

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. 22-010**

APPLICATION: Application of Horlando Martinez, Manuel Saldana, and Maria Leon for a conditional use permit to operate a landscaping business as a home occupation on a 1.43-acre parcel in an Acreage Residential (AR) zone located at 498 Cordon Road NE, Salem (T7S; R2W; Section 29AC; Tax lot 1000).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to conditions.

EXPIRATION DATE: This conditional use permit is valid only when exercised by **April 22, 2024**. 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 approval for all required permits from the Marion County Building Inspection Division.
2. The home occupation will be limited to the two employees allowed for conditional home occupations as indicated in Marion County Code 17.120.075. **No dispatch or assembly of other employees will be allowed from the property.**

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

3. The home occupation shall be operated in full compliance with the criteria in Marion County Code 17.120.075.
4. Failure to continuously comply 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:

5. The applicants should contact the Marion County Fire District #1 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) based on 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 **April 22, 2022**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 23, 2022**, 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. The intent of this designation and the corresponding AR (Acreage Residential) zone is to allow for the creation of acreage home sites at a density that maintains the character and environmental quality of the county's rural lands.
2. The subject property is located on the southeast side of the intersection between Cordon Road NE and Auburn Road NE. The property currently contains one dwelling and two accessory structures. Tax Lot 1000 is currently developed with one dwelling and two accessory structures. Tax Lot 1000 is described by and consists of two parcels according to the most recent deed. Parcel 1 has existed in its current configuration since before September 1, 1977 per a warranty deed recorded in Volume 693, Page 746 of the Deed Records of Marion County, Oregon. Parcel 2 has existed in its current configuration since before September 1, 1977 per a warranty deed recorded in Volume 785, Page 363 of the Deed Records of Marion County, Oregon. Therefore, this property contains two legal parcels for the purposes of land use per Marion County Code 17.110.427.
3. According to the applicant site plan and statement, the home occupation will be occurring on the southern legal parcel. This parcel is approximately the southern 80 feet of the Tax Lot 1000, or more specifically is described in Volume 785, Page 363 of the Deed Records of Marion County, Oregon.
4. Properties to the north, east, and south are zoned Acreage Residential (AR) and consist of small acreage home sites. Properties to the west are either annexed into the city of Salem or within the Urban Growth Boundary and zoned as Urban Transition (UT). The Urban Growth Boundary currently lies on the west side of Cordon Road.
5. The applicant is proposing to operate a landscaping business as a home occupation. The applicant states that the business currently employs one full-time employee and one part-time employee, both occupants of the property. The business will not be open to the public, and there is no office on-site. The business will be operated from a garage at the southeast corner of the property. The business makes use of three vehicles, two trailers, and smaller landscaping equipment; all this equipment for the business will be stored at the property.
6. Marion County Land Development and Engineering commented that:

ENGINEERING ADVISORY

An existing 20' x 70' paved loading/unloading area within the Cordon Road right-of-way adjacent to the subject property may be partially or wholly removed at such time as Cordon Road future widening improvements are undertaken.

7. All other contacted agencies either failed to comment or had no objection to the proposal.
8. 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 and primary operator of the home occupation, Manuel Saldana, is a resident of the property and has indicated in his statement that the only other person involved in the business is his son who helps on a part-time basis. 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 no additional noise will be created by the business. The applicant has stated that he typically departs the property with his equipment between 7:30 and 8:00 a.m. and returns around 5:00 p.m.

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

The applicant has not addressed this criterion directly, but he indicates that the use will not affect other uses because the scale of the operation is small. 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 home occupation will be conducted within a 1,500 square foot accessory building (a shop/garage) located at the southeast corner of the property. The applicant has indicated that equipment will be stored inside this accessory building. 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 shown that that an area approximately 800 square feet in size inside the 1,500 square foot shop will be used for the home occupation. Because the shop is 1,500 square feet in size, it can be concluded that, even if the home occupation expands inside the shop, the 1,500 square foot maximum will not be exceeded. 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 shop/garage 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 no customers will visit the property, and the business will not be open to the public. 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 indicated that equipment will be stored inside the aforementioned accessory building. 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 persons involved in the home occupation reside at the property; no other outside employees are assembling at the property or are dispatched. Furthermore, this will be made a condition of the home occupation's approval. 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 landscaping business is a service business that does not involve sales at the property. The criterion is met.

9. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in Marion County Code (MCC) 17.128.040. Those requirements are:

- A. The conditional use as described by the applicant will be in harmony with the purpose and intent of the zone.*

The applicant's landscaping business is a small-scale service business that will minimally impact the residential purpose and intent of the Acreage Residential (AR) zone. The applicant has indicated that there will be minimal noise created by the business, as the work is done off-site. Deliveries will not occur. The equipment and materials stored on site for the business are not significantly different than those that might be used in the AR zone for farm or personal use. The criterion is met.

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

The applicant has indicated that the business does utilize three vehicles; however, so long as the home occupation conditions are met regarding the number of employees and dispatch of employees, then the impact on traffic should remain minimal. The criterion is met.

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

The property is served by Marion County Fire District #1. The fire district had no comments on the home occupation, and there is no evidence that there is a lack of fire protection. The criterion is met.

D. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, or air and water quality.

The property is relatively isolated from nearby surface water or habitats. The home occupation will utilize existing improvements on the property, and the storage of landscaping equipment typically does not have a significant adverse impact on soils, air, or water quality. The criterion is met.

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

The applicant has indicated that the work will be operated off-site, and therefore no significant noise will be created. The criterion 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 potential water impoundments identified in the area. There are no mineral or aggregate sites identified in the area. The criterion is met.

10. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for placing a temporary manufactured home/RV for medical hardship purposes and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich,
Planning Director/Zoning Administrator

Date: April 7, 2022

If you have any questions regarding this decision contact Daniel Jansen 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.