



Marion County OREGON

PUBLIC WORKS

MEMORANDUM

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SURVEY

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Brandon Reich
SUBJECT: Comprehensive Plan/Zone Change/Conditional Use 18-008/
Apostolic Christian Faith
DATE: February 6, 2019

The Marion County Planning Division has reviewed the above-named case and offers the following comments:

FACTS:

1. Apostolic Christian Faith of Silverton proposes to change the zone from AR- 3 (Acreage Residential – 3 Acre Minimum) to P (Public), change the Comprehensive Plan designation from Rural Residential to Public, and a conditional use to establish a cemetery on a two acre portion of a 7.4 acre parcel located at 6691 Peter Road SE, Aumsville.
2. The property is located on the west side of Peter Road in the 6600 block. The property was created as Parcel 2 of Partition Plat 90-10.
3. Surrounding properties to the west, north and south are zoned AR-3 and developed with rural homesites. Property to the east is zoned EFU (Exclusive Farm Use) and consists of homesites and land being farmed.
4. Marion County Public Works Land Development and Engineering Permits provided the following comments:

ENGINEERING REQUIREMENTS

“A. 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, per Marion County Ordinance #00-10R.

B. Access modifications associated with construction of the church structure shall be completed per Access Permit #555-17-006742-DA.”

ENGINEERING ADVISORY

“C. A Non-Remonstrance Agreement for seasonal lignin application and future financial participation toward a Peter Road SE road improvement paving project was recorded on the subject property in 2017 by the Marion County Clerk at Reel 4027 / Page 122.”

At the time of this staff report all other contacted agencies contacted either failed to respond or stated no objection to the proposal.

FINDINGS AND ANALYSIS:

5. In land use actions of this type, the applicant has the burden of proving compliance with all applicable criteria. This report will outline the criteria that must be satisfied in order for an approval to be granted. If the applicant supplied argument or evidence to address specific criteria, the response will be summarized.
6. The property is a part of the county’s original exception areas, identified as Area 22.2-Shaw, an area developed and committed to non-farm uses. Consequently, the property has been determined to be exempted from Statewide Planning Goal 3 - Agricultural Lands and Goal 4 - Forest Lands and no goal exception to either of these goals is required to change the zone from residential to public.
7. The zone change process is subject to ORS 197.610-197.625, the post-acknowledgement amendment process. While that is the process being followed, there are no specific criteria for this zone change in that statute.
8. The applicant intends to change the Comprehensive Plan designation from Rural Residential to Public and to establish a cemetery on a two acre portion of the property. There are a number of rural development comprehensive plan policies that apply to a zone change:

GENERAL DEVELOPMENT POLICIES

3. *Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.*

The proposed use, a private cemetery, will serve an existing church on the property. The cemetery would not be open to the public. A cemetery is a passive use and would not impact neighboring properties or uses in the area. The use would also have little to no impacts on agricultural uses in the area. This policy appears to be satisfied. Agricultural Lands Policies #3 is: “Discourage development of non-farm uses on high value farmland and ensure that if such uses are allowed that they do no cause adverse impacts on farm uses.” As demonstrated below, the proposed use will not have an adverse impact on farm use. While some uses in the Public zone might, the applicants are proposing a limited use overlay to ensure the property remains in use only as a cemetery. This will ensure the use of the property does not have a negative impact on farming, as well as other uses in the area.

RURAL SERVICES POLICIES

General Policies

1. *The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.*

The proposed use will not require additional facilities. This policy appears to be satisfied.

2. *It is the intent of Marion County to maintain the rural character of the areas outside of urban growth boundaries by only allowing those uses that do not increase the potential for urban services.*

The proposed use will serve the church located on the property. No urban services will be required to support the cemetery. This policy appears to be satisfied.

3. *Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.*

The proposed use will be accessory to the existing church and no additional facilities or services will be needed to accommodate it. The use is a very passive use and would be consistent with the rural density and character of the area. This policy appears to be satisfied.

4. *The sizing of public or private service facilities shall be based on maintaining the rural character of the area. Systems that cannot be cost effective without exceeding the rural densities specified in this Plan shall not be approved. The County shall coordinate with private utilities to ensure that rural development can be serviced efficiently.*

As discussed above, the proposed use will not require additional public or private service facilities beyond what is normally found in a rural area. This policy appears to be satisfied.

Special District Policies

4. *Marion County shall require evidence that the level of fire protection provided by a fire district is adequate to service proposed land developments. If service is not adequate the development shall be denied or be conditioned so that necessary facilities are provided.*

The proposed use is within the Aumsville Fire District. Additional fire protection is not expected to be required by the use. This policy appears to be satisfied.

9. Proposals to amend the Comprehensive Plan must be consistent with the Statewide Planning Goals:

- Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement. This goal appears to be met.

