

Attention Property Owner: A land use proposal has been submitted for property near where you live or property you own elsewhere. State law requires the county notify property owners within a certain distance from this property. The proposal and address 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. 19-013

APPLICATION: Application of Shawna and Robert Stouder for a conditional use to operate a kennel on a 4.51 acre property in an AR (Acreage Residential) zone located at 10613 Mill Creek Rd SE, Aumsville (T8S; R1W; Section 32B; tax lot 1200).

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 28, 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 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 permits from the Marion County Building Inspection Division.
2. Outdoor kennel facilities including fenced enclosures shall be setback at least 20 feet from neighboring properties.

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

3. The applicants shall maintain adequate fencing to contain dogs on the property at all times.
4. The dogs shall be secured in an indoor enclosure between the hours of 9:00 p.m. and 7:00 a.m.
5. 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, and otherwise within 60 calendar days from the date of an approved Notice of Decision, apply for and obtain an Access Permit, and under the permit, pave the existing residential access a minimum 20 feet back from the edge of pavement and permanently close the eastern ancillary access.

6. The kennel shall be operated as proposed in the application and described in Findings #4 and #7.
7. 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 below be contacted to identify restrictions or necessary permits.

8. The applicant is advised to contact Marion County Dog Control and obtain any necessary licenses they require.
9. The applicant is advised to contact Oregon Water Resources to obtain any required permit to use the well on the property for a kennel.
10. The applicant is advised to contact Public Works Land Development and Engineering Permits regarding the requirements outlined in Finding #5 below.

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 **May 28, 2019**. 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 29, 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 Rural Residential in the Marion County Comprehensive Plan. The purpose of the Rural Residential designation and the corresponding AR (Acreage Residential) zone is to allow acreage homesites at a density that maintains the character and environmental quality of the County's rural residential areas.
2. The subject parcel is located on the north side of Mill Creek Road SE approximately 3,125 feet east of its intersection with Leverman Road SE. The property is described in its current configuration in deeds as far back as May 14, 1975 and is considered a legal lot for land use purposes.
3. Properties in all directions are zoned AR and consist of rural residential lots.
4. The applicant is requesting to establish a dog kennel on the subject property. Marion County Code (MCC) 17-110.300 defines kennel:

“Kennel” means any lot or premises on which four or more dogs and/or cats or pets over the age of four months are kept for sale, lease, breeding, boarding, shows or training. Such term does not include kennels and dog training facilities meeting the standards and criteria set forth in EFU, SA and FT zones.”

This would include daycare and boarding of dogs. Approximately 5-10 dogs at a time would be boarded or provided daycare at the facility. No retail sales in conjunction with boarding/daycare is proposed. The proposal meets the definition of a kennel.

5. **Public Works Land Development and Engineering Permits** requested that the following condition be included in the land use case:

*“**Condition A** – Prior to establishment of the business, and otherwise within 60 calendar days from the date of an approved Notice of Decision, apply for and obtain an Access Permit, and under the permit, pave the existing residential access a minimum 20 feet back from the edge of pavement and permanently close the eastern ancillary access.*

Access is typically a Requirement, but has been elevated to a Condition as a matter of timing for completion. In conjunction with paving the main access it may need to be widened to accommodate the additional traffic to the lot. In accordance with Marion County Code 11.10, driveway permits are required for a change in use of the existing access to the public right-of-way. Driveways must meet sight distance, design, spacing, and safety standards. Due to the change in use of the existing primary access from residential to commercial and the proposed increase in traffic to the lot, paving of the access a minimum of 20 feet back from the edge of pavement for safety of the traveling public is required to limit the gravel being dragged onto Mill Creek Road. It has also been noted that a second access east of the primary access exists and needs to be permanently closed by re-establishing the roadside ditch. Both the paving and closure of the ancillary access may be done under a single Access Permit. Vegetation clearing or trimming may also be necessary to achieve adequate sight distance.

LDEP also requested that the following Requirement be included:

- B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits and/or change in use of an existing structure, per Marion County Ordinance #00-10R.”

Marion County Building Inspection commented that permits would be required for change of occupancy.

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

6. In order to approve a dog kennel in an AR zone, MCC 17.128.040 lists the following criteria that apply to all conditional uses in the AR zone:
 - A. *The conditional use as described by the applicant will be in harmony with the purpose and intent of the zone.*
 - B. *The use will not increase traffic beyond the capacity of existing roads.*
 - C. *Adequate fire protection and other rural services are, or will be, available when the use is established.*
 - D. *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
 - E. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
 - F. *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.*
7. The property is not farmed and surrounding properties on the north side of Mill Creek Road SE consists of residential home sites. Parcels on the south side of Mill Creek Road SE are zoned Exclusive Farm Use (EFU) and are small parcels primarily in rural residential use. The applicants state that the dogs will be kept inside a sound-proofed, insulated building, with supervised outdoor time between the hours of 8 am to 9 pm. Prolonged barking will not be allowed. As conditioned, the proposal meets the criteria in #6(a) and (e).

The property is served by the Aumsville Fire District and other services are available or can be provided. The applicant estimates that up to 20 trips per day will be generated by the kennel. Marion County Public Works did not note that the capacity of existing roads would be adversely impacted by the kennel. The applicant proposes to remove waste from the property; however, if a septic system were used, the applicant would be required to obtain any necessary septic permits for the kennel. The proposal can be conditioned to meet the criteria in #6(b) and (c).

There are no significant watersheds, groundwater, fish and wildlife habitat, soil and slope stability, or air or water quality areas identified in the Marion County Comprehensive Plan for this site. The parcel is within the Sensitive Groundwater Overlay zone, an area where the aquifer may not be able to provide water on a long term basis. While no standards apply in the overlay zone for this kind of use, the applicant may have to obtain a permit from Oregon Water Resources to use the well on the property for a kennel. This can be made a condition of any approval. As conditioned, the proposal meets the criteria in #6(d).

The Marion County Comprehensive Plan identifies no potential water impoundments or mineral and aggregate sites. The proposal meets 6(f).

8. Based on the above findings it has been determined that the applicant's request has adequately addressed all the applicable criteria for locating a kennel on the property. Therefore, subject to meeting conditions of approval, the application for a kennel is **APPROVED** subject to conditions.

Joe Fennimore
Director-Planning Division

Date: May 13, 2019

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.