



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: September 28, 2022

Department: Public Works Agenda Planning Date: Sept. 22, 2022 Time required: None

☐ Audio/Visual aids None

Contact: Lindsey King Phone: 503-566-4162

Department Head Signature:


TITLE Receive Hearings Officer's decision on Conditional Use (CU) Case 22-027/JaDontae Evans on behalf of Brent Chandler.

Issue, Description & Background The Marion County Hearings Officer issued a decision on September 21, 2022, approving CU22-027. As part of the land use process the Marion County Board of Commissioners must officially receive notice of the decision.

Financial Impacts: None

Impacts to Department & External Agencies None

Options for Consideration: 1. Receive notice of the decision.
2. Receive notice of the decision and call the matter up.

Recommendation: Staff recommends that the board receive notice of the hearings officer's decision.

List of attachments: Hearings Officer's Decision

Presenter: Lindsey King

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Lindsey King - lking@co.marion.or.us
Brandon Reich - Breich@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:) Case No. CU 22-027
)
JaDontae Evans on behalf of Brent Chandler) **CONDITIONAL USE PERMIT**

ORDER

I. Nature of the Application

This matter came before the Marion County Hearings Officer on the application of JaDontae Evans on behalf of Brent Chandler for a conditional use permit to operate a kennel on a 2.90-acre property in an AR (Acreage Residential) zone located at 1322 Hylo Road SE, Salem (T8S, R3W, Section 26C, Tax Lot 900).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code (MCC), Title 17, especially MCC 17.128.030 (Conditional Uses) and MCC 17.128.040 (Acreage Residential Conditional Use Criteria)

III. Hearing

A public hearing was held on the Application on September 15, 2022. At the hearing, the Planning Division file was made part of the record. The following persons appeared in person and provided testimony on the Application:

1.	Austin Barnes	Marion County Planning Division
2.	JaDontae Evans	Applicant
3.	Destiny Basham	For Applicant
4.	Kenneth Pappas	Appellant
5.	Lesa Goff	Appellant
6.	Steve Duvall	Appellant
7.	John Conard	Appellant

No objections were raised to notice, jurisdiction, conflict of interest, exhibits, evidence or testimony presented at the hearing. The following exhibits were offered and admitted:

Exhibit 1:	Statement addressing Neighbor's Concerns (Offered by Applicant)
Exhibit 2:	Statement addressing septic concerns (Offered by Applicant)
Exhibit 3:	Certificate of Liability Insurance (Offered by Applicant)
Exhibit 4:	Evidence of Dog Licensing (Offered by Applicant)
Exhibit 5:	Information regarding dog activity/exercise needs (Offered by Applicant)
Exhibit 6:	Photographs of the yard and property (Offered by Applicant)
Exhibit 7:	Letters from customer and owner of business (Offered by Applicant)
Exhibit 8:	Google Maps and maps of property (Offered by Appellant Pappas)

- Exhibit 9: Letter from Derrick and Elizabeth Ramseyer (Offered by Appellant Duvall)
- Exhibit 10: Letters regarding noise issue and LUBA order (Offered by Appellant Duvall)

The Appellants requested to keep the record open, and the Applicant objected. At the conclusion of the public hearing, the record was closed. On September 19, 2022, a letter was received that was signed by both the Applicant and the Appellants requesting that the record be reopened and advising that the Applicant and Appellants propose and stipulate to a condition of approval. The record was opened for the limited purpose of accepting the letter into the record. The request to open the record to accept the letter was granted, and the letter is made a part of the record. The request that the Hearings Officer consider the contents of the letter as a proposed and stipulated condition of approval is granted.

IV. Executive Summary

The Applicant requests a conditional use permit to operate a kennel on a 2.90-acre property in an AR (Acreage Residential) zone located at 1322 Hylo Road SE, Salem (T8S, R3W, Section 26C, Tax Lot 900). The Applicant has provided substantial evidence to satisfy the applicable standards and criteria for approval of a conditional use permit, and the conditional use permit application is APPROVED.

