

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. 21-037**

**APPLICATION:** Application of Rose High Bear for a conditional use to operate an educational non-profit as a home occupation on a 1.99 acre property in the AR (Acreage Residential) zone located at 2281 Delaney Road SE (T8; R3W; Section 26D; Tax Lot 300).

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

**EXPIRATION DATE:** This Conditional Use Permit is valid only when exercised by **September 7, 2023**. 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. Classes shall occur between the hours of 8:00 a.m. and 8:00 p.m., as is required in MCC 17.120.075.
3. There shall be no more than 10 students on the property at any given time without permission from the Marion County Planning Director.

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

4. The home occupation shall be operated in full compliance with the criteria in MCC 17.120.075 that are listed in #6 of the Findings and Conclusions section of this decision.
5. 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 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 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

6. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for an additional Engineering Requirement, listed in Finding #6 below, that may be required.

**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 **September 7, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 28, 2021** 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 purpose 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 residential lands.
2. The property is located on the north side of Delaney Road SE, approximately 1000 feet from the I-5 Delaney Road interchange. The property is described in its current configuration in a deed dated February 14, 1959, which is located in the deed records of Marion County, Oregon at Volume 520 and Page 61. It is therefore considered legal for land-use purposes.
3. Properties to the south are zoned AR and contain a mix of small to medium sized residential properties. The property to the east is zoned Interchange District (ID) and is developed with two single-family homes and a drive-thru espresso business. The property to the north is zoned Special Agriculture and is undeveloped. The property to the west is zoned Special Agriculture, planted with a vineyard, and is developed with a single-family home and accessory structures.
4. The applicant is proposing to operate an educational/workforce development focused non-for-profit organization—Wisdom of the Elderberry—out of an accessory structure where she will instruct small groups of students in irrigation, crop health, and other ecology topics. The classes are funded through the United States Department of Agriculture's (USDA) National Institute of Food and Agriculture. The program will be operated in partnership with Chemeketa Community College and classes will occur twice per week during the fall term from 2021 to 2026.
5. Marion County Land Development and Engineering provided the following comments:

**ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits, an Access Permit will be required to permanently close the western remnant field access approach and middle residential access approach of the three access points, and then widen and pave the third eastern driveway approach. These requirements are for establishing safe access due to limited vision on horizontal and vertical roadway curvature.
- B. At the time of application for building permits, Transportation System Development Charges will be assessed.
- C. Utility work in the public right-of-way requires separate permitting from PW Engineering.

Marion County Building Inspection commented that permits are required for the conversion of the existing garage to commercial use. Plans will be needed describing the use of spaces and any proposed construction and/or alterations.

Marion County Septic Division commented that an application has been submitted regarding septic for the home and proposed usage, a decision has not been made at this time, but I do not anticipate any problems regarding sizing the replacement system to accommodate both uses.

6.

MCC 17.120.075 provides specific criteria for approval of a home occupation:

- 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).*
  - 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.*
  - C. *The conditional home occupation shall not significantly interfere with other uses permitted in the zone in which the property is located.*
  - D. *A sign shall meet the standards in Chapter 17.191 MCC.*
  - E. *The home occupation shall be conducted entirely within the dwelling or accessory building.*
  - 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.*
  - G. *No structural alterations shall be made that would be inconsistent with future use of the buildings exclusively for residential purposes.*
  - H. *No alteration to or use of the premises shall be made that would reduce the number of required on-site parking spaces.*
  - 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.*
  - 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.*
  - 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.*
  - 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 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.*
  - M. *The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.*
  - 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.*
7. The applicant indicated in her application that there will be two employees including her. She also indicated that she lives on the property full time. The criteria in MCC 17.120.075 (A) are satisfied. The applicant is advised of this ongoing requirement and there is no reason to believe that the use of the property for culturally-specific workforce development/educational purposes will result in a public or private nuisance to surrounding property owners. The nature of the home occupation is limited to a select group of people—the application states there will be eight students—coming to the property for a limited duration. There is no evidence that their presence will

interfere with other uses permitted on surrounding properties. MCC 17.120.075(B) and (C) are satisfied. The applicant is not proposing a sign. MCC 17.120.75(D) is satisfied. The applicant is advised that activities related to the home occupation must occur within the dwelling or accessory structures. Marion County Planning considers the gardening the applicant mentions to be coincident to the outright permitted residential use of the property; therefore, it is not deemed to be part of the home occupation. Moreover, the square footage dedicated to home occupation is expected to be 790 square feet. Consequently the criteria in MCC 17.120.075(E) and (F) are satisfied. The applicant plans to convert a detached garage into a classroom space with a bathroom, which will not prevent the future use of the property exclusively as a residence, as many accessory structures in the County have bathrooms. This will likely only add value to residence and MCC 17.120.057 (G) is met. Notwithstanding conversion of the garage, the property maintains more than the required four off-street parking spaces. The criterion in MCC 17.120.075(H) is satisfied. Classes will be limited to the hours between 8:00 a.m. and 8:00 p.m. as a condition of approval. MCC 17.120.075(I) is satisfied. The application does not indicate that there will be any need for deliveries, outdoor storage (apart from the garden space), retail sales, or assembly or dispatch of employees to and from the property; the criteria in MCC 17.120.075(J), (K), (L), (M), and (N) are satisfied.

8. 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.*
- B. *The use will not increase traffic beyond the capacity of existing roads.*
- C. *Adequate fire protection and other rural services are, or will be, available when the use is established.*
- 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.*
- E. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- 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.*

9. The stated purpose of the 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 residential lands. This is no evidence that the proposed use will negatively interfere with this intent. The application indicates that the cohort will meet at the property a total of 28 times over the course of a year and that there will be no more than nine additional individuals travelling to and from the property on those occasions. This should not increase traffic beyond the capacity of the existing roads. Marion County records indicate that the property is served by Turner Fire District and the Marion County Sheriff's Office provides police services. There is no evidence that the use will have a significant adverse impact on local watersheds, groundwater, fish and wildlife habitat, soil and slope stability, or air and water quality. The noise associated with the property should be minimal, as the classes will occur inside the accessory structure. There are no nearby water impoundments or significant mineral or aggregate sites. The criteria in MCC 17.128.040 (A), (B), (C), and (D) are met.

10. Based on the above findings it has been determined that the applicant's request to operate an educational non-profit satisfies all applicable decision criteria and is **APPROVED**, subject to conditions.

Joe Fennimore  
Planning Director

Date: August 23, 2021

If you have any questions regarding this decision, contact Ryan Dyar 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.