

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
ADMINISTRATIVE REVIEW CASE NO. 21-036

APPLICATION: Application of Richard and Heather Stoller for an administrative review to establish a primary farm dwelling on a 32.52 acre parcel in an EFU (Exclusive Farm Use) zone located in the 13800 block of Ehlen Road NE, Aurora (T04S; R1W; Section 14B; Tax lot 300).

DECISION: The Planning Director for Marion County has **DENIED** the above-described Administrative Review, subject to certain conditions.

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 deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) 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. Appeals 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 **February 3, 2022** If you have questions about this decision contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **February 4, 2022** unless appealed.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use). The intent of both designation and zone is to promote and protect commercial agricultural operations. Dwellings in conjunction with farming may be approved subject to certain criteria.
2. The subject property is located on the south side of Ehlen Rd NE, approximately 0.05 miles west of the intersection of Boones Ferry Rd NE and Ehlen Rd NE. There is one accessory structure located on the subject property. The property was the subject of Variance Case V85-7 and is considered legal for the purposes of land use.
3. Surrounding properties to the west, north and south are zoned EFU and to the northeast are zoned Public and Commercial. There are a mix of small residential properties and large scale commercial farming operations as well as some commercial uses in their appropriate zones.
4. The applicants are proposing to place a primary farm dwelling on the northeastern portion of the property.
5. Soil Survey of Marion County Oregon indicates 100% of the subject property soils are High-Value Farmland.
6. Marion County Building Division commented that building permits will be required for future development.

Marion County Public Works Land Development and Engineering Permits (LDEP) requested that the following Requirements be included in the land use decision:

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits an Access Permit will be required for a change-in-use of the recently permitted Boones Ferry Road field access having Permit #21/001646-PW to combined residential use. It appears that internal access to the existing shop building is entirely feasible; therefore, it will be required to close the Ehlen Road access approach as county policy is a total of one (1) access serving residential properties, especially considering Ehlen Road is an Arterial.
- B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits.
- C. Utility work in the public right-of-way requires separate PW Engineering permits.

Marion County Septic commented that a site septic site evaluation and construction/installation permit will be required for this dwelling proposal.

All other contacted agencies stated no objections or had no comments to the proposal.

- 7. Primary farm dwellings located on high-value farmland may be approved when the standards in Chapter 17.136.030(A) (1) of the Marion County Code (MCC) are satisfied. These standards include:
 - A. *There is no dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;*
 - B. *The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least \$80,000 in gross annual income from the sale of farm products. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;*
 - C. *The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;*
 - D. *The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section.*
- 8. There is no existing dwelling on the subject parcel and the applicant does not own any additional farm land. The criterion in 7(a) is met.

The applicant has provided a letter from Aldrich CPAs & Advisors LLP stating that for 2020 and 2021 the applicant grossed approximately \$250,000. The CPA letter states that this "certification does not include any representation or assurances as to the accuracy or completeness of the information contained by Stoller's federal income tax returns that I did not prepare". The CPA later states that this information is "based on representation provided by Stoller" however no additional documents were submitted. According to deed records the applicant purchased the subject property December 30, 2020, giving just one day to gross the \$250,000 as stated in the CPAs letter. Staff requested additional information via an incomplete letter dated December 17, 2021. No additional information has been submitted. Staff received a phone call from the applicant where Mr. Stoller stated that he was leasing the parcel prior to his purchase in late 2020 and did not produce the gross income as a property owner. Based on these facts, criterion 7(b) is not met.

The applicant states that the property is used to produce Filberts. Aerial imagery confirms that the property is used to Filberts, and has since at least 2019. The growing of Filberts is considered a farm use that can be used to generate farm income. Based on these facts, criterion 7(c) is met.

The applicant states that the dwelling will be occupied by him and family. Based on these facts, criterion 7(d) is met.

9. Based on the above findings, it has been determined that the applicants' request to establish a primary farm dwelling on the subject property does not satisfy all applicable decision criteria and is **DENIED**.

Brandon Reich
Director-Planning Division

Date: January 19, 2022

If you have any questions regarding this decision contact Lindsey King at (503) 588-5038.

Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.