

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. 22-019**

APPLICATION: Application of Alex Arciga on behalf of Ana Rosa Lua Espinosa for a conditional use permit for a home occupation business to store work vehicles and painting supplies on a 0.87-acre property in an UT-5 (Urban Transition) zone located at 4982 Sunnyview Road NE, Salem. (T7S, R2W, Section 20BA, Tax Lots 100 & 300).

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

EXPIRATION DATE: This conditional use permit is valid only when exercised by **June 9, 2024**. 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 home occupation will be limited to the two employees allowed for conditional home occupations as indicated in Marion County Code 16.32.400. **No dispatch or assembly of other employees will be allowed from the property.**

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 Marion County Code 16.32.400.
4. 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 another 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 the Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

5. The applicants should contact the Marion County Fire District #1 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.

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) based on 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 **June 9, 2022**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 10, 2022**, unless further consideration is requested.

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

1. The subject property is zoned Urban-Transition – 5 acres lot minimum (UT-5). The purpose of this zone is intended to retain and protect for future urban use properties which are undeveloped or underdeveloped and do not have available urban facilities such as sanitary sewer, water, drainage and streets.
2. The subject property is located on the southwest side of the intersection between Cordon Road NE and Sunnyview Road NE. The property currently contains one dwelling and four accessory structures. Tax Lot 100 is currently developed with one dwelling and one accessory structure, while Tax Lot 300 consists of three accessory structures.

Both parcels (Tax Lots 100 and 300) have been the subject of three previous land use cases. In 1980, the parcels were considered one parcel, but were partitioned because of the approval of Major Partitioning Case 80-22 (MP80-22). In 2011, the parcels were the subject of land use case Conditional Use Case 11-005 (CU11-005) which approved a home occupation for a hay tarp covering business. Finally, the parcels were the subject of Land Use Case Adjustment 22-004 which was withdrawn on April 20, 2022. As a result of MP 80-22, the parcels were split from their original form into the figure they are today. With the approval of CU11-005, both parcels were deemed legal. Therefore, this property contains two legal parcels for the purposes of land use per Marion County Code 16.49.152.

3. According to the applicant site plan and statement, the home occupation will be occurring on the southern legal parcel and is described in Reel 4390, Page 0199 of the Deed Records of Marion County, Oregon.
4. Properties to the north, west, and south are either annexed into the city of Salem or within the Urban Growth Boundary and zoned as Urban Transition (UT). Properties to the east are outside of the Urban Growth Boundary and are zoned as Exclusive Farm Use (EFU). The Urban Growth Boundary currently lies on the west side of Cordon Road.
5. The applicant is proposing to operate a painting business on the southern parcel at 4982 Sunnyview Road NE in Salem. They are proposing to use a newly planned building to store three vehicles inside. Additionally, the applicant is proposing to store paint and other equipment in the vehicles. The applicant lives on-site and employs his son and brother who live on-site as well. The applicant, his son, and his brother will all use each vehicle for the painting business. The applicant has stated that they will leave the site at about 6:30 am and return to the site at around 6:00 pm, daily.
6. Marion County Land Development and Engineering commented that:

ENGINEERING REQUIREMENTS

- A. If the proposal is approved, an Access Permit is required to pave the Sunnyview Drive driveway approach back for a minimum of 15 feet measured from the back of the concrete driveway apron. A permit file is set up as #555-22-000545-PW for which a fee of \$50 will be due. Access work must be completed prior to final building inspection.

- B. If the proposal is approved, Transportation System Development Charges (SDCs) will be assessed as a stipulation for issuance of building permits for the pole building assigned Building Inspection #555-22-003683-STR that is inferred to be used as storage for the painting business, based on prior conversation with the painting contractor.

ENGINEERING ADVISORY

- C. No direct access to the properties is allowed from Cordon Road.

Marion County Fire District No. 1 made the following comments:

1. **Fire apparatus road distance from buildings and turnarounds:** Access roads shall be within 150' of all portions of the exterior wall of the building as measured by and approve route around the exterior of the building. An approved turnaround is required if the remaining distance to an approve intersection roadway, as measured along the fire apparatus access road, is greater than 150'. (2019 Oregon Fire Code 503.1.1)
2. **Surface and load capacities:** Fire apparatus access roads shall be of an all-weather surface that is easily distinguishable from the surrounding area and is capable of supporting not less than 12,000 pounds point load (wheel load) and 75,000 pounds live load (gross vehicle weight). Documentation from a registered engineer that the final construction is in accordance with approved plans or the requirements of the Oregon Fire Code may be requested. (2019 OFC D102.1)
3. **Premise identification:** Buildings shall have address numbers or approved identification placed in a position that is plainly legible and visible from the access road fronting the property. Numbers shall contrast with their background and shall be a minimum of 4 inches in height with a minimum stroke width of half an inch. (2019 Oregon Fire Code 505)
4. **Gates:** Gates securing fire apparatus roads shall comply with all of the following:
 - a. Where a single gate is provided, the gate width shall be not less than 20 feet. Where a fire apparatus road consists of a divided roadway, the gate width shall be not less than 12 feet.
 - b. Gates shall be of the swinging type or sliding type.
 - c. Construction of gates shall be of materials that allow manual operation by one person.
 - d. Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.
 - e. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices shall be *approved by the fire code official*.
 - f. Electric gate operators, where provided, shall be *listed* in accordance with UL 325.
 - g. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F2200. (2019 Oregon Fire Code D103.5)
5. **Flammable and Combustible Liquids:** Provide documentation for any flammable or combustible liquid storage. (2019 Oregon Fire Code Chapter 57)

Marion County Septic Division commented that no septic action is required because the applicant has stated the employees of the business live at the property so operation of the business as described does not constitute an increase in flow to the septic system, which was permitted for a single family residence (07-00687). If the business expands to include employees that use the septic system but do not live on site, an authorization notice in accordance with OAR 340-071-0205 would be required.

