

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. 23-001**

**APPLICATION:** Application of Judith James for a conditional use permit to operate a dog training business as a home occupation on a 1.90-acre property in an AR (Acreage Residential) zone located at 6237 Arbordale Drive SE, Salem (T8S, R2W, Section 4A, Tax Lot 5000).

**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 **February 22, 2025**. 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 obtain all necessary permits from the Marion County Building Inspection Division.
2. Within sixty (60) calendar days from final Planning approval, acquire an Access Permit, and under the Permit permanently close the south driveway approach, and straighten-out and pave the north driveway approach with hot mix asphalt such that it meets public road perpendicularly.
3. An increase in flow, resulting from an increase in use from customers, will require the obtaining of a septic Authorization Notice for a change in use. Please contact the Marion County Septic Division for more information.
4. The hours of operation will occur from 8:00 am to 8:00 pm.
5. The days of operation will occur on Monday through Saturday.
6. Excluding the applicant, no more than two dog trainers will be allowed on-site for the purposes of dog training.
7. The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.
8. All dog training must occur in the 1,440 square foot accessory structure located in the eastern portion of the subject property.
9. No structural alterations shall be made that would be inconsistent with the future use of the buildings exclusively for residential purposes.
10. There shall be no outside storage or display of materials, equipment, or merchandise used in, or produced in connection with, the conditional home occupation.

11. Deliveries to or from the dwelling shall not involve a vehicle rated at more than one ton.
12. All customer parking must be located near the 1,440 square foot accessory building in the eastern portion of the subject property where the dog training classes will be held. No off-street parking will be allowed by customers.
13. The applicant shall have all adult dogs licensed through Marion County Dog Control.
14. All dog waste must be disposed of in the proper receptacle.
15. The applicant shall refer to Oregon DEQ (a DEQ fact sheet has been included) about any requirements or recommendations regarding waste disposal to protect soil and water quality.

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

16. The applicant shall not have more than four dogs on the property at any time, not including the applicant's own dog(s), for training purposes.
17. Failure to continuously apply 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 another 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 the Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

18. The applicants should contact the Marion County No. 1 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.

**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 **February 22, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 23, 2023**, unless further consideration is requested.

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

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 on Arbordale Drive SE, approximately 0.10 miles east of the intersection of Arbordale Drive SE and 62<sup>nd</sup> Avenue SE. The property is developed with an accessory structure and a dwelling from 1983. Adjacent properties in all directions are also zoned Acreage Residential.

3. This parcel has never been the subject of any previous land use cases. However, it is part the Foxdale subdivision that was established 1971. Therefore, this property is considered a legal parcel for the purposes of land use.
4. The applicant is requesting to operate companion dog training classes. The applicant has stated that each session lasts about an hour with two separate trainers operating on-site about 2-4 times a week. Additionally, the applicant offers evening classes about 2-4 times a week for about hour for each session.
5. Marion County Land Development, Engineering, and Permits commented:

#### ENGINEERING CONDITION

Condition A – Within sixty (60) calendar days from final Planning approval, acquire an Access Permit, and under the Permit permanently close the south driveway approach, and straighten-out and pave the north driveway approach with hot mix asphalt such that it meets public road perpendicularly.

#### ENGINEERING REQUIREMENT

B. Transportation System Development Charges may be assessed for the change-in-use of the existing personal use accessory structure for commercial purposes.

Marion County Building Division commented that permit(s) would be required to convert the use of the existing garage/shop from personal use to a business use available to the public by invite only. A floor plan of the building, noting the existing spaces and proposed uses, along with an accessible parking space identified, would be required at the time of permit application. This plan should also note the location of restroom facilities on the property.

Marion County Code Enforcement commented that that no sort of breeding/kenneling operation will be allowed.

Marion County Septic Division commented that an increase in flow will require a septic authorization for a change in use. See file for full comments.

6. All other contacted agencies either failed to comment or had no objection to the proposal.
7. In order to approve a conditional use home occupation, the home occupation must meet the criteria provided under Marion County Code (MCC) 17.120.075. These include:
  - A. *The home occupation shall be carried on by the resident or residents of a dwelling on the subject property as a secondary use and may employ no more than two persons ("person" includes volunteer, nonresident employee, partner, or any other person).*

The applicant has stated that she will conduct her dog training business on the subject parcel. Additionally, she will allow two contract dog trainers to conduct one hour dog trainings two to four times in the morning for two four times per week. There are no other proposed employees with being made a condition of approval. Therefore, the criterion is met.

- B. *The home occupation shall be continuously conducted in such a manner as not to create any public or private nuisance, including, but not limited to, offensive noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference. In a residential zone noise associated with the home occupation shall not violate Department of Environmental Quality standards or Chapter 8.45 MCC, Noise.*

The applicant has stated that the dog trainings will be conducted inside an existing accessory building, which is located behind the dwelling. It is not expected that the dog training sessions will create any vibrations, fumes, smoke, fire hazards, or electronic, electrical, or electromagnetic interference. Any noise or potential odors stemming from the dog training sessions will be limited to the existing accessory building. Therefore, this criterion is met.

- C. *The conditional home occupation shall not significantly interfere with other uses permitted in the zone in which the property is located.*

The proposed dog training will be confined to the existing accessory building and is not expected to interfere with other uses permitted in the zone. The criterion is met.

- D. *A sign shall meet the standards in Chapter 17.191 MCC.*

The applicant has stated that no sign will be used. Therefore, this criterion does not apply.