V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR (Acreage Residential). The primary intent of both this designation and zone is to allow for development of acreage homesites in a low-density environment in order to maintain quality of environment and compatibility with other rural uses.
2. The property is located 0.15 miles west of the intersection of Sunnyside Road SE and Hylo Road SE. The property is developed with an original dwelling built in approximately 1945. Adjacent properties in all directions are also zoned Acreage Residential. A bit further beyond the adjacent parcels exist larger parcels zoned Special Agriculture (SA).
3. The applicant, Brent Chandler, has submitted a deed as evidence of ownership of the property. The applicant representative, JaDontae Evans, in this case is the renter and occupant of the property. Mr. Evans indicated that he is purchasing the property under a "rent to own" arrangement with Mr. Chandler. The representative will be operating the kennel on the property.

4. The subject property (tax lot 900) has existed as a single legal parcel in its current configuration since before September 1, 1977, per a bargain and sale deed recorded in Reel 44, Page 303 of the Deed Records of Marion County, Oregon. Therefore, this property is considered a legal parcel for the purposes of land use per Marion County Code 17.110.427.
5. The applicant is requesting to establish a dog kennel on the subject property. The applicant states that this kennel focuses on the breeding and selling of a limited number of dogs, focusing on French Bulldogs.
6. The Marion County Planning Division requested comments from various governmental agencies, and the following comments were received:

Marion County Building Division commented permits may be required if any future structures and/or utilities are proposed on the property, or if public sales are conducted on site.

Marion County Septic Division submitted the DEQ fact sheet regarding kennels.

Marion County Dog Services commented that they had no objections to the application.

All other contacted agencies either failed to comment or had no objection to the proposal.
7. Austin Barnes, Marion County Planning, presented the staff report, which found that the Applicant met the criteria included in MCC 17.128.040.
8. JaDontae Evans addressed the Appellants' concerns regarding building an outdoor structure, and testified that the business and he have no intention of building an outside structure for the dogs that are part of the kennel. JaDontae

Mr. Evans testified that they do not want to have more dogs on location than they can properly care for and rotate the breeding cycles. Mr. Evans indicated that the breeding services require veterinarian involvement, and takes place at a veterinarian clinic. Mr. Evans stated that they would like to have approximately six (6) females, and four (4) male dogs that will essentially remain in the house. Mr. Evans also has a pet dog, Mac, that is not a French Bull Dog, and is not included in the definition of kennel.

The dogs are primarily "indoor" dogs. Mr. Evans testified that theft of French Bull Dogs and puppies is a concern, and for that reason, the dogs will primarily remain in their residence.

Exhibits and testimony provided by Mr. Evans illustrate that French Bull Dogs do not need much exercise and that they are very susceptible to impact of moderate heat. Because of their flat faces, French Bull Dogs can having breathing problems so short, low-intensity walks are best for French Bull Dogs. Mr. Evans indicated that he has had a French Bull Dog suffer heat stroke by being outside in moderate weather. As such, he intends to keep the French Bull Dogs indoors at the residence.