- Goal 2: Land use Planning. The subject application would change the zoning within an acknowledged exception area. This goal appears to be met.
- Goal 3: Agricultural Lands. Since the property is within an acknowledged exception area, this goal does not apply.
- Goal 4: Forest Lands. Since the property is within an acknowledged exception area, this goal does not apply.
- Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources. The Marion County Comprehensive Plan does not identify any significant open spaces, scenic and historic areas and natural resources on the subject property.
- Goal 6: Air, Water and Land Resources Quality. The subject property is not within an identified air quality area. The property is within the Sensitive Groundwater Overlay Zone, however, no zone code regulations apply since a partition is not proposed. Any well would have to be permitted by the Oregon Department of Water Resources. An Erosion Prevention and Sediment Control Permit must be obtained from Marion County Public Works prior to establishment of the use to manage stormwater runoff.
- Goal 7: Areas Subject to Natural Disasters and Hazards. The subject property is not within an identified floodplain or geologic hazards area. This goal is not applicable.
- Goal 8: Recreation Needs. No recreational uses of the property are proposed in conjunction with this application. This goal does not apply.
- Goal 9: Economic Development. Because this goal focuses on commercial and industrial development, primarily within an urban growth boundary, it does not apply to this proposal.
- Goal 10: Housing. This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal.
- Goal 11: Public Facilities and Services. The subject parcel can be served by the usual rural facilities, such as the existing roadway network and electrical service. The use will rely on on-site water and septic service, if necessary. This goal appears to be met.
- Goal 12: Transportation. The applicant indicates that traffic to the property will be minimal, approximately the equivalent of a single-family dwelling. The existing roadway network appears adequate to serve the use. This goal appears to be met.
- Goal 13: Energy Conservation. The use does not require utility services. This goal appears to be met.
- Goal 14: Urbanization. The proposed use would be in conjunction with an existing rural church. The use will not create the need for urban services nor would it rely on urban facilities. Also, the use does not appear to urbanize the land; the land will remain rural in nature and use. This goal appears to be met.

10. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). DLCD was notified as required by State Law and did not comment prior to this report being prepared.
11. The MCCP establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer properties will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in Marion County Code Chapter 17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 123 of the MCRZO.
12. The criteria for a zone change are found in the Marion County Code Chapter 17.123.060:

- A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*
- B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*
- C. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*
- D. *The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*
- E. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

13. As described above, the proposed designation is consistent with the goal and policies of the Comprehensive Plan. The applicant provided evidence that the use is low intensity in nature and will not have an impact on surrounding uses or cause the density or pattern of development in the area to change. There are adequate rural public facilities and services available to the property. Since the property must be located near the existing church to serve its members, there are no other properties available to provide the use. The Public zone is the only zone that implements the Public comprehensive plan designation. The proposal appears to satisfy the criteria for a zone change.

14. Marion County Code 17.176 provides a means to apply a limited use overlay when a new zoning is applied to the property. The purpose of the overlay is described in MCC 17.176.010:

“The purpose of the LU (limited use overlay) zone is to reduce the list of permitted or conditional uses in a zone to those that are suitable for a particular location. Zones permit a number of uses without notification or opportunity for a hearing, because the uses are considered generally acceptable, although type and intensity of activity may vary. Zones also include conditional uses which may be permitted if certain criteria are met. However, on a particular property certain of these uses may conflict with adjacent land uses or may not be considered suitable for a particular site. Rather than deny a zone change because the proposed zone would allow an objectionable permitted or conditional use, the limited use overlay can be used to identify the appropriate uses and either require a conditional use permit for other uses normally permitted in the zone or delete objectionable permitted or conditional uses from the zone.”

The applicant proposes that the use be limited to a private cemetery. This can be made a condition of approval.

15. A cemetery is listed in the Public zone as a conditional use, Marion County Code (MCC) 17.171.030(G); however, the Public zone does not contain specific criteria for a conditional use. MCC 17.119.070 contains general criteria that apply to a conditional use

Before granting a conditional use, the director, planning commission or hearings officer shall determine:

- A. *That it has the power to grant the conditional use;*

- B. *That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;*
- C. *That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.*

16. A cemetery is listed as a conditional use in the Public zone; therefore the county has the power to grant the use. The public zone is intended to apply to land that can provide for public and semi-public uses that serve a rural area, such as cemeteries. Therefore, the proposal appears to be in harmony with the purpose and intent of the zone. Any condition imposed will be necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood. The proposal appears consistent with the criteria for granting a conditional use in the public zone.
17. The Public zone contains development standards in MCC 17.171.060 to ensure that the uses in the zone are compatible with nearby properties and uses. If approved, Planning recommends the use provide a site plan demonstrating compliance with those standards as a condition of approval.
18. If applicant's request is recommended for approval, Planning recommends the following conditions be applied:
- A. The use shall be limited to a private cemetery as accessory to the church on the property.
 - B. The applicant 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.
 - C. Obtain any required permits from Oregon Department of Water Resources for a well to serve the use.