

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
ADMINISTRATIVE REVIEW CASE NO. 22-021**

APPLICATION: Application of Gregory Hathaway on behalf of Insurance Auto Auctions INC, for an administrative review to establish a site plan of existing structures and uses for a nonconforming use on a total 16.35 acres in a UT-20 (Urban Transition 20 Acre Minimum) and a CR (Commercial Retail) zone located at 597, 605 and 655 S. Pacific HWY, Woodburn (T5S; R1W; Section 18D; Tax lots 300, 400, 500 & 600).

DECISION: The Planning Director for Marion County has **determined that the eight (8) structures (as shown on site plan, Exhibit G) previously destroyed in 2022 may be replaced using the same footprint.**

EXPIRATION DATE: This decision is valid only when exercised by **October 12, 2026**, unless an extension is granted. The effective period may be extended once for two years, and then up to five more times for one year each, subject to approval of an extension (form available from the Planning Division). Request for an extension must be submitted to the Planning Division prior to expiration of the approval.

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well, and drainfield replacement areas, this parcel 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 applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. The office will be addressed as **605 South Pacific Highway, Woodburn, OR 97071.**
3. Any changes to the use or approved structures shall require additional land use actions. This would include increasing size or changing location of structures.
4. The applicant shall obtain and maintain an auto dealers license for the proposed auto auction.
5. The applicant shall maintain the appropriate number of parking stalls, including ADA for the office (MCC 16.30)
6. The applicant shall adhere to the special siting requirements listed in MCC 16.06.250 (A-D) on all property abutting a residential zone (UT and UD included).
7. If any development is proposed within the floodplain, additional permitting may be required.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect any 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 #6 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

8. The applicants should contact the Woodburn 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.
9. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories.

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 Road NE, Salem, by 5:00 p.m. on **October 12, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 13, 2022**, unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which decision was based are noted below.

1. The subject property is designated Medium Density Residential in the Woodburn City Comprehensive Plan and zoned Commercial Retail (CR) and Urban Transition-20 (UT-20) in Marion County. The primary intent of the comprehensive plan designation is for multi-family type developments. The commercial zone is a legacy zone that covers the non-conforming use on the applicable parcels.
2. Adjacent properties to the north are zoned Commercial General with a Limited Use overlay and within Marion County jurisdiction and zoned Medium Density Residential within City limits of Woodburn. Parcels to the south are zoned Single Family Residential and Medium Density Residential within City limits of Woodburn. Parcels to the west are zoned Single Family Residential and within City limits of Woodburn. Parcels to the east, located across Highway 99E are zoned Commercial General (CG) and within Marion County jurisdiction.
3. Soil Survey for Marion County, Oregon, indicates approximately 99.1% of the soils on the subject tax lot are classified as high value.
4. The City of Woodburn commented "These properties are currently outside of Woodburn city limits, but within the urban growth boundary. The comprehensive plan designates them as Medium Density Residential therefore the default zoning district upon annexation would be the Medium Density Residential (RM) zone. Permitted uses in the RM zone are outlined in Table 2.02A of the Woodburn Development Ordinance. The auto auction business use is not a permitted use in this zone."
5. Marion County Land Development and Engineering provided information regarding stormwater detention on the subject properties.
6. Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies failed to comment.
7. Marion County Code 16.49.180 defines nonconforming use as:

"Nonconforming use" means a primary, secondary, accessory, permanent or temporary use, including a mobile home without a foundation, which met all applicable use standards imposed by applicable zoning ordinance provisions when it was established; and which has been maintained in compliance with such standards; but which does not comply with the standards for such structures in this title, solely because of the adoption or amendment of this title.

The properties are located approximately one-half mile south of the intersection between South Pacific Highway/Highway 99E and Silverton Rd NE and addresses 597, 605, and 665 South Pacific Highway. The properties are approximately 16.17 acres in size. The western portion of the parcel is located within a 100-year floodplain and Regulatory Floodway of Mill Creek. Since floodplain boundaries are subject change, contact staff prior to adding any impervious surface within 100 feet of the streambank.

According to the applicants statement the auto and livestock auction yard has been in operation since at least 1977. Upon staff review of Variance Case #71-14, for address 665 S. Pacific Highway, permitted an expansion of the non-conforming auction yard to construct one additional storage building to house merchandise and equipment used with the auction yard. In 1976 aerial photos found by staff, it shows a vehicle auction related business, with most of the land dedicated to farmland. It does not appear that until 1988 that the auction expanded into the remaining farmland. There is no documentation of this expansion. According to photos and evidence (Exhibit G, Page 1 of 1) provided by the applicant there were eight (8) structures on site.

- 2 - Two 'barn buildings'
- 5 - Five 'one-story buildings'
- 1 - One 'two-story building'

Per applicant statement all nonconforming use structures have been removed from the site. The previous size (square footage) is unclear on two (buildings 1 & 2) of the 8 buildings, but location of these structures is depicted on the site plan, labeled Exhibit G, as mentioned above, and can be found in the file. Per the applicant statement one of the 'one-story buildings' was an office that was being used for the auction business, and the applicants are proposing to replace this structure. Initially it was unclear to staff if there was an established office building. No building permits were found for an office, and no mention of an office was found in either land use cases (V71-14 and M06-224) related to the auction yard. Staff contacted the applicant regarding the lack of evidence for the office building and requested additional information. The applicants representative Gregory Hathaway submitted a declaration signed with a notary by Tom Elder, the previous property owner for the auction yard stating that there was in fact an office. This office, as stated by Mr. Elder was in the central portion of the property (what staff has labeled building #4 on Exhibit G).

The applicant shall be permitted to replace the destroyed nonconforming use structures within the same building footprint with the same size of preexisting structure. The proposed office building may be replaced in the location labeled #4 on exhibit G. The office shall not exceed the previous office footprint of 7,200 square feet. All replacement buildings shall obtain the appropriate building permits.

8. **MCC 16.06.250** Special requirements adjacent to residential zones requires that a nonresidential development (IAA) meet the following requirements:

- A. Outdoor storage facilities shall be screened by a sight-obscuring fence, wall or hedge from view of the public road and from adjacent residential property.
- B. Exterior lighting shall be designed to illuminate the site and be directed away from public streets and residential properties.
- C. Roof equipment shall be screened from view of nearby residential property.
- D. Special setback and height standards in MCC 16.06.110 and 16.06.140(A).

The majority of the surrounding properties are zoned residential or Urban Transition (UT); therefore this section is applicable to the proposed use.

Staff would not that if the applicant wishes to expand, reconfigure, or alter the pre-existing nonconforming use a zone change, and comprehensive plan amendment would need to be approved.

9. Based on the above findings, it has been **determined that the eight (8) structures depicted on the site plan (Exhibit G) previously destroyed in 2022 may be replaced using the same building footprint.**

Brandon Reich
Planning Director/Zoning Administrator

Date: September 26, 2022

If you have any questions regarding this decision contact Lindsey King 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.