

**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.20-014**

**APPLICATION:** Application of Ronald Fink for a conditional use to place a non-farm dwelling on a 5 acre parcel in an EFU (Exclusive Farm Use) zone located in the 18000 block of Hazelnut Ridge Road, Silverton. (T6S; R1E; Section 21C; tax lot 00500).

**DECISION:** The Planning Director 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 **June 10, 2024**. The effective period may be extended one time, for two additional years 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. A special dwelling setback of 200 feet for the dwelling and 100 feet for accessory structures shall be required from the north and south property line. The dwelling and any accessory structures shall maintain a 160 foot setback from the west property line and 75 feet from the east property line.
4. Prior to obtaining building permits, the applicant must provide evidence to the Planning Director that the county Assessor's Office has permanently disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or ORS 308A.724 or ORS 321.359(1)(b), ORS 321.842(1)(A) and 321.716.
5. Prior to issuance of any building permit for any new dwelling, the applicants shall sign and submit a Declaratory/Farm-Forest Statement (enclosed) to the Planning Division. This Statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed 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 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:

6. The applicants should contact the Silverton 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.

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

**APPEAL PROCEDURE:** The Marion County ZoneCode 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 **June 10, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 11, 2020** 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 commercial agriculture in the area.
2. The subject parcel is located on the north side of Hazelnut Ridge Road approximately 2,300 feet west of its intersection with Heinz Road. The subject property is unimproved. The parcel was subject of Conditional Use case CU90-76 and is considered a legal lot for land use purposes.
3. Nearby land consists of small farm operations and rural home sites in an EFU zone.
4. The applicant submitted a site-specific soil survey to the Oregon Department of Land Conservation and Development, which determined that 64% of the soils on the property are Class 6 soils that are not high value for agriculture.
5. The applicant proposes to establish a non-farm dwelling on the property.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following requirements be included in the land use decision:
  - A. At the time of application for building permits it will be required to obtain an Access Permit from PW Engineering to inspect and document the recently installed access approach. In accordance with MCC 11.10, new and or modified accesses require a Permit. During a preliminary field inspection in conjunction with this action it was noted that the approach grade is at or may even slightly exceed 15%. Marion County construction standards stipulate a maximum of 5% slope within the first 20 feet. It may be required to regrade/flatten the approach and/or provided written evidence of local FD acceptance. The Applicant could potentially be required by PW Engineering at the time of permitting to make modification to correct any deficiency.
  - B. At the time of application for building permits Transportation System Development and parks charges will be assessed for the new dwelling.
  - C. Electrical and other dry utility work involving trenching or boring within the Hazelnut Ridge Road public right-of-way requires utility permits from PW Engineering.”

Marion County Building Inspection commented that a building permit is required for new construction or placement of a manufactured home.

Marion County Onsite Wastewater Specialist commented that a site evaluation for an onsite septic system is required.

Silverton Fire District commented that a new dwelling must fire district requirements for access and water supply.

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

7. In order to approve a non-farm dwelling in an EFU zone, the applicant must demonstrate compliance with criteria identified in Sections 17.136.060(A), 17.136.060(B), 17.136.070 and 17.136.100. These include:

The following criteria apply to all conditional uses in the EFU zone under 17.136.060(A):

- (a) *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.*
- (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
- (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- (e) *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.*

8. The subject property is not currently being farmed and is not receiving a special assessment on the property taxes. The dwelling would be located at least 2,000 feet from adjacent property currently receiving a special assessment on the property taxes for agriculture to the north and south and 160 from the specially assessed property to the west, which is the maximum possible given the size of the property. One additional dwelling in this area would not add significantly to the relatively minor effects other residences in the area have had on farming, as discussed in Finding 10, below. The application meets #7(a).

The subject parcel has a well and electrical service on the property. The land is within the Silverton Fire District and served by the Marion County Sheriff. The proposal meets #7(b).

The property does not contain any identified groundwater, fish and wildlife habitat, air, and water quality resources and the dwelling would be located approximately 600 feet from the pond and creek at the north end of the property. As described above, the proposal meets #7(c). It is expected that any noise generated by the dwelling will be confined to the property and will have little or no impact on surrounding lands. The proposal meets #7(d). The Marion County Comprehensive Plan identifies no potential water impoundments or mineral and aggregate sites. The proposal meets #7(e).

9. In addition to the standards in #7 above, non-farm dwellings shall be subject to the following criteria listed in 17.136.060(B) and include:

- (a) *The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in Section 17.136.130.*
- (b) *The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993 in any way that enables the lot or parcel to meet the criteria for a non-farm dwelling*
- (c) *The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings on other lots or parcels in the area similarly situated shall be considered. To address this standard, the following information shall be provided:*
  - (1) *Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch*

*operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;*

- (2) *Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm dwellings that could be approved under Section 17.136.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;*
- (3) *Determine whether approval of the proposed non-farm dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.*

10. The applicant submitted a site-specific soil survey to the Oregon Department of Land Conservation and Development, which determined that 64% of the soils on the property are Class 6 soils that are not high value for agriculture. Therefore, the proposal meets criteria listed in #9(a). As stated previously, the subject property is considered a legal parcel, and the applicant provided evidence that the property boundary has not been reconfigured since at least July 6, 1990. The request complies with the review criteria listed in #9(b).

