

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. 23-005

APPLICATION: Application of Theodore and Margaret Hafner Trust for an administrative review to place a secondary farm dwelling on a 31.50-acre parcel in an EFU (Exclusive Farm Use) zone located at 5715 Anderson Road SE, Aumsville (T8S; R1W; Section 16; Tax Lot 800).

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

EXPIRATION DATE: This decision is valid only when exercised by **April 29, 2027**, unless an extension is granted. The effective period may be extended for two years subject to approval of an extension (form available from the Planning Division). Request for an extension must be submitted to the Planning Division prior to expiration of the approval.

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should check with 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 applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permit for the secondary single-family farm dwelling, the applicants shall sign a Marion County Farm/Forest Declaratory Statement for the secondary single-family dwelling. The applicants shall record the Statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
3. Prior to issuance of any building permit for the secondary single-family farm dwelling, the applicants shall sign a Marion County Secondary Farm Dwelling Removal Agreement for the secondary single-family dwelling. The applicants shall record the Statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
4. The secondary single-family dwelling shall be continuously occupied by a person working on the farm, as described in this decision.
5. The secondary single-family dwelling will consist of a manufactured dwelling.
6. The farm operator shall continue to play the predominant role in management and farm use of the farm.
7. Upon change of occupant the applicant shall submit a new application.
8. The secondary single-family dwelling will be addressed **5717 Anderson Road SE**.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect any 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 #6 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

9. The applicants should contact the Sublimity 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.
10. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories listed in Finding #6 below, that may be required.

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) 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. 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 **May 1, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 2, 2023**, 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.
2. The property is located at 5715 Anderson Road SE, near Sublimity. The parcel is approximately 0.46 miles from the intersection of Anderson Road SE and Schmidt Road SE. The parcel was the subject of two previous land use cases: Administrative Review 05-047 and Conditional Use 75-068; both cases were approved. As a result of the approval of the two previous land use case, the parcel is legal for land use purposes.
3. Surrounding properties in all directions are in farm use and in an EFU zone.
4. The applicants are proposing to place a secondary farm dwelling on the subject parcel for the property owner's son, Walter Hafner.
5. Soil Survey of Marion County Oregon indicates the subject property is composed of approximately 99.1% of high-value farm soils.
6. Various agencies made the following comments:

Marion County Building Inspection commented: Permit(s) are required to be obtained prior to any development and/or utilities on private property. Recommend the proposed dwelling be placed 3 feet or more from all property lines. Any less and additional fire resistive construction would be required according to the 2021 Oregon Residential Specialty Code.

Marion County Land Development, Engineering, and Permits made the following comments:

Engineering Requirements

A. Driveways are required to meet PW Engineering design and construction standards. The following numbered sub-requirements pertain to access:

- 1) At the time of application for building permits a formal Access Review will be conducted. A preliminary review noted six accesses to Anderson Road, which is deemed an excessive number relative to what is considered

reasonable access. Applicant is advised that it will be required to close three of the middle accesses, those situated between the southernmost and home accesses, since there appears to be ample internal circulation routes to adjacent outbuildings.

2) The most northern access approach intended to serve the secondary farm dwelling is currently rudimentary and will therefore need to be improved under the Access Permit by aligning it perpendicular with the road and surfacing with compacted crushed rock.

B. At the time of application for building permits, Transportation & System Development & Parks Charges (SDCs) will be assessed.

C. Utility service extensions in the public right-of-way require permits from MCPW Engineering.

All other contacted agencies either failed to comment or stated no objection to the proposal.

7. For the purposes of this land use application and application of the Marion County Code, the farm operator is synonymous with the owner of the subject parcel.

Secondary farm dwellings customarily provided in conjunction with farm use may be approved when the standards in Chapter 17.136.030(B) of the Marion County Code (MCC) are satisfied. The applicable standards include:

1. *The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.*

The applicant has stated that Walter Hafner will live in the secondary farm dwelling and work on the farm. Walter is the son of the applicants: Theodore and Margaret Hafner. Walter's role on the farm will be, but is not limited to, repairing and servicing farm equipment, raising cattle, and operating the hazelnut orchard. The applicant has met the burden of proof and, therefore, this criterion is met.

2. *There is no other dwelling on lands in the EFU, SA or FT zone owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.*

The applicant has stated that there are two dwellings, currently, on the subject parcel. One of the dwellings is the main dwelling which is occupied by the property owner while the other dwelling is being used by a farm worker. Therefore, this criterion is met.

3. *The proposed dwelling will be located:*

a. *On the same lot or parcel as the primary farm dwelling; or*

b. *On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or*

c. *On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (B)(1) of this section; or*

- d. *On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable State Building Code or similar types of farm worker housing as that existing on farm operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or*
- e. *On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (B)(4) of this section, whichever is applicable.*

There is only one subject parcel in which the applicant is proposing to place the proposed secondary farm dwelling. This parcel also contains the primary farm dwelling. Therefore, this criterion is met.

4. *The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:*

- a. *On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least \$40,000 gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years; or*
- b. *On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least \$80,000 in gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years;*
- c. *The primary dwelling is located on a commercial dairy farm as defined in this chapter; and*
 - i. *The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and*
 - ii. *The Oregon Department of Agriculture has approved a permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and*
 - iii. *The Oregon Department of Agriculture has approved a producer license for the sale of dairy products under ORS 621.072;*
- d. *In determining the gross income in subsections (B)(4)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.*

The applicant submitted three sets of documents to prove that the subject parcel earned at least \$80,000 in gross annual income for the last two years (2022 and 2021). First, the applicant submitted invoices from the sale of farm products from the subject parcel from the years 2020, 2021, and 2022. Second, the applicant submitted IRS Form 1120 for the years 2019, 2020, and 2021. Lastly, the applicant submitted deposits for NW Preferred Federal Credit Union showing deposits for the years 2021 and 2022.

Staff reviewed all three sets of documents. To prove income, staff relied on the bank deposits from 2022 and 2021 to corroborate the income being reported by the applicant via the submitted invoices. Staff were able to corroborate all but one of the invoices from 2022 and 2021 by using the bank deposit information. Specifically, staff could not corroborate an invoice from January 4, 2021, in the amount of \$710.00. However, by excluding this amount from the reported income from 2021, this does not change the fact that the applicant met the minimum income requirement of \$80,000 a year in gross annual income for the years 2022 and 2021.

In summation, the applicant claimed to make \$90,844 in gross annual income from the sale of farms products from the subject property which has been corroborated by the submitted bank deposits and invoices. Additionally, the applicant claimed to make \$96,805 in gross annual income from the sale of farms products from the subject property in which only \$96,095 of that reported income could be corroborated by staff via the submitted bank deposits and invoices. Therefore, this criterion is satisfied.

5. *The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.*

The subject parcel is not located within the big game habitat area. Therefore, this criterion does not apply.

6. *Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable State Building Code, and a deed restriction filed with the county clerk requiring removal of the manufactured home or removal, demolition or conversion to a nonresidential use if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.*

The applicant has stated that the proposed secondary farm dwelling will be a manufactured dwelling. This criterion will also be a condition of approval. This criterion is met.

8. Based on the above findings, it has been determined that the proposed secondary dwelling satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: April 14, 2023

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.