9. Destiny Basham testified with the Applicant in favor of the Application. Ms. Basham testified that they raise French Bull Dogs for their family, and are working very hard to build a business to support their family, including a young son. Ms. Basham testified that they want to be considered a respected breeder of French Bull Dogs, and also that she wants to have her neighbors feel comfortable with the operation.
10. Kenneth Pappas, Appellant, testified that the appellants' concerns are not personal against Mr. Evans and Ms. Basham, and that the appellants do not question the care that they provide their dogs. Mr. Pappas testified that the opposition to the kennel is rooted in concerns for property and real estate values, which could decline with the presence of a kennel in the neighborhood. Mr. Pappas understood Mr. Evans to state that he intended to build a kennel, which concerned him because the property is three acres, but is very narrow. Although the property is acreage residential, the houses are situated closely to each other. Mr. Pappas raised the concern that the presence of 20 adult barking dogs would decrease property values and interfere with the quiet enjoyment of his property. Mr. Pappas questioned why the kennel could not be situated in the barns that are already on the property. Mr. Pappas testified that the problem is the noise that would be associated with the kennel that would impact property values, and that there is the possibility of a decline in property values based on the noise.
11. Lesa Goff, Appellant, stated that it was her understanding that a building would be built for purposes of the kennel. Ms. Goff raised the issue that potentially 20 barking dogs would not be in harmony with the purpose and intent of the zone and would impact the marketability of their property.
12. Steve Duvall, Appellant, testified that he opposed the application for a conditional use permit because of the building involved, which could house up to 20 dogs. Mr. Duvall testified that the proposed kennel would raise concerns about excessive barking and noise, and that he was concerned about property values.
13. John Conard, Appellant, testified that the property values of surrounding properties should be considered with respect to the conditional use permit.
14. Photographs submitted as exhibits by the Applicant evidence that the property is fully fenced, and includes additional fenced areas where the dogs can be securely kept. However, the Applicant testified that the dogs will not be outside unattended so that they do not bark excessively or are vulnerable to theft.
15. A letter received on September 16, 2022, signed by Applicant, Destiny Basham, and the Appellants stated that the parties have discussed their concerns and agree that a condition of approval be included that the kennel operation use the existing dwelling and that no new buildings will be constructed for the kennel operation. As Applicant signed the letter, the hearings officer finds that Applicant does not object to the condition of approval and that the condition is necessary for the public health, safety, or welfare, or to protect the health and safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

2. Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, applicants have not met their burden and the application must be denied. If the evidence for every criterion is a hair or breath in applicant’s favor, the burden of proof is met and the application is approved.
3. Under MCC 17.119.030, the planning commission, hearings officer, or board on its own motion may hear and decide applications for conditional uses. The planning commission, hearings officer or board shall decide whether or not the conditional use may be placed in a zone and may impose conditions. Under MCC 17.119.100, the Planning Director has the power to decide applications for conditional uses.
4. On August 2, 2022, the Planning Director approved the conditional use application subject to certain conditions.
5. On August 15, 2022, pursuant to MCC 17.119.140, interested persons who reside adjacent to or near the subject property (“Appellants”) timely appealed the Planning Director’s decision.
6. Pursuant to MCC 17.119, 150, a de novo public hearing was conducted on the application.
7. Under MCC 17.119.020, a conditional use application may only be filed by certain people, including the owner of the property subject to the application and a lessee in possession of the property who submits written consent of the owner to make the application. JaDontae Evans leases the subject property from Brent Chandler, who submitted a deed evidencing his ownership. The owner and the Applicant jointly submitted this application. MCC 17.119.020 is satisfied.
8. Under MCC 17.119.025, a conditional use application shall include signatures of certain people, including all owners of the subject property. Brent Chandler owns the subject property and signed the application. MCC 17.119.025 is satisfied.

9. Under MCC 17.119.070, before granting a conditional use, the hearings officer shall determine:

- (A) That the hearings officer has the power to grant the conditional use;
- (B) That the conditional uses, 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

10. MCC Chapter 17.128 applies to the Acreage Residential (AR) zone. Under MCC 17.128.030(A), a kennel is a permitted use in the AR zone subject to obtaining a conditional use permit.

11. Under MCC 16.149.140, kennel means keeping four or more dogs, cats, or pets over the age of four months for the purpose of sale, lease, breeding, training, racing, or boarding.

12. Applicant has a run a family-operated kennel for approximately two years and started the breeding in an apartment. Applicant breeds French Bull Dogs and is committed to breeding healthy French Bull Dogs. Applicant stated he is not intending to have an outdoor kennel structure because of the concerns of theft of French Bull dogs, and the delicate nature of French Bull dogs. Applicant stated that here is no plan to have twenty (20) dogs, and does not intend to have more than six active breeding dogs (females).