The applicant submitted a Cumulative Impact Analysis Study to address requirements listed in 17.136.060(B)(3). A staff review of the information revealed that the data were adequate to make a decision on this application.

- A. The applicant has provided a study area which encompasses over 2000 acres surrounding the property. This study area included only properties zoned as farm use. Lands zoned for rural residential or other non-resource uses are not included in the study area. Information supplied by the applicant, and verified by staff, indicates that there is no non-resource zoned land applied to the study area and that the applicant's report meets the required 2000 acre resource zone analysis area.
- B. The applicant has indicated this study area was chosen as representative of the land use pattern surrounding the subject parcel. Properties within the study area are predominately in farm use, including row crops, pasture, grass seed and Christmas tree farm operations, depending on the slope and soil types of the particular property. Staff concludes that the area presented by the applicant is a fair representation of the surrounding area and is sufficient to arrive at a sampling of the land use pattern.
- C. The development trends in the study area have been identified in the applicant's statement and the overlay map. There are 83 parcels in the study area, of which 16 are considered to be non-farm parcels, 10 of which are developed with non-farm dwellings. Since 1993, only one non-farm dwelling approval has occurred. The dwelling was not established prior to expiration of the approval, however, the property is likely to re-qualify for a non-farm dwelling. This property is the only one, other than the subject property, that is likely to qualify for a non-farm dwelling in the future. All of the existing dwellings on small lots were built prior to 1993. The proposed dwelling would be consistent with the development pattern that has occurred on surrounding lands in the past.
- D. As stated above, the applicant identified one parcel that would qualify for a non-farm dwelling, because of the predominance of high value soils in the study area, as the soils are currently mapped by the National Resource Conservation Service. More detailed soil mapping of an individual parcel may indicate the presence of non-farm soils; however, that information is not available at this time and would be prepared in the future on a parcel-by-parcel basis. The number of potential additional non-farm

dwelling is restricted by the number of dwellings already in the study area. It appears that an insignificant percentage of the study area could include potential non-farm parcels.

- E. Resource land inside the study area as previously determined is zoned EFU. The commercial agriculture operations in the study area are predominately in row crops, pasture, grass seed and Christmas tree farm operations. It appears that these crops and farming activities are impractical on the subject parcel because of the poorer soils, slope of the land and size of the property.

The site specific soils survey conducted on the property determined that the soils are not predominately high-value and are not suitable for most types of farming activity. Any proposal to add the property to an adjoining farm parcel would not provide any significant agricultural benefit to that parcel. According to these findings, the proposed dwelling would not make it more difficult for existing farming activities to continue and would not materially alter the land use stability of the area and meets the criteria in #9(c).

11. The following regulations apply to non-farm dwellings approved pursuant to Section 17.136.050(A) and meeting provisions listed in 17.136.070 as follows:
- (a) *Special Setbacks:*
    - (1) *Dwellings. A special dwelling setback of 200 feet from any abutting parcel in farm use or timber production is required.*
    - (2) *Accessory buildings. A special setback of 100 feet is required for buildings accessory to a dwelling from any abutting parcel in farm use or timber production.*
    - (3) *Adjustments. The special setbacks in (1) and (2) may be reduced if it is determined that a lesser setback will prevent activities associated with the dwelling or accessory building from seriously interfering with farming or forest practices as provided in Section 17.110.680.*
  - (b) *Fire Hazard Reduction: As a condition of approval for any non-farm dwelling located closer than 200 feet to timber, the owner shall be required to provide continuing fire hazard management in accordance with Chapter 3 of "Fire Safety Consideration for Development in Forested Area", 1978, and any revisions thereto.*
  - (c) *Prior to issuance of any residential building permit for an approved non-farm dwelling under Section 17.137.050(A), evidence shall be provided that the County Assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or ORS 308A.724 or ORS 321.359 (1)(b), ORS 321.842(1)(A) and 321.716. A parcel that has been disqualified under this section shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.*
12. The site plan submitted with the application shows that a dwelling can be located on the property to meet the special setbacks from the north and south property lines. The subject parcel is too narrow to meet 200 foot special setbacks from the east and west property lines. The applicant proposes to place the dwelling at least 75 feet from the east property line. The adjacent 6.63 acre property to the east is not specially assessed for farm use. The applicant proposes to site the dwelling at least 160 feet from the west property line. The adjacent parcel to the west is a 5.43 acre parcel currently being specially assessed for farm use. Consequently, the setback adjustment provided in #11(a) (3) can be granted for the east and west property lines, and structures can be placed as proposed by the applicant. The property is not located within 200 feet of timber and the fire hazard reduction is not applicable. It can be made a condition of approval that the property be disqualified from any special assessment prior to obtaining a building permit.
13. Chapter 17.136.100(C) requires that a declaratory statement acknowledging surrounding farm and forest uses be recorded for all newly approved dwellings. This can be made a condition of any approval.
14. Based on the above discussion, the applicant has adequately addressed all the applicable criteria for placing a non-farm dwelling on the property. Therefore, subject to meeting conditions of approval, the application for a non-farm dwelling is **APPROVED**, subject to conditions.

If you have any questions regarding this decision contact Lisa Milliman 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.