and for a Conditional Use to establish a cemetery on a two acre portion of a 7.4 acre parcel at 6691 Peter Road SE, Aumsville, Marion County, Oregon (T8S, R1W, S19C, tax lot 2501).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and Marion County Code (MCC) title 17, especially chapters 17.119, 17.123 and 17.171.

III. Public Hearing

A public hearing was held on February 13, 2019. At hearing, the Planning Division file was inventoried and made part of the record. The case file in Partition 90-10 was also made a part of the record. The following persons appeared and testified at hearing:

- | | | |
|----|----------------|----------------------------|
| 1. | Brandon Reich | Planning Division |
| 2. | Byron Farley | Applicant's attorney |
| 3. | Norman Bickell | Applicant's representative |
| 4. | Phil Teubel | For applicant |
| 5. | Ann Geiger | Neighbor/for applicant |

No documents were entered into the record as exhibits. No objections were made to notice, jurisdiction, conflict of interest, evidence or testimony at the hearing.

IV. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject 7.4-acre property is designated Rural Residential in the M CCP and zoned AR-3. The property is on the west side of Peter Road in the 6600 block. The property was created as Parcel 2 of Partition Plat 90-10. The subject property is considered a legal parcel for land use purposes.
2. The subject property is part of Marion County's original exception area 22.2 – Shaw. The property is excepted from Statewide Planning Goal 3 – Agricultural Lands, and Goal 4 – Forest Lands.
3. Surrounding properties to the west, north, and south are zoned AR-3 and developed with rural homesites. Property to the east is zoned EFU (Exclusive Farm Use) and consists of farmland and homesites.
4. Applicant asks Marion County to change the M CCP designation from Rural Residential to Public, to change the zone from AR-3 to P, and to establish a cemetery on a two-acre portion of the parcel as a conditional use.
5. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

Marion County Public Works Land Development and Engineering Permits (PW LDEP) commented:

ENGINEERING REQUIREMENTS

A. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits, per Marion County Ordinance #00-10R.

B. Access modifications associated with construction of the church structure shall be completed per Access Permit #555-17-006742-DA.

ENGINEERING ADVISORY

C. A Non-Remonstrance Agreement for seasonal lignin application and future financial participation toward a Peter Road SE road improvement paving project was recorded on the subject property in 2017 by the Marion County Clerk at Reel 4027/Page 122.

Marion County Code Enforcement commented that there are no code enforcement issues on the property.

Oregon Department of Land Conservation and Development (DLCD) acknowledged receipt of notice.

Other contacted agencies failed to respond or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

6. This is a recommendation to the Marion County Board of Commissioners (BOC). The BOC is the final decision making authority. Applicant has the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

'Preponderance of the evidence' means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicant must prove, by substantial evidence in the whole record, it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, applicant has not met its burden and the application must be denied. If the evidence for every criterion is in applicant's favor, then the burden of proof is met and the application must be approved.

PLANNING AND ZONING IN EXCEPTION AREAS

7. The subject property is in a Statewide Planning Goal 3 exception area. OAR 660-004-0018 contains requirements for plan designation and zoning in exception areas:
- (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.
 - (2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):
 - (a) That are the same as the existing land uses on the exception site;
 - (b) That meet the following requirements:

- (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;
 - (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and
 - (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;
 - (c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22;
 - (d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.
- (3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.
- (4) "Reasons" Exceptions:
- (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.
 - (b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.
 - (c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and

services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.

MCCP Appendix A, books 1 through 3, adopted as part of the 1980 MCCP, contain maps showing originally proposed exception areas, and narratives justifying proposed exceptions. The introduction to Appendix A, book 1 explains that all agricultural and forest lands were inventoried to determine comprehensive plan designations for lands in Marion County. During that process, the county found some lands were already developed for, committed to, or needed for non-farm and non-forest uses, and asked the state to approve exceptions to statewide agricultural and forest land use planning goals for those properties. In Appendix A, book 1 Marion County proposed exception area 22.2-Shaw, which included the subject property. Appendix A, book 2 identifies uncontested exception areas and shows the state did not contest the portion of area 22.2 containing the subject property. The exception became effective with adoption of the 1980 MCCP. The exception adopted several designations and zones in area 22.2, including Public designation and P zoning. The book one map showing exception area 22.2 also shows proposed exception area 22.3, a small area annotated with a cross (+) and P. The book 1 listing of developed public lands shows area 22.3 as the Aumsville Cemetery, and the narrative identifies cemeteries as appropriate for public use designation and zoning. Public designation and P zoning are consistent with area 22.2 and with cemetery use of the subject two acres, and will continue existing types of development in the exception area. OAR 660-004-0018(a) is met. No new goal exception is required.