Marion County Building Inspection commented that permits would be required for any proposed structures exceeding 200 sq. ft. in area and/or utilities alterations or additions on private property.

7. All other contacted agencies either failed to comment or had no objection to the proposal.
8. In order to approve a conditional use home occupation, the home occupation must meet the criteria provided under Marion County Code (MCC) 16.32.400. These include:

A. The premises upon which the home occupation is conducted shall be the residence of the person conducting the home occupation.

The applicant and primary operator of the home occupation, Alex Arciga, is a resident of the property and has indicated in his statement that the only other people involved in the business are his son and brother who help on a full-time basis. The criterion is met.

B. The home occupation shall be continuously conducted in such a manner as not to create any nuisance, public or private, known law or equity, including but not limited to: noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference.

The applicant has stated that the home occupation will not create a nuisance, public or private. The work vehicles, containing paint, will be parked in a building on-site that will be out of the view of the public or the residents living there. This will also avoid creating any issues surrounding the potential for odors or fumes. Additionally, the proposed building that will store the work vehicles, will be built up to fire standards as to mitigate any potential fire hazards. This criterion is met.

C. No sign shall be displayed on the premises except those as permitted in MCC 16.31.060(A).

The applicant has stated that there are no signs on the premises. The criterion is met.

D. No structural alterations shall be made to the dwelling that would be inconsistent with future use of the building as a dwelling.

The applicant is not proposing to alter the dwelling in any way. Therefore, this criterion does not apply.

E. No alteration to or use of the premises shall be made that would reduce the number of on-site parking spaces required for dwellings as outlined in MCC 16.30.170.

The applicant has stated that the work vehicles that will be stored on-site will be parked in a building that is being proposed to be built. Therefore, these vehicles would not reduce the number of on-site parking spaces required for the dwelling. The criterion is met.

F. Parking of customers' or clients' vehicles shall create no hazard or unusual congestion. If the home occupation requires any parking for an employee or customer, a site plan meeting the requirements for off-street parking in Chapter 16.30 MCC shall be submitted and approved by the planning manager.

The applicant has stated that there will be no customers on-site. The criterion is met.

G. Delivery and pick-up of materials or commodities in conjunction with the home occupation to and from the premises shall be made by private vehicles or by commercial vehicles not exceeding two axles in size.

The applicant is not proposing to receive deliveries or to have customers pick-up any material or commodities in conjunction with the home occupation. The criterion is met.

H. There shall be no outside storage or display of materials, equipment, or merchandise used in or produced in connection with the home occupation.

The customer has stated that all three vehicles, with the various painting supplies and equipment, will be stored inside a proposed accessory building that will be built on-site. The vehicles will leave at about 6:30 am every morning and will return around 6:00 pm every night to be stored in the proposed building. The criterion is met.

- I. *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.*

The applicant states that no customers will visit the property and the business will not be open to the public. The criterion is met.

- J. *The dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations. [Ord. 1204 § 4, 2004; Ord. 863 § 5, 1990. UZ Ord. § 32.40].*

The applicant has stated that other employees will not assemble nor dispatch from the parcel. The criterion is met.

9. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in Marion County Code (MCC) 16.40.020. Those requirements are:

- A. *The use is listed as a conditional use in the zone, or is otherwise identified as a conditional use and is consistent with the intent and purpose of the zone and the provisions that authorized consideration as a conditional use.*

According to MCC 16.13.020(R), a conditional home occupation is allowed, if the applicant can meet the criteria in MCC 16.32.400. The applicant has not applied for anything that is not already allowed in the UT zoning. Therefore, the criterion is met.

- B. *The parcel is suitable for the proposed use considering such factors as size, shape, location, topography, soils, slope stability, drainage and natural features.*

The applicant is proposing to replace an existing building on-site with a new one that will store the three vehicles and equipment used for the painting business. The current configuration of the parcel is suitable for the existing buildings, while the proposed building will be able to accommodate it and the three vehicle with equipment stored inside. The criterion is met.

- C. *The proposed use, as conditioned, will not substantially limit, impair, or preclude the use of surrounding properties for the uses permitted in the applicable zone.*

The applicant has stated that the home occupation will be used to store the three vehicles and other equipment for the painting business. The applicant and the two employees living on-site, will conduct business off-site and will use the home site only for storage, which will not limit, impair, or preclude the use of the surrounding properties permitted in the applicable zone. The criterion is met.

- D. *The proposed use, as conditioned, will not have a significant adverse effect on air or water quality.*

The applicant is proposing to use a planned building to store three vehicles and other equipment. Work pertaining to the business will be done off-site and will not have an adverse effect on the air or water quality of the surrounding parcels. The criterion is met.

- E. *Adequate public and utility facilities and services to serve the use are available or will be made available prior to establishment of the use. [Ord. 863 § 5, 1990. UZ Ord. § 40.02.*

The applicant has indicated that the work will be operated off-site and will using the home site as storage for the three vehicles and equipment. The criterion is met.

10. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for placing a temporary manufactured home/RV for medical hardship purposes and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich,
Planning Director/Zoning Administrator

Date: May 25, 2022

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173.

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.