

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 RECONSIDERATION OF DECISION
CONDITIONAL USE CASE NO. 18-039**

APPLICATION: Application of Heber Sanchez and Diana Anguiano for a conditional use to establish an automobile dealership as a home occupation on a 1.21 acre parcel in an UT-5 (Urban Transition – 5 Acre Density) zone located at 4995 Auburn RD NE, Salem. (T7S; R2W; Section 29BA; tax lots 1801 & 1900).

DECISION: The Planning Director for Marion County has **RECONSIDERED and APPROVED** the above-described Conditional Use application subject to certain conditions. See Finding #4 for additional information on the reconsideration.

EXPIRATION DATE: This Conditional Use Permit is valid only when exercised by **October 3, 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 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. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

***Condition A** - The approval is contingent on applicant securing any required access permissions (Salem) and building permits (Marion County) to serve the home occupation, including access to the shop building, via Auburn Road.*

***Condition B** - Access to Auburn Road shall be in place within 60 calendar days from the date of a Planning Department approved Notice of Decision (NOD), and no business activity shall be allowed on site until all access provisions have been completed to the satisfaction of Engineering.*

3. Prior to building permits, the applicant shall coordinate with the City of Salem, Marion County Building Inspection and Marion County Public Works to obtain all necessary public services and utilities.

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 16.32.400 that are listed in #6 of the Findings and Conclusions section of this decision and the applicant's statement.
5. One vehicle used with the home occupation and one vehicle used in other employment, along with personal use vehicles, may be parked on the premises. All other vehicles associated with the home occupation must be stored inside a building.

6. 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

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) 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 **October 3, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 4, 2018** unless further consideration is requested.

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

1. The property is designated Developing Residential in the Salem Area Comprehensive Plan. The purpose of this designation and the corresponding UT-10 (Urban Transition - 10 Acre Minimum) zone is to maintain land available for residential development once the property is annexed into the city.
2. The property is located in the northwest corner of the intersection of Cordon Road and Auburn Road NE. The property is currently developed with a dwelling and several accessory buildings.
3. Adjacent properties are zoned UT or RS (Single Family Residential), inside Salem's city limits, and mostly in residential use. A church is located to the south of the subject property. Adjacent properties on the east side of Cordon Road are in an AR (Acreage Residential) zone and in residential use.
4. The applicant proposes to operate a home office for an automobile sales dealership on the property. **Marion County Planning approved the conditional use subject to conditions on August 21, 2018. The applicant subsequently requested reconsideration of the decision with respect to Condition #2, requiring access to Cordon Road to be closed and all access to the property be made from Auburn Road. Marion County Public Works Land Development and Engineering Permits reviewed the request and determined that "PW Engineering cannot support and provide access for even a low-volume business that will exacerbate and already deficient and potentially unsafe access location" and is unable to amend the conditions of approval.**
5. Public Works Land Development and Engineering Permits (LDEP) requests that the following conditions, lettered A and B, are included in the land use case. LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file.

"Condition A - The approval is contingent on applicant securing any required access permissions (Salem) and building permits (Marion County) to serve the home occupation, including access to the shop building, via Auburn Road.

Condition B - Access to Auburn Road shall be in place within 60 calendar days from the date of a Planning Department approved Notice of Decision (NOD), and no business activity shall be allowed on site until all access provisions have been completed to the satisfaction of Engineering.

Nexus for Conditions A and B are consistent with the Cordon Road Limited Access Resolution, goals of which

are to maintain Cordon Road as a limited access, high speed facility, while promoting traffic safety by limiting the intensification of use at existing accesses or closing them altogether, where feasible.”

Marion County Building Inspection commented that a building permit is required for a Change in Use or Occupancy and a septic evaluation is required.

6. Conditional home occupations are allowed, subject to the criteria in MCC 16.32.400, as follows:
A home occupation that employs no more than one person (“person” includes volunteer, nonresident employee, partner, or other person) in the conduct of the home occupation may be approved as a conditional use subject to meeting the following criteria:

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

Heber Sanchez owns the business and resides in the dwelling on the property.