COMPREHENSIVE PLAN AMMEDMENT

8. Under MCCP plan amendment policy 2, plan changes directly involving five or fewer properties are quasi-judicial amendments. Quasi-judicial comprehensive plan amendments are reviewed by zone change procedures established in MCC title 17 and may be processed simultaneously with a zone change request. The proposed comprehensive plan amendment involves one parcel in one ownership and is a quasi-judicial plan amendment request being processed with a zone change application.
9. Under ORS 197.610 and MCC 17.111.030(C), DLCD must be notified of any comprehensive plan amendment. DLCD was notified but provided no comment on the proposal.
10. The MCCP plan amendments section states that comprehensive plan amendments must be consistent with statewide planning goals, and OAR 660-004-0010(3) and 660-004-0018 also say that an exception to one goal or goal requirement does not assure compliance with any other applicable goals or goal requirements for proposed uses at an exception site. Each statewide planning goal must be examined for compliance.

Goal 1: Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process. The notice and hearings process before the hearings officer and BOC provide opportunity for citizen involvement. Goal 1 is satisfied.

Goal 2: Land Use Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions. Applicant proposes a site-specific comprehensive plan amendment. The Planning Division notified local and state agencies, including the Oregon DLCD, for comments. Few comments were submitted, but the BOC will accommodate them to the extent feasible. Goal 2 is satisfied.

Goal 3: Agricultural Lands. To preserve and maintain agricultural lands. The subject property is within an acknowledged goal 3 exception area. Goal 3 does not apply.

Goal 4: Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture. The subject property is within an acknowledged goal 4 exception area. Goal 4 does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. To protect natural resources and conserve scenic and historic areas and open spaces. There are no MCCC-identified scenic, historic, or open space resources on the subject or nearby properties. Goal 5 is satisfied.

Goal 6: Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state. The proposed use will not result in particulate discharges that would affect air and water quality. The proposal will not degrade air, water, or land resources. All burials must comply with State Health Department standards for cemetery uses. The subject property is not within an identified air quality area. The property is within a Sensitive Groundwater Overlay Zone; however, no zone code regulations apply since a partition is not proposed. No new well is proposed. A condition can require Oregon Department of Water Resources coordination for any new water use. Goal 6 is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards. To protect people and property from natural hazards. The subject property is not within MCCC-identified floodplain or geologically hazardous areas. Goal 7 is not applicable.

Goal 8: Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts. No Goal 8 resources are identified on or near the subject property or implicated by this proposal. Goal 8 is not applicable.

Goal 9: Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens. Goal 9 addresses commercial and industrial development, primarily in urban areas. OAR Chapter 660, Division 009 applies only to comprehensive plans for areas within urban growth boundaries. Goal 9 is not applicable.

Goal 10: Housing. To provide for the housing needs of citizens of this state. OAR 660-008 is intended to define standards for compliance with Goal 10. OAR 660-008 deals with providing an adequate number of needed housing units, and efficient use of buildable land within urban growth boundaries. The subject property is not within an urban growth boundary. Goal 10 does not apply.

Goal 11: Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The subject property can be served by the usual rural facilities, such as the existing roadway network and electrical service. No new on-site water or septic service is needed. Goal 11 is satisfied.

