

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**  
**PROPERTY LINE ADJUSTMENT/CONDITIONAL USE CASE NO. 23-001**

**APPLICATION:** Application of Ross and Shellee Newkirk for a property line adjustment to adjust the property lines on a 2.5-acre parcel and a 1.36-acre parcel to create a 2.86-acre parcel and a 1.0-acre parcel, and for a conditional use permit to operate a diesel repair business as a home occupation on the resultant 2.86-acre parcel in a UT-1.5 (Urban Transition – 1.5 Acre Minimum) zone located at 17605 Painter Loop Road NE, Hubbard (T4S; R1W; Section 34CC; Tax Lots 400 & 401).

**DECISION:** The Zoning Administrator 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 proposal. To ensure the subject property can accommodate the proposal the applicant should contact 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 approval for all permits required by the Marion County Building Inspection Division.
2. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
3. The business shall only operate repairs during the hours of 8am to 5pm.
4. The business shall be conducted entirely indoors as to limit any noises on neighboring parcels.
5. There shall be no outside storage or display of materials, equipment, or merchandise used in or produced in connection with the home occupation. The business shall store all materials and equipment indoors.
6. Any parking used by the business shall be screened from neighbors.
7. This business shall not be open to the public. Repairs are to be by appointment only with a maximum of two customers per day.
8. Delivery and pick-up of materials or commodities in conjunction with the home occupation to and from the premises shall be made by private vehicles or by commercial vehicles not exceeding two axles in size.
9. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to a County hearings officer for a public hearing.

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

**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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #5 under Findings and Conclusions below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

10. The applicants should contact the Hubbard 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.
11. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 below, that may be required.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Zoning Administrator. If there is any doubt that the application conforms with adopted land use policies and regulations the Zoning Administrator must condition or deny the application. Anyone who disagrees with the decision may request that the application be considered by a 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 120 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 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 property is designated Low Density Residential in the Hubbard Area Comprehensive Plan. The purpose of this designation and the corresponding Urban Transition zone is intended to retain and protect for future urban use properties which are undeveloped or underdeveloped and do not have available urban facilities such as sanitary sewer, water, drainage and streets.
2. The properties are located between Dunn Rd NE and Painter Loop NE, at the terminus of Dunn Rd. 17605 Painter Loop will contain the home occupation and has frontage on Painter Loop, approximately 686 feet west of its intersection with Landura Ct NE. It also contains a dwelling and three accessory structures. 17520 Dunn Rd has frontage on Dunn Rd and is approximately 0.8 miles south of its intersection with Whiskey Hill R NE. This property contains a dwelling and an accessory structure.
3. Surrounding uses are a mix of residential, farm and industrial. Dunn Rd and Painter Loop are developed with larger rural homesites mixed with farm uses. To the south of the subject properties is Exclusive Farm Use Zoned land that is in commercial agriculture production. To the West of Dunn Rd are industrial properties within the City of Hubbard.
4. The applicant proposes a property line adjustment to adjust the property lines on a 2.5-acre parcel and a 1.36-acre parcel to create a 2.86-acre parcel and a 1.0-acre parcel, and for a conditional use permit to operate a diesel repair business as a home occupation on the resultant 2.86-acre parcel
5. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

## ENGINEERING REQUIREMENTS

A. The following numbered sub-requirements pertain to access and review of the property frontage:

- 1) At the time of application for building permits it will be required to pave the Painter Loop access approach with hot mix asphalt under an Access Permit due to the proposed addition of commercial traffic. The work must be completed by the time of establishment of the proposed business and/or building certificate of occupancy.
- 2) Previously issued Access Permit #555-22-000148-PW associated with the personal use pole building had requirements, such as boulder removal, that would still need to be completed.

B. Transportation System Development Charges will be assessed for change-of-use of the existing personal use shop accessory structure to commercial use diesel repair shop.

Marion County Building Inspection commented:

“Permit(s) would be required for the proposed shop building prior to construction. The proposed property line should be created at least 3 feet from any existing buildings, otherwise additional fire rated construction may be required on adjacent exterior walls.”

Marion County Septic Department commented:

“PLA: A record review with a site plan showing there is adequate area for a replacement system is required for the proposed 1.0 acre lot.”

“CU: The proposed diesel repair shop requires either an authorization notice if the owner proposes to connect to the existing system serving the dwelling, or a site evaluation and construction/installation permit if they propose a new system to serve the shop.”

