

Attention Property Owner: A land use proposal has been submitted for property near where you live or 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. 19-013**

APPLICATION: Application of Coyne A. Smith and Lanita K. Smith, Trustees under Coyne and Lanita Smith Living Trust, for an administrative review to place a lot of record dwelling on a 6.01 acre parcel in a SA (Special Agriculture) zone located in the 9000 block of Smith Road SE, Aumsville (T8S; R2W; Section 24A; tax lot 1600).

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 **July 11, 2023** unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

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 building permits, the applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division (enclosed). This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
3. Prior to issuance of building permits, the applicant shall sign and submit a Sensitive Groundwater Overlay Zone Declaratory Statement (enclosed) to the Planning Division for each resulting parcel. This statement shall be recorded by the applicant with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director.
4. Prior to issuance of building permits, the applicant shall sign and submit a Geological Hazardous Area Declaratory Statement (enclosed) to the Planning Division for each resulting parcel. This statement shall be recorded by the applicant with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director.
5. This lot-of-record dwelling approval may be transferred **one time only** by a person who has qualified under this section to any other person after the effective date of this land use decision.
6. As a result of this decision, the Marion County Assessor is now notified that the county intends to allow a dwelling on the property.

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 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. The applicants should contact the Aumsville 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. Fire District access standards may be more restrictive than County standards.
8. 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) 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 **July 11, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 12, 2019** unless appealed.

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

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan and zoned SA (Special Agriculture). The intent of both the designation and zone is to promote and protect commercial agricultural operations. The property is also located in a Sensitive Groundwater Overlay zone and a Geologically Hazardous Areas Overlay Zone.
2. The subject property is located on the north side of Smith Road SE in the 9000 block and is undeveloped. The property was the subject of a previous land use case, Minor Partition Case #80-55, which determined the parcel was legally created, denied a land division and approved a dwelling. The property was also subject to Farm Dwelling Case #92-17, which denied a request to place a farm dwelling on the property.
3. Surrounding properties in all directions are zoned SA and in farm use and rural home sites.
4. The applicants are proposing to place a lot-of-record dwelling on the subject property.
5. Soil Survey of Marion County Oregon indicates 99% of the subject property consists of high-value farm soils.
6. Public Works Land Development and Engineering Permits (LDEP) requested the following Requirements be included in the land use decision:

“A. In accordance with Marion County Driveway Ordinance #651, a driveway “Access Permit” for access to the public right-of-way will be required upon application for a building permit for a new dwelling. Driveways must meet sight distance, design, spacing, and safety standards. It was noted during an initial site inspection that the driveway is steep and may need vegetation clearing to achieve adequate sight distance and potentially some additional rock and a culvert to meet Marion County Design Standards. Requirements to meet Marion County Design Standards will be defined in the permit.

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, per Marion County Ordinances #00-10R and #98-40R, respectively.”

LDEP also requested the following Advisory be included:

“C. Per the Marion County Rural Transportation System Plan, this section of Smith Road is classified as a Local road. Per Marion County Code 17.112.020 a Special Setback of 30 feet measured from the centerline of the

street right-of-way applies on Local roads, and from which standard zoning setbacks are measured. Please note county records indicate that the current right-of-way half-width is 20 feet, therefore the setback is an additional 10 feet back from the property line.”

Marion County Building On-Site Wastewater Specialist commented that a site evaluation is required for septic system.

7. Section 17.137.030(D) of the Marion County Code (MCC) allows a lot of record dwelling subject to meeting specific standards and criteria. These include:

- (a) *The lot or parcel on which the dwelling will be sited was lawfully created and acquired and owned continuously by the present owner:*
 - (1) *Since prior to January 1, 1985; or*
 - (2) *By devise or intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.*
 - (3) *“Owner”, as the term is used in this section only, includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.*

The applicants purchased the property on March 9, 1981. This criterion is met.

- (b) *The tract on which the dwelling will be sited does not include a dwelling.*

There are no adjacent properties in the same ownership which would constitute a tract. This criterion is met.

- (c) *The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, and no dwelling exists on another lot or parcel that was part of that tract.*

A review of Assessor records determined that there were no adjacent properties with a dwelling owned by the same persons on November 4, 1993 that would have constituted a track. This criterion is met.

- (d) *When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.*

There are no adjacent properties in the same ownership which would constitute a tract. This criterion does not apply.

- (e) *The request is not prohibited by, and complies with, the Comprehensive Plan and other provisions of this ordinance, including but not limited to floodplain, greenway, and big game habitat area restrictions.*

The property is not in an identified big game habitat area, floodplain, or greenway area. The property is in a Sensitive Groundwater Overlay zone; however, those provisions do not apply to placing a dwelling on an existing property. It can be made a condition of any approval that the applicants record a declaratory statement acknowledging availability of groundwater on the property may be limited and require an alternative water source in the future. The property is also in a geologically hazardous area. However, the hazard level on the property does not require any further review before placing a dwelling. It can be made a condition of any approval that the applicants record a declaratory statement acknowledging the geologic hazards present on the property. The proposal can be conditioned to meet the criteria above.

- (f) *The proposed dwelling will not:*
 - (1) *Exceed the facilities and service capabilities of the area.*
 - (2) *Create conditions or circumstances contrary to the purpose of the Special Agriculture zone.*

It appears the property will be able to have a well and septic installed. The property is in the Aumsville Fire District and law enforcement will be provided by Marion County. All other services are or can be made available to the property. In addition, the purpose statement in the SA zone recognizes that properties in this zone will be developed for various sized farms as well as rural home sites. The subject property is surrounded by land in commercial agricultural use and small acreage home sites. The proposed dwelling, located on a 6 acre parcel, is consistent with these existing, surrounding uses. There is no evidence to indicate that the proposed dwelling will have any adverse effects on surrounding properties in a farm or timber use. MCC 17.137.100(c) requires that a Declaratory Statement be recorded with the property deed because the subject property is in a resource zone. This serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. The proposal meets these criteria.

(g) *A lot-of-record dwelling approval may be transferred by a person who has qualified under this section to any other person after the effective date of the land-use decision.*

This can be made a condition of any approval.

(h) *The County Assessor shall be notified that the county intends to allow the dwelling.*

This can be made a condition of any approval.

(i) *The lot or parcel on which the dwelling will be sited is not high-value farmland as defined in Section 137.130 (d);or*

The parcel consists of high-value farmland. This criteria does not apply.

(j) *The lot or parcel on which the dwelling will be sited is high-value farmland as defined in MCC 17.137.130(D)(2) or (3) and:*

(1) *Is 21 acres or less in size;*

The property is 6 acres in size. This criteria is met.

(2) *The tract on which the dwelling is to be sited is not a flag lot and is:*

- i. *Bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993; or*
- ii. *Bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. No more than two of the four dwellings may be within an urban growth boundary;*

The property is not a flag lot; it abuts the public right-of-way. The property is bordered by 6 parcels, 5 are less than 21 acres in size, which is 83% where 67% is required in (j)(2)(i) above. There are five dwellings on the bordering properties, all of which appear to be less than ¼ mile from the center of the subject property, which is 83% where 25% is required in (j)(2)(ii) above. The proposal meets the criteria.

8. Based on the above findings, the proposal to place a dwelling on the property meets all applicable criteria and special use requirements. This request is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: June 26, 2019

If you have any questions regarding this decision contact Brandon Reich 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.