Goal 12: Transportation. To provide and encourage a safe, convenient and economic transportation system. Under OAR 660-012-0060(1), if an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of the rule, unless the amendment is allowed under section (3), (9) or (10) of the rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP [transportation system plan]. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.
 - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
 - (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

The subject property is accessed via Peter Road, which is classified as a local road on the Marion County Rural Transportation System Plan. The proposed use will not change the functional classification of Peter Road, change any standards implementing a functional classification system, affect types or levels of travel or access inconsistent with roadway functional classifications, degrade roadway performance standards, nor are any affected roadways projected to fail TSP performance standards. Traffic associated with the proposed use is expected to be minimal, approximately the equivalent of a single-family dwelling. The existing roadway network will adequately serve the use. Goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy. The proposed use will not require new utility services and will not be a significant on-site energy user. Goal 13 is satisfied.

Goal 14: Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. The proposed use would be in conjunction with an existing rural church, will not create the need for urban services, and will not rely on urban facilities. The use does not urbanize the land, which will remain rural in nature and use. Goal 14 is satisfied.

Goals 15-19, Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources. The subject site is not within the Willamette River Greenway, or near ocean or coastal resources. These goals do not apply.

CONCLUSION. Statewide Planning goals are met.

11. The M CCP does not contain specific review criteria for plan amendments, but plan amendments must be consistent with applicable M CCP goals and policies. The following policies apply to the M CCP amendment request.

General development policies

3. Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies. The proposed use, a private cemetery, will serve an existing church on the property and will not be open to the public. A cemetery is a passive use and would not impact neighboring properties or uses in the area, including agricultural uses. Some other uses in the Public zone might not be compatible with agricultural uses, applicant proposes a limited use overlay to ensure the property remains in use only as a cemetery. This will ensure the use of the property does not have a negative impact on farming or other uses in the area. This policy is satisfied.

Rural services policies

General Policies

1. The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed. The proposed use is passive and will be accessory to the church. Roadway, water, wastewater and other facilities already serve the site. The new use will not tax existing on-site facilities. No additional facilities are needed. This policy is satisfied.
2. It is the intent of Marion County to maintain the rural character of the areas outside of urban growth boundaries by only allowing those uses that do not increase the potential for urban services. The proposed use is a private cemetery to serve the members of the church on the subject property. The church is a permitted use in the AR zone and the cemetery is accessory to that use. There will not be a need for urban services to support the cemetery use of the property. This policy is satisfied.
3. Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area. The proposed use will be accessory to the existing church. No additional facilities or services will be needed to accommodate the proposed use. The use is passive and consistent with maintaining the rural density or character of the area. This policy is satisfied.
4. The sizing of public or private service facilities shall be based on maintaining the rural character of the area. Systems that cannot be cost effective without exceeding the rural densities specified in this Plan shall not be approved. The County shall coordinate with private utilities to ensure that rural development can be serviced efficiently. The proposed use is accessory to the church use and will not require any new public or private service facilities to support its use. The existing church use on the subject property will already have the access to a public roadway and the driveway servicing the church will also serve the cemetery. This policy is satisfied.

Special District Policies

4. Marion County shall require evidence that the level of fire protection provided by a fire district is adequate to service proposed land developments. If service is not adequate the development shall be denied or be conditioned so that necessary facilities are provided. The proposed use is within the Aumsville Fire District (AFD). The fire district was notified of the proposed new use and provided no comment. The use is in conjunction with church use, and will not add any new gathering structures. No additional fire protection services will likely be required to support the cemetery use, but a condition of approval can require proof from AFD that the proposal meets fire district requirements. As conditioned, this policy is met.

12. CONCLUSION. MCCP policies and statewide planning goals are satisfied. The comprehensive plan amendment can be approved.

ZONE CHANGE

13. Under MCC 17.123.060, approval of a zone change application or initiated zone change shall include findings that the change meets the following criteria:
- A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and
 - B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and
 - C. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and
 - D. The other lands in the County already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and
 - E. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.
14. This application includes an MCCP amendment request that would change the MCCP designation from Rural Residential to Public. If the MCCP amendment is approved, the proposed P zone would be consistent with the Public plan designation and applicable MCCP policies. MCC 17.123.060(A) is satisfied.
15. Use of the proposed cemetery will be limited to church members and not be open to the general public. The only abutting farm zone property is to the east, and buffered from the proposed use by the church building and an estimated distance of about 1,000' (judging from the plat map, site plan, and Assessor's map 081W19C in the file). No interference with farm use is likely. With AR-3 zoning to the north, west and south, the area is not densely populated. A cemetery is generally a passive use except during interments and will, more likely than not, be compatible with the surrounding rural residential uses. MCC 17.123.060(B) is satisfied.
16. The subject property is served by the Aumsville Fire District and law enforcement is provided by Marion County. The use is expected to produce traffic similar to a single-family dwelling, about 12 trips per day. PW LDEP commented on the proposal but expressed no roadway concerns. The proposed use will be accessory to the church on the subject

