

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
ADMINISTRATIVE REVIEW CASE NO. 24-022**

APPLICATION: Application of Taylor & Allison Meyer for an administrative review to place a primary farm dwelling on a 29.68-acre parcel in the EFU (Exclusive Farm Use) zone located in the 8400 block of Mt Angel Highway NE, Mt. Angel (T6S; R1W; Section16D; Tax Lot 100).

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

EXPIRATION DATE: This decision is valid only when exercised by **November 1st, 2028**, unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure 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:

1. The applicant shall obtain all permits, including subsurface sewage disposal, as required by the Marion County Building Inspection Division.
2. The applicants shall sign and submit a Farm/Forest Declaratory Statement (enclosed).
3. The applicants shall sign and submit a Use of Agriculture Land for Dwelling Qualification OAR 660-033-0135 Declaratory Statement (enclosed).
4. Based on the proposed access, the address of the proposed farm dwelling will be: **8440 Mt. Angel Hwy NE**. This is subject to change if the location of the driveway changes.

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 the agencies mentioned in Finding # below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

5. The applicants should contact the Mt. Angel 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.
6. 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 deny the application. Anyone who disagrees with the Director's decision may appeal the decision

to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) 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. Appeals 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 **November 1st, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 4th, 2024**, unless appealed.

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 and correspondingly zoned EFU (Exclusive Farming Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is located in the 8400-block of Mt. Angle Hwy NE, less than a mile south of Silverton. The parcel is 29.68-acres and contains approximately 11-acres in strawberry production, and a 10-acre section of Hazelnut orchard that stretches across a contiguous property to the south under different ownership. The strawberry field and orchard are separated by a band of grass field 60 to 80 feet wide. The parcel also contains a canal and related pond of approximately 0.75-acres.

Subject Tax lot 100 was described in its current configuration by deed in 1975 (Reel 9, Page 1697) and is therefore considered legal for land use purposes.

3. All adjacent parcels are in agricultural use for grass seed, orchards, and row crops. Many of the nearby farms also include dwellings.
4. The applicants are proposing to place a primary farm dwelling on the subject property.
5. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Building Inspection commented: No Building Inspection concerns. Permits are required to be obtained prior to any development and/or utilities installation on private property.

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

6. Chapter 17.136.030(A) of the Marion County Code (MCC) allows for the construction of a single-family dwelling in conjunction with farm use with filing of the Declaratory Statement(s) in MCC 17.136.100(C). The dwelling will be considered customarily provided in conjunction with farm use when the following criteria are met.

(a). *It is located on high-value farmland as defined in MCC 17.136.140(D) and satisfies the following standards:*

The subject parcel (Tax lot 100) is made up of 84.9% high value soils. The criteria under 17.136.030(A)(1) are therefore the correct criteria to apply.

1. There is no dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;

The is no dwelling on the subject parcel, and it is the sole farm parcel under the same ownership. The criterion is met.

2. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least \$80,000 in gross annual income from the sale of farm products, not including marijuana. In determining gross annual income from the sale of farm

products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;

The Meyers purchased the subject parcel in the fall of 2021 and took over the existing farm operation. This operation includes approximately 11-acres row crop fields, and 10-acres of a hazelnut orchard. The orchard extends onto the south adjacent parcel where there are another 17-acres of hazelnuts. Under previous ownership the subject parcel was managed together with the south adjacent parcel, and the hazelnut orchard still stretches between both without clear delineation. This south adjacent parcel was purchased in 2021 by the Grimms. Nolan Grimm and Taylor Meyer co-own and operate an irrigation business serving farms in Marion County. The Meyers and the Grimms harvested the orchard that stretches across both parcels, and the strawberry fields on the Meyers parcel, together in 2023 in a profit-sharing agreement. The applicant provided receipts for the total harvest, the harvest from his own property, and his schedule F tax form from 2023.

Reported on the 2023 schedule F is only the applicant's portion of the profits from this combined harvest. This value is less than the annual minimum income requirement for this criterion. However, the applicant provided receipts for from the Willamette Valley Fruit Company showing weights for all his strawberry deliveries in 2023, as well as the income from the harvest. These receipts confirm that the applicant did earn on the subject tract over \$80,000 of gross income from the sale of strawberries grown and harvested on the subject parcel. As a result of the profit-sharing agreement with Nolan Grimm, this income is not fully reflected on the applicant's schedule F from 2023. This criterion specifies that, "Only gross income from land owned, not leased or rented, shall be counted." The 2023 agreement between Nolan Grimm and Taylor Meyer was neither a lease nor rental agreement. The farm operator, Taylor Meyer, earned on the subject tract more than the minimum standard, and subsequently shared in the profits after completing the harvest as part of a cooperative agreement with his neighbor and business partner. The intent of the income standard criterion is not infringed by this agreement, and the applicant has provided sufficient evidence that he was the farm operator who harvested the crop from his own land and delivered that crop to market at a value above the minimum standard of \$80,000.

In 2024 the Meyers and Grimms harvested the crops on their properties independently. The applicant will be filing a schedule F for 2024 early next year, so in the meantime he provided receipts from the Willamette Valley Fruit Company for the weights of his strawberry deliveries in 2024, as well as separate receipts showing the income from that harvest. The receipts show a harvest in excess of 23,000 lbs/per acre in 2024, up from 12,000 lbs per acre in 2023. Marion County requested additional information. The applicant explained that a combination of this being the second year for the high-yield variety (Sweet Sunrise) that he planted after purchasing the farm, bolstered by a drip irrigation system installed by the applicant utilizing an injection of liquid fertilizers and nutrients, and the particularly favorable weather leading up to the June harvest, resulted in the surprising yield in 2024. The gross income from the 2024 harvest exceeds the minimum standard required by this criterion. The applicant provided a letter from his Certified Public Accountant, Kyle Walter, confirming the accuracy of the 2024 receipts.

The applicant provided a letter from Eric Cope, the Fruit Procurement Manager of the Willamette Valley Fruit Company, and member of the Oregon Strawberry Commission. Mr. Cope confirms that all of the strawberries the applicant delivered in 2023 and 2024 came from the subject parcel. He also explains in the letter that 2023 was a particularly bad year for strawberries in Oregon. The total harvest fell 2.5 million pounds, from 9.7 million in 2022 to 7.3 million in 2023. While final numbers haven't been calculated, Mr. Cope suggests the statewide strawberry harvest for 2024 will be over 11 million pounds.

The financial documents provided by the applicant, along with his written statements and those of Kyle Walter and Eric Cope, show that the applicant is the farm operator who has earned on the subject parcel in the last two years at least \$80,000 annually from the sale of farm products grown on the subject parcel. The criterion is met.

3. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;

The applicant attests that he will continue to farm the subject parcel. The strawberries were harvested this past June, and the hazelnut harvest is in September and early October. The subject tract is therefore currently employed for the farm use that produced the income required by the previous criterion. This criterion is met.

4. The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section; or

The applicant proposes a dwelling for himself and his family to be able to live on, and manage more effectively, the farm he purchased three years ago. The dwelling is specifically related to the agricultural production generating the income on this property and will be occupied by the applicant and his family who will continue to produce the crops which generate income on this farm. The criterion is met.

(b). All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:

It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling. These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions is located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.

A declaratory statement (Use of Agriculture Land for Dwelling Qualification) attaching these CCRs to the deed will be a condition of approval. The criterion is met.

8. 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: October 17, 2024

If you have any questions regarding this decision contact John Speckman 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.