- E. *The home occupation shall be conducted entirely within the dwelling or accessory building.*

The applicant has stated that the dog training will be conducted within a 1,440 square foot accessory building located at the eastern corner of the property. The criterion is met.

- F. *The total floor area of buildings on the subject property devoted to a home occupation shall not exceed 500 square feet in a residential zone, except in the AR zone where 1,500 square feet is the maximum.*

The applicant has stated that the dog training will be done in the existing 1,440 square foot accessory building on the subject parcel. Therefore, the criterion is met.

- G. *No structural alterations shall be made that would be inconsistent with the future use of the buildings exclusively for residential purposes.*

The applicant is not using a residential structure for the home occupation and has not proposed any alterations to existing structures that would be inconsistent with the future use of the buildings. The home occupation will be operated from an accessory building. The criterion is met.

- H. *No alteration to or use of the premises shall be made that would reduce the number of required on-site parking spaces.*

No alteration is proposed that would reduce the availability of on-site parking. The criterion is met.

- I. *All visits by suppliers or customers shall occur between the hours of 8:00 a.m. and 8:00 p.m. These limitations do not apply to a bed and breakfast use as defined in MCC 17.110.108.*

The applicant states that some dog training sessions will occur during the evening hours, but not past 8:00 p.m. This will be made a condition of approval. The criterion is met.

- J. *There shall be no outside storage or display of materials, equipment, or merchandise used in, or produced in connection with, the conditional home occupation.*

The applicant has not proposed to store or display materials, equipment, or merchandise used in, or produced in connection with, the conditional home occupation. This will be made a condition of approval. The criterion is met.

- K. *Deliveries to or from the dwelling shall not involve a vehicle rated at more than one ton. There shall be no more than one commercial vehicle located on the property in conjunction with the home occupation.*

The applicant has indicated that no deliveries are needed for this home occupation. The criterion does not apply.

- L. *Where a home occupation involves deliveries, one off-street loading space shall be provided. If visits by customers occur, two additional off-street parking spaces shall be provided if the street along with the lot frontage does not provide paved area for at least two parallel parking spaces. During normal loading/unloading or customer parking periods, the off-street loading and parking spaces shall be reserved exclusively for that use.*

The applicant has indicated that no deliveries are needed for this home occupation. The criterion does not apply.

*M. The property, dwelling, or other buildings shall not be used for assembly or dispatch of employees to other locations.*

The applicant states that the applicant plus two dog training contractors will conduct the dog training business at the subject parcel. No employees will assemble or dispatch to other locations. The criterion is met.

*N. 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.*

The applicant's dog training business is a service and not a retail type business. The criterion is met.

8. Per Marion County Code 17.128.040, the following criteria apply to all conditional uses in the AR zone:

*O. 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. The keeping of dogs as pets in residential zones is common. Up to four dogs on a residential parcel is also commonplace for this zoning. Additionally, the Marion County Code, specifically Chapter 17.128.030(A), has determined that kennels as a conditional use are in harmony with the purpose and intent of the zone, in conjunction with conditions of approval. The applicant is essentially proposing a temporary day use for dogs for the purpose of training them. No dogs, other than applicant's own dogs, will be boarded for any length of time. In other words, the dog training business that the applicant is proposing to conduct, is expected to have less impact than a kennel which is allowed as conditional use in this zone. Therefore, this criterion is met.

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

The applicant has stated that any training session could include up to four dogs, not including the demonstration dog. The number humans accompanying the dogs being trained, is typically one to three. Presumably, each dog that is accompanied by their human owners arrives at the subject parcel in a single vehicle which could result in four customer vehicles at one time. For the morning sessions, this could also include two vehicles from the two instructors who will use the accessory building to train other dogs. In total, there could be anywhere from two to six vehicles on the subject property during the morning training sessions; sessions could range from two to four a day, two to four times a week. The applicant has also stated that she will be conducting evening training sessions. The evening sessions could include up to four vehicles on the subject parcel.

As stated earlier, the subject parcel is located on Arbordale Drive SE near Salem. Arbordale Drive SE is a public, Marion County maintained road that is paved. The applicant's dwelling is approximately 528 feet from Arbordale's intersection with 62<sup>nd</sup> Avenue SE, a wider paved public, Marion County maintained road. Additionally, the accessory structure that is located on the subject parcel, which will be used for dog training, is behind the dwelling and is approximately 200 feet from Arbordale Drive SE. Parking can be limited to these areas only with no parking on the street. The proposed number of possible vehicles during training sessions is not likely to increase traffic beyond the capacity of the existing roads because the amount of vehicles using the road is typical and the road is publicly maintained. Therefore, the criterion is met.

*Q. 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. In fact, the Marion County No. 1 Fire Department serves the subject parcel. Therefore, the criterion is met.

*R. 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 applicant is proposing to conduct her dog training business inside the accessory structure already established on the subject parcel. This will limit any potential adverse impacts on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air, and water quality. Therefore, this criterion is met.

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

The applicant states that the dog training will be conducted in the existing accessory structure. The applicant has stated that there will be no more than four dogs at a time during the training sessions, which may last up to an hour each. The noise from the dogs training in the existing accessory structure will be limited. Additionally, Acreage Residential is a residential zoning which is typically accompanied by pets, including dogs, who will make barking and other noises while living at a residence. Four dogs at any one point on any residential property is a typical residential use. Therefore, this criterion is met.

*T. 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. Therefore, this criterion is met.

9. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for operating a kennel in the Acreage Residential zone, and therefore, is **APPROVED**, subject to conditions.

Brandon Reich  
Planning Director/Zoning Administrator

Date: February 7, 2023

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173.

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.