

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
CONDITIONAL USE CASE NO. 18-052**

APPLICATION: Application of Minh and Carmen Nguyen for a conditional use to establish a commercial kitchen as a home occupation on a 1.67 acre parcel in an SA (Special Agriculture) zone located at 8684 Jackson Hill Rd SE, Salem. (T8S; R3W; Section 35; tax lot 600).

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 **September 21, 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 drain field 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, (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.

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

2. The home occupation shall be operated in full compliance with the criteria in MCC 17.137.060 (C) that are listed in #6 of the Findings and Conclusions section of this decision.
3. 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 #6 be contacted to identify restrictions or necessary permits.

4. The applicant should contact Turner 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. Contact Chief Remy at 503-743-2190.

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 4:00 p.m. on **September 21, 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 **September 22, 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 designation and zone is to promote and protect commercial agricultural operations.
2. The subject parcel is located on the east side of Jackson Hill Rd SE, approximately 1300 feet north of its intersection with Shasta St SE. The property contains a dwelling, accessory structures, well, and septic system. The property was the subject of a previous land use case, Administrative Review 06-44 (AR06-44), that approved a replacement dwelling and is considered a legal parcel for land use purposes.
3. Surrounding properties to the north and east are zoned SA and consist of rural residential lots. Properties to the south and west are within the EFU (Exclusive Farm Use) zone and in farm use.
4. The applicant is requesting to establish a commercial kitchen as a home occupation in an existing accessory building on the subject property.
5. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

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

Marion County Building Inspection Onsite Wastewater Specialist commented that septic permits may be required.

Turner Fire District commented that the use would have to comply with fire code and access requirements.

6. 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, non-resident 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 offsite 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.*

7. Information provided by the applicant indicates that Carmen and Minh Nguyen will operate the business and they both reside in the dwelling on the property. The business will not include any additional employees. Based on

information submitted to the file, the applicants catering company will be for events, parties and their mobile food trucks that are located off-site. The business will be operated from an accessory building, including storage of equipment and supplies in the accessory building. Any noise or odors associated with the business would be limited to the property or would be consistent with agricultural activities. The 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 #6 (A), (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 of the Marion County Code. There will be no dispatch of employees to or from the property. The operation is allowed one commercial vehicle in conjunction with the home occupation, and any other vehicles associated with the business must be stored inside. All equipment used with the business will be stored inside a building. The applicants are not requesting that retail sales from the property be allowed, and such sales are not permitted as part of a home occupation. The proposal meets the criteria in #6(D)-(G).

8. Section 17.126.020(D)(3) of the Marion County Code (MCC) allows one vehicle used with a home occupation and one vehicle used in other employment, along with personal use vehicles to be parked on the premises. All other vehicles used for the home occupation must be kept off premises.
9. In order to approve a home occupation in an SA zone, the applicant must also satisfy the criteria in MCC 17.137.060 (A), these include:
 - (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 the use will have a negative impact on nearby lands devoted to farm use. The applicant is proposing to establish a commercial catering kitchen as a home occupation on the property. The applicants previously recorded a Farm/Forest Declaratory Statement acknowledging the impacts of farm and forest management practices conducted in the area with AR06-44. The proposal meets #9(A). Turner Fire District serves the parcel and all other needed services are currently available to the site, satisfying criterion in #9(B). The property is not within a wildlife habitat area or geologically hazardous area. There is no evidence of significant odors or noxious matter emitted from the premises that would affect air or water quality. It appears that the operation will generate little or no noise heard off the property, meeting #9(C) and (D). There are no potential water impoundments or significant mineral and aggregate sites identified by the Comprehensive Plan in the area, meeting the criterion in #9(E).
11. Based on the above findings it has been determined the applicant's request can meet all applicable criteria to establish a commercial kitchen for a catering business as a home occupation and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: September 6, 2018

If you have any questions please contact Patty Dorr 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.