property and will not require additional public services. The cemetery will be private to serve church members and will not be open to the general public. As noted above, a condition of approval can attach, requiring proof from AFD that the proposal meets fire district requirements. As conditioned, MCC 17.123.060(C) is satisfied.

17. The cemetery will serve the church and its members and will not be open to the general public. Association with the church makes the subject property appropriate for locating the proposed use. MCC 17.123.060(D) is satisfied.
18. The P zone is the only zone allowed in the Public designation. MCC 17.123.060(E) does not apply.
19. CONCLUSION. If the comprehensive plan amendment is approved, the zone change would be appropriate.

CONDITIONAL USE

20. Under MCC 17.119.020, a conditional use application may only be filed by certain people, including the owner of the property subject to the application. The case file contains a warranty deed recorded in Marion County deed records at reel 3812, page 116 showing that the subject property was conveyed to Apostolic Christian Faith of Silverton on April 29, 2016. The application was signed by Doug Kuenzi, who at the time of the application was Head Trustee and Chairperson of Apostolic Christian Faith of Silverton. The current head trustee appeared at the hearing in support of the application. MCC 17.119.020 is satisfied.
21. Under MCC 17.119.025, a conditional use application shall include signatures of certain people, including the owner of the property subject to the application. The case file contains a warranty deed recorded in Marion County deed records at reel 3812, page 116 showing that the subject property was conveyed to Apostolic Christian Faith of Silverton on April 29, 2016. The application was signed by Doug Kuenzi, Head Trustee and Chairperson of Apostolic Christian Faith of Silverton at time of application. MCC 17.119.025 is satisfied.
22. Under MCC 17.119.070, before granting a conditional use, the director, planning commission, or hearings officer shall determine:
 - A. That it has the power to grant the conditional use;
 - B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
 - C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.
23. Under MCC 17.119.030, the hearings officer, or BOC on its own motion, may hear and decide only those applications for conditional uses listed in MCC title 17. The proposed use is

listed in the P zone as a conditional use under MCC 17.171.030(C). The BOC is not calling up the subject conditional use application. The application is part of a package of applications, including a comprehensive plan amendment where the decision can only be made, and a zone change that can only be approved, by BOC action. Rather than bifurcate the process, it is Marion County practice to have all applications together before the BOC for initial decision. The BOC may hear and decide this matter. MCC 17.119.070(A) is met.

24. The purpose and intent of the P zone is to provide regulations governing the development of lands appropriate for specific public and semi-public uses and to ensure their compatibility with adjacent uses. A cemetery is a relatively passive use. Interment, including digging and filling graves will likely be the most active use of the proposed site. Routine maintenance is also expected. The use, as shown above in the comprehensive plan amendment and zone change sections, is compatible with adjacent residential and farm uses. MCC 17.119.070(B) is met.
25. The planning director proposed conditions limiting the use to a private cemetery accessory to the church on the property, having applicant contact the Aumsville Fire District to obtain a copy of and to adhere to the district's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide, and to having applicant obtain any required permits from Oregon Department of Water Resources for any well that serves the use. These conditions relate to ensuring the proposed use will not impact the health, safety or welfare of persons residing in the area or present a need for further protection for other properties in the neighborhood. MCC 17.119.070(C) is met.
26. Conclusion. The conditional use criteria have been met.