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.*

This can be made a condition of any approval.

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

No signs are anticipated for the business.

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

No structural alterations shall be made to the dwelling.

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.*

No alterations to the property are expected, with the exception of building a new access to the accessory buildings to Auburn Road. The new access will not conflict with the existing driveway.

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.*

No customer or employee parking is needed. No parking associated and needed for the dwelling on the property will be used for the business.

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.*

No deliveries associated with the business are expected. Automobiles sold by the business will be driven to the property and stored inside a building.

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 applicant stated that all activities associated with the business will be conducted in one of two existing accessory building on the property. All automobiles held for sale will be kept inside the larger building until taken off premises to be sold.

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 stated that no customers will come to the property.

J. *The dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.*

The only person associated with the business is Heber Sanchez, who resides on the property.

7. In order to grant approval for a conditional use listed in MCC 16.13.020, the general criteria in MCC16.13.030 must also be satisfied:

A. *The use will not increase traffic beyond the capacity of existing roads.*

It is unclear if access for a home occupation is available to the subject property from Auburn Road. Marion County Public Works has requested a condition of approval that requires securing access permission from the City of Salem for use of Auburn Road. Marion County Public Works will also require a driveway permit. This criterion is satisfied subject to conditions.

B. *If the use will remain after the area is urbanized it will be located in such a manner that any significant unused portion of the property has adequate development options.*

Only existing buildings will be used for the business. This criterion does not apply.

C. *The use and related structures and improvements meet the development standards of the most restrictive zone consistent with the applicable Comprehensive Plan designation; or the city concurs and, if the city requests, conditions are imposed that require the structures and improvements to be brought into conformance with city zoning regulations upon annexation.*

The most restrictive zone consistent with the Comprehensive Plan designation of the property (Residential) is the RS (Single Family Residential) zone. Home occupations are a permitted use in the RS zone. The proposal can satisfy this criterion.

D. *The most restrictive zone used in the applicable Comprehensive Plan designation lists the proposed use as a permitted or conditional use; or the city concurs and, if the city requests, conditions are imposed which require that the use be brought into conformance with city zoning regulations upon annexation.*

As discussed above, the most restrictive zone consistent with the Comprehensive Plan designation of the property (Residential) is the RS zone. Home occupations are a permitted use in this zone. The proposal satisfies this criterion.

8. All conditional uses are subject to the general criteria in MCC16.40.020, these include:

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.*

The use is listed as a conditional use in the RS zone, the most restrictive residential zone and is therefore a conditional use in the UT zone. This 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 parcel is roughly rectangular in shape and relatively flat. The existing buildings and access ways cover most of the subject parcel. Access to the accessory buildings is currently via an unauthorized driveway onto Cordon Road. Marion County Public Works requires that an authorized access be established on Auburn Road prior to operating the business. This criterion is satisfied subject to conditions.

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 subject property is located in an area designated for residential use. The property is located in the northwest corner of the intersection of Auburn Road and Cordon Road. Cordon Road is a limited access, high speed, high traffic roadway and Auburn Road is a well-traveled link between Lancaster Drive and Cordon Road. The applicant stated that all activities associated with the business will be conducted in one of two existing accessory buildings on the property. All automobiles held for sale will be kept inside the larger building until taken off premises to be sold. Normal office activities will be conducted inside the smaller building and no noise or other impacts should be noticed off site. The applicant stated that no customers will come to the property. The proposed use does not generate noise or emissions that would affect other uses in the area and will be developed in such a manner that will not interfere with or restrict development options on adjacent properties. The proposal can satisfy this criterion.

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

The applicant will be required to meet the stormwater standards at time of building permits. Air quality is not expected to be significantly affected. The proposal can satisfy this criterion.

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.*

The applicant must coordinate with the City of Salem, Marion County Building Inspection and Marion County Public Works regarding provision of public services and utilities. The proposal can be conditioned to meet this criterion.

9. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria to establish a car dealership as a home occupation and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Zoning Administrator

Date: September 18, 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.