

**NOTICE OF DECISION
CONDITIONAL USE CASE NO. 19-001**

APPLICATION: Application of Mike Hillyer for a conditional use to establish an automobile dealership as a home occupation on a 1.99 acre parcel in a SA (Special Agriculture) zone located at 7095 Spencer Pl SE, Salem. (T8S; R2W; Section 15A; tax lot 401).

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 **February 22, 2021**. 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.

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

2. The business shall continuously comply with the home occupation criteria in MCC 17.136.050(C) and listed in Finding #7.
3. Failure to continuously comply with the Conditions of Approval may result in this approval being revoked. Any revocation can be appealed to a Marion 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:

4. 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.
5. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 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 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 **February 22, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 23, 2019** 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 Special Agriculture in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding SA (Special Agriculture) zone is to promote and protect commercial agricultural operations.
2. The subject parcel is located on the south side of Spencer Place SE, the west side of 71st Ave SE, and the north side of Santiam Highway. The property contains a dwelling, well and septic system. The property was created by approval of Partition case number P07-25, and is a legal lot for land use purposes.
3. Surrounding land in every direction is zoned SA (Special Agriculture) and consists of various sized parcels primarily in agriculture production.
4. The applicants are proposing to establish an automobile dealership as a home occupation. As proposed the business will be conducted in the dwelling and will employ one person.
5. Public Works Land Development and Engineering Permits commented:
 - “A. In accordance with Marion County Code (MCC) 11.10, driveways must meet sight distance, design, spacing, and safety standards. A driveway “Access Permit” for access to the public right-of-way will be required due to previous work conducted without a permit. An inspection will be conducted and if any changes are necessary, the permit will explain the needed changes. This work may include, but is not limited to, the removal of trees that have been planted in the right-of-way that are impeding intersection sight distance. Per aerial photographs, the Spencer Place access to 71st Avenue SE was paved without a permit sometime between late 2016 and early 2017.
 - B. The subject property is within the unincorporated area of Marion County and may be assessed Transportation System Development Charges (SDCs) for the change-in-use to the existing 500 square-foot garage, per Marion County Ordinance #00-10R. The Applicant should contact PW Engineering for a quote and to arrange payment.”

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

Marion County On-Site Sewage commented that septic permits may be required.

Marion County Tax Assessor provided comments regarding taxes on the subject property.

6. Marion County Code (MCC) 17.137.050 permits a home occupation subject to the criteria in MCC 17.137.060(A) and (C) with the filing of a declaratory statement regarding nearby farm and forest practices. The recording of a declaratory statement was previously filed with the building permit for the replacement dwelling in 2016.
7. MCC 17.137.060 (C) provides specific criteria for approval of a home occupation:
 - A. *A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including 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:*
 - a. *The dwelling; or*

- b. *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.*

Information provided by the applicant indicates Mike Hillyer will operate Diversified Auto Group, an automobile dealership and he is a resident of the property. The business will include no additional employees and there appears to be adequate room on the property for business and personal parking. The home occupation will take place in the dwelling. The home occupation business should not cause significant emissions, including noise, odors, vibration, and fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference. There is no evidence that the business operation as proposed will interfere with other permitted uses in the area. Any sign will be required to meet the standard in MCC 17.191. 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 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 above.

8. In addition to the specific criteria, MCC 17.137.060(A) contains general criteria that apply to any conditional use:
- 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.*

The proposed use will take place entirely within the dwelling on the property. There is no anticipated impact from the use on surrounding farm or forest practices. Aumsville Fire District provides fire protection to the property and the Marion County Sheriff provides police protection. Other rural services are available to the property, such as a well and septic system. There are no identified watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality issues on the property. No significant noise is anticipated from the property because of the proposed use. There are no identified potential water impoundments or mineral and aggregate sites on the property or nearby that would be affected by this proposed use. The existing dwelling is located out of the 100 year floodplain. These criteria are met by the proposal.

9. Based on the above findings it has been determined the applicant's request can meet all applicable criteria to establish an automobile dealership as a home occupation and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: February 6, 2019

If you have any questions regarding this decision 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.