LIMITED USE OVERLAY

27. Under MCC 17.176.010, the purpose of the LU (limited use overlay) zone is to reduce the list of permitted or conditional uses in a zone to those that are suitable for a particular location. Zones permit a number of uses without notification or opportunity for a hearing, because the uses are considered generally acceptable, although type and intensity of activity may vary. Zones also include conditional uses which may be permitted if certain criteria are met. However, on a particular property certain uses may conflict with adjacent land uses or may not be considered suitable for a particular site. Rather than deny a zone change because the proposed zone would allow an objectionable permitted or conditional use, the limited use overlay can be used to identify the appropriate uses and either require a conditional use permit for other uses normally permitted in the zone or delete objectionable permitted or conditional uses from the zone.

Under MCC 17.176.020, when the limited use overlay zone is applied, the uses identified in the underlying zone shall be limited to those permitted or conditional uses specifically referenced in the ordinance adopting the limited use overlay zone. Until the overlay zone has been removed or amended the only uses permitted on the property shall be those specifically referenced in the adopting ordinance. Uses that would otherwise be permitted, or permitted subject to a conditional use permit, may only be allowed if the list of permitted

or conditional uses in the limited use overlay zone is amended or the limited use overlay zone is removed from the property.

28. Under MCC 17.176.030, the limited use overlay zone is applied at the time the underlying zone is being changed. It shall not be necessary to mention in the hearing notice of a rezoning application that this overlay zone may be applied. The ordinance adopting the overlay zone shall include findings showing that:
- (A) No zone has a list of permitted and conditional uses where all uses would be appropriate;
 - (B) The proposed zone is the best suited to accommodate the desired uses;
 - (C) It is necessary to limit the permitted or conditional uses in the proposed zone; and
 - (D) The maximum number of acceptable uses in the zone have been retained as permitted or conditional uses. The ordinance adopting the overlay zone shall by section reference, or by name, identify those permitted uses in the zone that become conditional uses and those permitted or conditional uses that are deleted from the underlying zone. A use description may be segmented to delete or require a conditional use for any aspect of a use that may not be compatible.

The only other zones conditionally permitting cemeteries are resource zones, which do not apply in exception areas. The P zone is the only zone available to applicant for the proposed use. Applicant acknowledges the majority of uses listed in the P zone would not be compatible with adjoining properties due to their traffic and/or noise impacts, and proposed a limited use overlay as appropriate in this instance. MCC 17.176.030(A) and (B) are met.

The P zone is designed to allow only particular uses, noting that one use cannot be substituted for another without demonstrating compatibility with surrounding uses. This is in harmony with the limited use concept that it must be necessary to limit the permitted or conditional uses in the proposed zone. Applicant concurred at hearing that the proposed cemetery use can be the only use that should be retained in the zone, except that all other uses, including crematoriums and mausoleums, will still be available as conditional uses requiring a demonstration of compatibility with surrounding uses. MCC 17.176.030(C) and (D) are met.

The hearings officer recommends the BOC apply a limited use overlay, limiting the subject two acres to cemetery use and retaining all other MCC 17.171 uses, including crematoriums and mausoleums, as conditional uses.

29. Under MCC 17.176.040, the official zoning map shall be amended to show an LU suffix where the limited use overlay zone has been applied. This can be a condition of limited use overlay zone approval.

VI. Recommendation

The hearings officer recommends the BOC APPROVE the comprehensive plan amendment, zone change and conditional use applications with the conditions set out below. The conditions are needed to protect the public health, welfare and safety.

- A. The MCC 17.171.030 list of permitted uses in the P (PUBLIC) zone, as applied to the subject property, is limited to MCC 17.171.030(C), cemeteries, specifically a private cemetery accessory to the church on the same property. All other MCC 17.171 uses are retained as conditional uses. The official zoning map shall be amended to show an LU suffix where the limited use overlay zone has been applied.
- B. Prior to establishing the proposed use, applicant shall provide the Marion County Planning Division proof from the Aumsville Fire District showing the proposed use meets access and premise identification regulations.
- C. Prior to establishing the proposed use, applicant shall provide the Planning Division with proof that any well water used on the subject two acres is allowed or that required Oregon Water Resources Department permits have been obtained.

VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 5th day of June 2019.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Luke Zollinger
14790 Anna Lane
Silverton, OR 97381

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by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 5th day of June, 2019, and that the postage thereon was prepaid.



Susan Hogg

Secretary to Hearings Officer