

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. 18-030**

**APPLICATION:** Application of Carol Lee for a conditional use to establish a bed and breakfast inn as a home occupation on a 9.4 acre parcel in an SA (Special Agriculture) zone located at 3705 Ballyntyne Road S, Salem (T8S; R3W; Section 18B; tax lot 500).

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

**EXPIRATION DATE:** This conditional use permit is valid only when exercised by **May 29, 2020**. 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 proposal is for land use purposes only. Due to septic, well, and drainfield replacement areas, these parcels may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division at (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 all necessary building and septic permits from Marion County Building Inspection Division.
2. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition has been satisfied:

*Condition A – Within 180 days following land use approval, dedicate a 30-foot half-width along the Ballyntyne Road frontage for public right-of-way purposes in order to meet the county's Local road standard [MCC 17.119.60].*

3. Prior to issuance of a building permit, the applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

**ADDITIONAL CONDITIONS:** Once the approved use is established, the following conditions must be continually satisfied:

4. The home occupation shall be operated in full compliance with the criteria in MCC 17.137.060(C) that are listed in #7 of the Findings and Conclusions section of this decision.
5. 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 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 restrictions or conditions thereon. It is recommended that agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits.

6. The applicant should contact the Salem Suburban 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. The Salem Suburban Fire District may be contacted at (503) 588-6245.

**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 \$200.00) 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. 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 **May 29, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the above address. This decision is effective **May 30, 2018** 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 designated Special Agriculture in the Marion County Comprehensive Plan and zoned SA (Special Agriculture). The intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The subject parcel is located on the north side of Ballyntyne Road SE, approximately 1,500 feet west of the intersection with Cobb Lane S. The property contains a dwelling, accessory structures, well, and septic system. The property was created in its present configuration as a result of approval of Property Line Adjustment case number PLA03-11 and is considered a legal parcel for land use purposes.
3. All surrounding properties, with the exception of the properties to the east are zoned SA, and consist of rural residential lots and land in timber use. Property to the east on the north side of Ballyntyne Road are zoned AR (Acreage Residential).
4. The applicant is requesting to establish a bed and breakfast inn as a home occupation in the dwelling.
5. **Public Works Land Development and Engineering Permits** requested that Condition A be included in the land use decision. LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file. LDEP will not approve the final use until the following condition has been met:

***Condition A – Within 180 days following land use approval, dedicate a 30-foot half-width along the Ballyntyne Road frontage for public right-of-way purposes in order to meet the county's Local road standard [MCC 17.119.60].***

The Applicant will need to engage a licensed Surveyor to accomplish this. Currently there exists a 20-foot right-of-way half-width.

**Marion County Building Inspection** commented that permits for a Change in Use or Occupancy and/or any new construction may be required.

All other agencies contacted stated no objection to the proposal.

6. MCC Chapter 17.110.108 defines a bed and breakfast inn as “a single-family dwelling where lodging and a morning meal for guests only are offered for compensation, having no more than five sleeping rooms for this purpose. An establishment where more than one meal per day is offered shall not be deemed a bed and breakfast inn. An establishment with more than five sleeping rooms shall be deemed a hotel. Unless specifically listed as a permitted or conditional use, a bed and breakfast inn is considered a home occupation. Weddings, receptions, group meetings, conferences and similar activities are not allowed as secondary uses, accessory uses or temporary uses in association with a bed and breakfast inn.” Accordingly, a bed and breakfast inn can be approved as a home occupation in the SA zone subject to the terms of this definition. The applicant stated that five sleeping rooms are proposed and the rooms are in the dwelling on the property. No activities are proposed that are not included in this definition.
7. In order to approve a conditional home occupation in an SA zone, the applicant must satisfy the criteria in Section 17.137.060(C) of the Marion County Code (MCC) as follows:
- (a) A home occupation or bed and breakfast shall be operated by a resident of the dwelling on the property on which the business is located. Including the residents, no more than five full-time or part-time persons shall work in the home occupation (“person” includes volunteer, nonresident employee, partner or any other person).
  - (b) It shall be operated substantially in:
    - 1. The dwelling; or
    - 2. Other buildings normally associated with uses permitted in the zone in which the property is located.
  - (c) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.
  - (d) A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.
  - (e) A sign shall meet the standards in Chapter 17.191 MCC.
  - (f) The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.
  - (g) 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.
8. Information provided by the applicant indicates that Carol Lee will operate the business and reside in the dwelling on the property. The business will include two additional employees. The proposal meets #7(a).
- Based on information submitted to the file, the applicant states that the business will include five sleeping rooms in the dwelling. Since all activity will take place inside the existing building, any noise associated with the business will be compatible with residential use of the property. The home occupation business should not cause significant emissions, including noise, odors, vibration, and fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference. The proposal satisfies the criteria in #7(b) and (c).
- There is no evidence that the business operation as proposed will interfere with other permitted uses in the area. Any sign would have to meet the requirements of Chapter 17.191 MCC. Structural alterations are not required and, therefore, no structures will be changed for any future residential use. There will be no dispatch of employees to or from the property and there will be no outside storage of materials or waste related to the business. The operation is allowed one commercial vehicle in conjunction with the home occupation. The applicant is not requesting that retail sales from the property be allowed, such sales are not permitted as part of a home occupation. The proposal meets the criteria in #7(d) through (g).
9. Since the property is located in an SA zone, the proposal must also satisfy the conditional use criteria in MCC 17.137.060(A). Those requirements are:
- (a) The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.

- (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
- (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- (e) *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

10. As outlined above, there is no evidence to indicate that the use will have a negative impact on nearby lands devoted to farm use. The applicant is proposing to operate a bed and breakfast inn in the dwelling on the subject parcel. As described above, the proposal meets the criteria for a conditional use home occupation in the SA zone. The criterion in #9(a) is met.

The property is served by the Salem Suburban Fire District and the Marion County Sheriff. The applicant must comply with any access standards and will be required to obtain any permits required by Marion County Building Inspection. The proposal can meet, or be conditioned to meet, the criteria in #9(b).

The site does not contain any significant watersheds, groundwater, fish and wildlife habitat, soil and slope stability, or air and water quality areas identified in the Marion County Comprehensive Plan. The proposal meets the criteria in #9(c).

Any noise from the business is not expected to be significant, either to surrounding residential uses or to farming in the area. The proposal meets the criteria in #9(d).

The Marion County Comprehensive Plan identifies no potential water impoundments or mineral and aggregate sites. The proposal meets #9(e).

11. Based on the above findings it has been determined that the applicant's request can meet all applicable criteria to establish a bed and breakfast inn as a home occupation and is, therefore, **APPROVED** subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: May 14, 2018

If you have any questions please contact Lisa Milliman 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.