

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. 19-008**

APPLICATION: Application of Gilberto and Carolina Alverado for a conditional use to establish a painting contracting business as a home occupation on a 9.77 acre parcel in an EFU (Exclusive Farm Use) zone located at 2675 Molalla Rd, Woodburn. (T5S: R1W Section 9A; 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 **April 5, 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 remove the kitchen in the 30 foot by 60 foot accessory building. The removal of the kitchen shall be verified by a Marion County Code Compliance Officer and the building shall not be occupied as a dwelling.
2. The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.
3. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition has been satisfied:

***Condition A** – Prior to establishment of the business, provide evidence to Marion County Public Works Engineering of ODOT approval, or waiver thereof, for the access to Molalla Road.*

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

4. The business shall continuously comply with the home occupation criteria in MCC 17.136.050(C) and listed in Finding #7.
5. No outside storage of supplies or solid waste is permitted.
6. No dispatching of employees is permitted from the property.
7. Only one vehicle associated with the business is permitted to be parked on the property.
8. No more than five employees are allowed.
9. The property is not approved for a guest facility.

10. 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:

11. The applicants should contact Woodburn County 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 Woodburn Fire District at (503) 982-2360 for more information.
12. The applicants should contact Marion County Land Development and Engineering at (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 **April 5, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 6, 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 Primary Agriculture in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote and protect commercial agricultural operations. Non-farm uses, such as home occupations, can be approved where they do not have a significant adverse impact on farming operations in the area.
2. The property is located on the north side of Molalla Road approximately 2,690 feet west of its intersection with Cooley Road. The property contains a dwelling, accessory buildings, an ag-exempt building, well and septic system. The parcel was created as Lot 12, Woodburn Fruit Farms, and is considered a lawfully created parcel for land use purposes.
3. Surrounding properties in all directions consist of land being farmed in an EFU zone.
4. The applicants are proposing to establish a painting contracting business as a home occupation. As presented in the applicant's statement, the business is conducted in an existing shop and employs two persons.
5. Public Works Land Development and Engineering Permits (LDEP) requested that the following condition be included in the land use case:

“Condition A – Prior to establishment of the business, provide evidence to Marion County Public Works Engineering of ODOT approval, or waiver thereof, for the access to Molalla Road.”

LDEP also requested that the following Requirement be included:

“B. A stormwater drainage plan may be required prior to the issuance of any future building permits for the subject property due to amount of impervious surface on the lot.”

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

Marion County Code Enforcement commented that there are building code and zone code violations occurring on the property.

6. Marion County Code (MCC) 17.136.050 permits a home occupation subject to the criteria in MCC 17.136.060(A) and (C) with the filing of a declaratory statement regarding nearby farm and forest practices. A declaratory statement was recorded with a previous land use approval. This criteria, has been satisfied.
7. MCC 17.136.060 (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.*

Based on information provided by the applicant, Gilberto Alvarado resides on the property and operates a painting contracting business on the property. The business includes an additional employee who lives off site and will report directly to job sites. No employee parking is needed on the property because the property will be approved for storage of equipment and supplies and office use only. Mr. Alvarado will be taking any necessary supplies and equipment from the property to job sites. The home occupation will take place in an accessory structure that was constructed as a residential accessory structure. 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 required will interfere with other permitted uses in the area. Any sign will be required to meet the standard in MCC 17.191. No dispatch of employees to or from the property is permitted 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 home occupation can be operated in accordance with the criteria above.

8. In addition to the specific criteria, MCC 17.136.060(A) contains general criteria that applies 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 existing accessory building on the property. There is no anticipated impact from the use on surrounding farm or forest practices. Woodburn 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. These criteria are met by the proposal.

9. MCC 17.110.680 states that:
“No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, or is being used or has been divided in violation of the provisions of this title unless issuance of the permit would correct the violation.”

In this case, an active code enforcement case is present on the subject parcel for the home occupation and a building code violation for constructing an accessory building as a dwelling without a building permit. Approval of this conditional use with conditions of approval needed to correct the code violations would resolve the code enforcement currently in progress on the property.

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

Joe Fennimore
Planning Director

Date: March 21, 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.