All other contacted agencies either failed to comment or stated no objection to the proposal.

6. Home Occupations in the UT zone are subject to the Home Occupations, Conditional, with employees code section found in MCC 16.32.400:

A. *The premises upon which the home occupation is conducted shall be the residence of the person conducting the home occupation.*

Ross Newkirk is the owner of the property and will be conducting the business. The criterion is met.

B. *The home occupation shall be continuously conducted in such a manner as not to create any nuisance, public or private, known law or equity, including but not limited to: noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference.*

Repair businesses of this type often lend themselves to loud noises and fumes. The applicant states they will be building a new building to perform the use in and will keep the doors shut to minimize sounds and odors. Additionally, the parcels are large enough in this area (1-4 acres) to provide a level of noise reduction due to the distance of the use from other parcels. This in conjunction with a condition that the business only operate between the hours of 8 am – 5 pm shall limit adverse effects on the surrounding area such that the criterion can be met.

C. *No sign shall be displayed on the premises except those as permitted in MCC 16.31.060(A).*

The applicant has stated they will not be using any signs. The criterion is met.

- D. *No structural alterations shall be made to the dwelling that would be inconsistent with future use of the building as a dwelling.*

The dwelling will not be altered as part of this permit. The criterion is met.

- E. *No alteration to or use of the premises shall be made that would reduce the number of on-site parking spaces required for dwellings as outlined in MCC 16.30.170.*

The dwelling has ample required parking and space to expand if needed. The criterion is met.

- F. *Parking of customers' or clients' vehicles shall create no hazard or unusual congestion. If the home occupation requires any parking for an employee or customer, a site plan meeting the requirements for off-street parking in Chapter 16.30 MCC shall be submitted and approved by the planning manager.*

The applicant has one employee and has provided a site plan showing ample parking for this employee and to maneuver cars into the shop. Off street parking is provided at the location and will not create congestion on Painter Loop. The criterion is met.

- G. *Delivery and pick-up of materials or commodities in conjunction with the home occupation to and from the premises shall be made by private vehicles or by commercial vehicles not exceeding two axles in size.*

This shall be made a condition of approval.

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

This shall be made a condition of approval.

- I. *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 states that customers would only come to pick up or drop off a vehicle with a maximum of two per day by appointment only, no retail sales, and the business will not be open to the public. The criterion is met.

- J. *The dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.*

This location is not used for assembly or dispatch of employees. Two of the three employees live on site. The criterion is met.

7. All conditional uses are subject to the general criteria in MCC 16.40.020, these include:

- (a) *The use is listed as a conditional use in the zone, or is otherwise identified as a conditional use and is consistent with the intent and purpose of the zone and the provisions that authorized consideration as a conditional use.*

Home occupations are a conditional use in this zone and the residential zone. The criterion is met.

- (b) *The parcel is suitable for the proposed use considering such factors as size, shape, location, topography, soils, slope stability, drainage and natural features.*

There are no usual feature such as the ones listed above that would preclude the use on this parcel. The criterion is met.

- (c) *The proposed use, as conditioned, will not substantially limit, impair, or preclude the use of surrounding properties for the uses permitted in the applicable zone.*

With conditions applied to keep the use indoors and limit operating hours, this use is not expected to limit or impair use on surrounding parcels. The use as conditioned meets the criterion.

- (d) *The proposed use, as conditioned, will not have a significant adverse effect on air or water quality.*

All activities will be performed inside a building. The applicant proposes to build a new building for the business. Because the use is conditioned to be inside, all spills or potential threats to water quality will be mitigated by being contained within the new building and not able to seep into the ground water. It is the applicant's responsibility to follow all proper DEQ and other applicable laws/guidelines when repairing vehicles and handling gas, oil or other chemicals. The criterion is met.

- (e) *Adequate public and utility facilities and services to serve the use are available or will be made available prior to establishment of the use.*

The applicant does not require public facilities to perform their use. When the property is annexed, public utilities will become available. The criterion does not apply.

8. In addition to these general criteria, in order to approve a Conditional Use in a UT zone the specific criteria in MCC 16.13.030 must be satisfied:

- (a) *The use will not increase traffic beyond the capacity of existing roads.*

The business is not open to the public and the applicant states they expect two customers per day maximum and by appointment only. The criterion is met.