13. Austin Barnes, Marion County Planning, clarified that there was not a request by the Applicant for up to 20 dogs, but that it was a reasonable condition to limit the number of dogs in a separate kennel application, and was used as a reasonable limit to the number of dogs for this Application.

14. Under Marion County Code 17.128.040, the following criteria 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.

The Acreage Residential zone allows for a mixture of residential and farm uses in a rural setting. A kennel is defined in Marion County Code as "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." The subject parcel is 3 acres in size. Applicant states that they keep approximately eight to ten adult dogs on the property, with seven that are involved in breeding.

Pets are commonplace in residential and farm uses. The kennel operation as described by the Applicant is essentially the keeping of pets for business purposes. Mr. Evans intends that the French Bull Dogs remain in the residence for their health and safety.

The noise concerns raised by Appellants is understandable based upon the Appellants' understanding that the application allowed a large, open-air facility with over twenty dogs that could potentially bark continuously and/or at all hours of the day and night.

However, there is no intention to build a kennel facility on the property by the Applicant. Although the Appellants' concerns may be understandable, there is nothing other than speculation that the kennel would create excessive noise and that such noise would impact their property values. The Code would allow the Applicant to have multiple dogs kept as pets without a business purpose, and the Appellants would be faced with the same concerns. Any excess noise concerns, to the extent that noise would not be in harmony with the purpose and intent of the AR zone, can be addressed with conditions of approval. (Addressed further below)

The proposed kennel maintains a limited scope on a parcel that is sufficient to house the pets and shall remain in harmony with the purpose and intent of the zone. MCC 17.128.040(A) is met

B. The use will not increase traffic beyond the capacity of existing roads.

The Applicant states that the sale of the dogs is completed off-site, and that prospective purchasers will not visit the subject property. There may be a slight increase in traffic as the occupants complete daily tasks such as veterinary visits, but this is nothing out of the ordinary for a residential area. Therefore, traffic is minimized, and no evidence suggests the existing roads cannot handle the capacity, to the extent that there is any increase in traffic with issuance of a conditional use permit. MCC 17.128.040 (B) is met.

C. Adequate fire protection and other rural services are, or will be, available when the use is established.

There is no evidence that fire protection and other rural services are not sufficient to cover the property and the kennel use. The Salem Fire Department reviewed the application and had no comment. MCC 17.128.040(C) is met.

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.

The applicants state that they take care of the property and household to keep it clean from waste. Animal waste is disposed of through a garbage service. Impacts on water, soils, and wildlife can be further protected by implementing conditions of approval. In addition, Oregon Department of Environmental Quality and Oregon Department of Agriculture have guidelines on kennels and wastewater. The applicants will contact these agencies to inquire into any necessary permits as a condition of approval. MCC 17.128.040(D) is met.

E. Any noise associated with the use will not have a significant adverse impact on nearby land uses.

The Applicant states that the noise level associated with the kennel use will be kept at a minimum by the limited number of dogs. Furthermore, the dogs tend to be "inside" dogs, staying inside the dwelling rather than outside for much of the time. This further reduces the amount of noise generated. Dogs are commonly found in residential areas, so the noise will not be abnormal or inharmonious for the zone. As noted, the Applicant would be permitted to have multiple dogs kept as pets, and the conditional use permit is required because Applicant has more than four dogs for the purposes of breeding. A condition of approval proposed by Marion County Planning included a limit of twenty (20) adult dogs as part of the kennel operations. Applicant agreed that he does not intend to have twenty (20) adult breeding dogs, and agreed that twelve (12) is a reasonable limit to the number of breeding dogs. This proposed condition of approval, in addition to the stipulated condition of the parties, and the proposed conditions of approval (addressed further below) will allow MCC 17.128.040(D) is met.

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.

There are no water impoundments or mineral and aggregate sites near the subject property, nor are there any potential water impoundments and aggregate sites identified in the Comprehensive Plan nearby. MCC 17.128.040(F) is met.

