

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.21-044**

**APPLICATION:** Application of Jose Vera Garcia and Lisa Vera Torres for a conditional use to operate an esthetician business as a home occupation on a 16.43 acre property in an EFU (Exclusive Farm Use) zone located at 9134 Mt. Angel Gervais Road NE, Gervais (T5S, R2W, Section 36D, Tax Lot 200).

**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 **October 12, 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 drainfield 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 business shall continuously comply with the home occupation criteria in MCC 17.136.060(C), listed in Finding #6, and the conditions of approval on this decision.
2. Failure to continuously comply with the Conditions of Approval may result in this approval being revoked. Any revocation can be appealed to a Marion County Hearings Officer for a public hearing.
3. This home occupation is not approved for retail sales open to the public. All sales shall be conducted on an appointment only basis.
4. 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.

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

5. 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 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 **October 12, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is **October 13, 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 Primary Agriculture in the Marion County Comprehensive Plan. The intent of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of agriculture and commercial farm uses in the area.
2. The subject property is located on the south side of Mt. Angel Gervais Rd NE, approximately 0.4 miles from its intersection with Howell Prairie Rd NE. The property contains a dwelling and two accessory structures related to farm use. The property is described by deed volume 412 and page 589 in 1950, it is therefore considered legal for land use purposes.
3. Properties are zoned EFU in all directions and consist of farms and home sites.
4. The applicant is proposing operate an esthetician business as a home occupation on a 16.43 acre property in an EFU (Exclusive Farm Use) zone.
5. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

### **ENGINEERING REQUIREMENTS**

- A. Prior to issuance of building permits, acquire an Access Permit, and under the Permit permanently close a remnant field access situated approximately 60 feet southeast of the main residential access. Closure will entail removing a 6- to 8-inch diameter concrete culvert pipe and reestablishing the shallow V-ditch cross-section. Access closure work must be completed and inspected prior to issuance of a Building Dept. Certificate of Occupancy.
- B. Transportation System Development Charges may be assessed at the time of application for building permits.

Marion County Septic commented: "The proposal will require a septic authorization notice for the change of use/increase in flow to the septic system. The use of sanitizers may cause the wastewater strength to be considered greater than residential, and require a Water Pollution Control Facilities Permit (WPCF) from the Oregon DEQ, per OAR 340-071-0130(15)(b)(B)."

All other commenting agencies failed to comment.

6. In order to approve a home occupation in an EFU zone, the applicant must demonstrate compliance with the specific criteria listed in MCC 17.136.060 (C). These include:

*C. Home Occupations. Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with the home occupation and bed and breakfast inns, are subject to the following criteria:*

1. *A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation ("person" includes volunteer, nonresident employee, partner or any other person).*

As described in the applicant statement, the lash extension service will be operated only by the applicant, no additional employees will work in the home occupation. The criterion is met.

2. *It shall be operated substantially in:*
  - a. *The dwelling; or*
  - b. *Other buildings normally associated with uses permitted in the zone in which the property is located.*

The business will be fully operated within the dwelling as described in the applicant statement. The criterion is met.

3. *It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.*

The use as described should not affect other permitted uses in this zone. The parcel is in farm use and will remain so after approval. As this use is inside the house, it cannot interfere with farm use. The criterion is met.

4. *A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.*

The structure proposed for the use is a dwelling and was not permitted as an agriculture structure. The criterion is met.

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

No signs are proposed with this application. The criterion is met.

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

No employee dispatch is discussed in this application. The applicant stated that no additional employees will be a part of the home occupation, therefore no employee dispatch or assembly will occur. The criterion is met.

7. *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.*

No sales are proposed. The low intensity nature of the use with one employee and one client at a time meets this criterion. The criterion is met.

7. The EFU zone, in MCC 17.136.060(A), contains general criteria that apply to all conditional use proposals. Those requirements are:

*A. The following criteria apply to all conditional uses in the EFU zone:*

1. *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*

The use is not expected to affect farm use in any way. The parcel is in farm use itself and this use will be conducted inside the home, away from any active farming. The criterion is met.

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

Woodburn Fire District serves the parcel. The criterion is met.

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

Septic authorization will be required to assess any improvements needed to the septic system. Water used will be contained in an existing septic system as to not affect ground water. The criterion is met.

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

There is no noise expected to be associated with this use other than ordinary residential noise. The criterion is met.

5. *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.*

This use will be connected to a septic system and improvement will be required if deemed necessary by Marion County Septic Department. The criterion is met.

8. Based on the above findings it has been determined that the proposed Conditional Use complies with the criteria for a Home Occupation in the EFU zone and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich  
Planning Director

Date: September 27, 2021

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.