- (b) *If the use will remain after the area is urbanized it will be located in such a manner that any significant unused portion of the property has adequate development options.*

The entire front of the subject property is undeveloped and suitable for development. The property essentially has two sides, one scattered with buildings and the dwelling, and one that is open and farmed. This open area totals approximately 1.2 acres, which is adequate for urban development.

- (c) *The use and related structures and improvements meet the development standards of the most restrictive zone consistent with the applicable comprehensive plan designation; or the city concurs and, if the city requests, conditions are imposed that require the structures and improvements to be brought into conformance with city zoning regulations upon annexation.*

The development standards contained in the UT zone are the same as the single family residential zone in Marion County. The criterion is met.

- (d) *The most restrictive zone used in the applicable Comprehensive Plan designation lists the proposed use as a permitted or conditional use; or the city concurs and, if the city requests, conditions are imposed which require that the use be brought into conformance with city zoning regulations upon annexation.*

Home occupations are a conditional use in this zone and the residential zone. The criterion is met.

9. The following regulations shall apply when property line adjustments and partitioning of land regulated by Chapter 16.33 MCC, Subdivision and Partition Requirements, are proposed:

1. *Additional street right-of-way required by adopted county standards shall be dedicated along the street frontage of any lot 10 acres or less in area that is part of a partition or lot line adjustment. Street and drainage improvements within the dedicated right-of-way shall be deferred until otherwise required by*

*the county, or by the city following annexation. A nonremonstrance agreement for future road or drainage improvements within the right-of-way abutting the lot may be required.*

Additional right of way is not being requested by Marion County LDEP or the City of Hubbard at this time. The criterion does not apply.

- 2. The location of lot lines shall not significantly reduce feasible options for the future location of urban streets or utility services, or preclude development options on the property or adjacent properties.*

This lot line adjustment moves the common boundary line to the west in a consistent manner, such that, the shapes of the parcels are preserved for development in the future. The lot being reduced in size was already under the minimum lot size/density limit of 5 acres as it is 1.37 acres before adjustment. The criterion is met.

- 3. When a lot occupied by a residence is reduced, or a lot is created to accommodate a new residence allowed in MCC 16.13.320, the lot should be as small as possible and should not be larger than one acre. If a lot of one acre or less is not feasible, the lot should either contain all of the undeveloped land or be large enough that the urban development potential will be a significant incentive for the owner to develop to planned urban uses when the lot is annexed.*

The 1.37 acre parcel is being reduced to 1.00 acres and both parcels contain dwellings. Both lots can be developed when annexed as the home locations do not preclude the lots from being subdivided as they are sited on the corners of either parcel. This lumps the undeveloped land on the other side so that it can be developed. The criterion is met.

- 4. When a new or adjusted lot located in a residential plan designation is smaller than five acres and larger than one acre, a redevelopment plan shall be required demonstrating that the lot can accommodate future subdivision development at the median density proposed in the Comprehensive Plan. The zoning administrator shall review and approve the redevelopment plan. The redevelopment plan is only for the purposes of identifying a feasible means to subdivide the property and to identify an appropriate location for residences, and does not limit consideration of other development options when urban services are available.*

The applicant has submitted a redevelopment plan showing proposed lot lines overlaid on their site plan which indicate that the property can be subdivided at a lot size of 6,000 square feet. Both lots, as explained above, are sited as such that the dwellings are in the sides and corners of the lots, allowing for maximum development room around them. The criterion is met.

- 4. New lots shall have no dimension less than 80 feet.*

No lots are proposed with a dimension less than 80 feet. The criterion is met.

- 5. When a lot located in a residential plan designation and occupied by a nonresidential use is created or altered, the lot should include as little undeveloped land suitable for residential uses as possible, unless evidence is presented that undeveloped land needs to be included in the lot to accommodate allowable expansion of the subject use.*

The 1.37 acre parcel is being reduced to 1.00 acres and both parcels contain dwellings. Both lots can be developed when annexed as the home locations do not preclude the lots from being subdivided as they are sited on the corners of either parcel. This lumps the undeveloped land on the other side so that it can be developed. The criterion is met.

6. *The minimum lot size, in acres, for lots in nonresidential plan designations is the numerical suffix added to the UT zone.*

Both lots are under the minimum lot size and will remain so after adjustment. The criterion is met.

10. Based on the above findings, it has been determined that the request satisfies all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: February 7, 2023

If you have any questions regarding this decision contact Austin Barnes 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.