15. Marion County Planning addressed five (5) proposed conditions of approval for the conditional use application. The conditions include:

1. Applicant will obtain all necessary permits.
2. Applicant will license all dogs with Marion County Dog Service as required for all dogs over the age of six (6) months or having full canine teeth, whichever is earlier.
3. Applicant will contact and act in compliance with any requirements of the Oregon Department of Environmental Quality and the Oregon Department of Agriculture.
4. The number of dogs that are part of the kennel do not exceed twenty (20).
5. Failure to comply with the conditions of approval may result in revocation of the land use approval.

The Applicant did not object to modifying the condition that allows up to twenty adult dogs that are part of the kennel to not exceed twelve (12) dogs. The Applicant and the Appellants stipulated that a condition of approval be included that the kennel operation use the existing dwelling and that no new buildings will be constructed for the kennel operation. The hearings officer finds that Applicant does not object to the condition of

approval and that the condition is necessary for the public health, safety, or welfare, or to protect the health and safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

VII. Order


It is hereby found that Applicant JaDontae Evans, on behalf of Brent Chandler, has met its burden of proving the applicable standards and criteria for approval of a conditional use permit have been met. Therefore, the conditional use permit application is **APPROVED**, with the following conditions:

1. Applicant will obtain all necessary permits.
2. Applicant will license all dogs with Marion County Dog Service as required for all dogs over the age of six (6) months or having full canine teeth, whichever is earlier.
3. Applicant will contact and act in compliance with any requirements of the Oregon Department of Environmental Quality and the Oregon Department of Agriculture.
4. The number of dogs that are part of the kennel shall not exceed twelve (12) adult dogs.
5. The kennel operation shall use the existing dwelling and no new buildings will be constructed for the kennel operation.
6. Failure to comply with the conditions of approval may result in revocation of the land use approval. Any revocation would be appealable to the Hearings Officer for a hearing on the matter.

VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Salem, OR 97301) by 5:00 p.m. on the 7th day of October, 2022. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon, this 21st day of September, 2022.


Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Ken Pappas
7611 Jackson Hill Rd. SE
Salem, OR 97306

Lesa Goff
7611 Jackson Hill Rd. SE
Salem, OR 97306

Steve and Chieko Duvall
1312 Saunders Lane SE
Salem, OR 97306

JaDontae Evans
1322 Hylo Rd. SE
Salem, OR 97306

Destiny Basham
1322 Hylo Rd. SE
Salem, OR 97306

John and Robin Conard
1342 Hylo Rd. SE
Salem, OR 97306

Agencies Notified:

Area Advisory Committee No. 1

(Via email: laulehines@gmail.com)

(Via email: arkaye2@gmail.com)

Friends of Marion County

(Via email: rkaye2@gmail.com)

Dog Control

(Via email: dog@co.marion.or.us)

Assessor

(Via email: Assessor@co.marion.or.us)

Surveyors' office

(Via email: survey@co.marion.or.us)

Fire district Salem

(Via email: salemfire@cityofsalem.net)

School district Salem-Keizer

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Building Inspection Septic

(Via email: abammes@co.marion.or.us)

Planning Division

(Via email: breich@co.marion.or.us)

(Via email: lking@co.marion.or.us)

Code Enforcement

(Via email: cgoffin@co.marion.or.us)

(Via email: jtaylor@co.marion.or.us)

Building Inspection

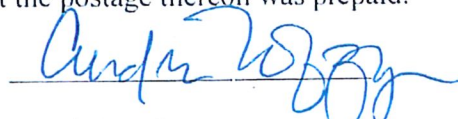
(Via email: PWolterman@co.marion.or.us)

(Via email: kaldrich@co.marion.or.us)

PW Engineering

(Via email: jrasmussen@co.marion.or.us)

By mailing to them copies thereof, I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 21st day of September, 2022 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer