

Attention Property Owner: A land use proposal has been submitted for property near where you live or 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. 17-047**

APPLICATION: Application of Glenna Belle Martin, Trustee of the Glenna Belle Martin RLT, for a conditional use to place a temporary mobile home or recreation vehicle for medical hardship purposes on a 14.5 acre parcel in a FT (Farm Timber) zone located at 7138 Grand View Ave. NE, Scotts Mills. (T6S; R1E; Section 22; tax lot 300).

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 **February 28, 2020**. 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.**

RENEWAL: This permit may be renewed for successive one year periods if the applicant submits to the Planning Division, on an annual basis, a new Physician's Certificate which indicates the hardship situation continues. The Planning Division will mail renewal forms to the property owner approximately two months prior to permit expiration.

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support an additional dwelling. To be sure the subject property can accommodate the proposed use the applicant should check with the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met.

1. The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.
2. The applicant shall submit a Manufactured Dwelling/RV Removal or Disconnect Agreement (enclosed) to the Planning Division. This agreement specifies that placement of the manufactured home or RV is temporary and it will be removed, or the RV disconnected and no longer used for residential purposes, after the hardship ceases.
3. Prior to issuance of a building permit, the applicant shall sign and submit a Farm/Forest Declaratory 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.

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

4. The applicants are advised that this permit is granted for a period of one year and must be renewed for successive one year periods upon submittal of a Physician's Certificate verifying that the hardship conditions continue to exist. In addition, every five years the Marion County Building Inspection Division requires a septic evaluation for shared systems prior to renewal of hardship conditional uses.

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. The applicant is advised of the following:

5. The applicants should contact 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.

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 Road, Salem, by 5:00 p.m. on **February 28, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or the office. This decision is effective **March 1, 2018** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions which the decisions was based are noted below.

1. The subject property is designated Farm Timber in the Marion County Comprehensive Plan and zoned FT (Farm Timber). A temporary manufactured home/RV under hardship conditions may be approved as a conditional use provided the need is justified and the residence will not have a detrimental impact upon the existing or potential farming and timber activity in the area.
2. The property is located on the east side of Grand View Ave NE approximately 1,300 north of the intersection of with Hazelnut Ridge Rd. The property contains a dwelling, accessory structures, well and septic system. The property is described in deeds prior to 1977 and considered a legal parcel for land use purposes.
3. Property to the west is zoned EFU (Exclusive Farm Use) and devoted to farm use. Properties to the north, east, and south are zoned FT and consist of a mixture of timbered parcels and properties being farmed.
4. Soil Survey of Marion County Oregon indicates 100% of the property is composed of high-value farm soils.
5. A signed Physician's Certificate has been submitted for Jennifer Sheldon and Glenna B. Martin indicating they both have medical conditions that preclude them from maintaining a complete, separate, and detached dwelling apart from their family.
6. Marion County Building Inspection commented that permits would be required for any new construction.
Marion County On-site Wastewater Specialist commented that the applicant should contact Marion County Building Inspection to discuss septic system and replacement area.
7. In order to approve a manufactured home/RV under hardship provisions, the applicants must demonstrate compliance with the specific criteria listed in Section 17.120.040 of the Marion County Code (MCC). These include:
 - (a) *For the purposes of this subsection "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.*
 - (b) *A doctor of medicine or licensed psychologist shall sign a statement indicating the physical or mental condition that prevents the person(s) with the hardship from providing the basic self-care needed to live on a separate lot. The statement shall also attest that the physician or licensed psychologist is convinced the person(s) with the hardship must be provided the care so frequently or in such a manner that the caretaker must reside on the same premises.*
 - (c) *Those providing the needed assistance shall be related by blood, marriage or legal guardianship and reside in another residence on the property. If evidence is presented that there is no family member able*

to provide the needed care, the caretaker may be someone else, provided the property is located in a zone other than the EFU, SA, FT or TC zones. In the EFU, SA, FT and TC zones, occupancy of the hardship mobile home or recreational vehicle is limited to the term of the hardship suffered by the existing resident or a relative as defined in ORS 215.283.

- (d) Those providing the care must show that they will be available and have the skills to provide the primary care required by the doctor or psychologist.*
- (e) One of the residences shall be removed from the property within 90 days of the date the person(s) with the hardship or the care provider no longer reside on the property. In the case of a recreational vehicle it shall be rendered uninhabitable by disconnection from services. An agreement to comply with this requirement shall be signed by the property owner and the care providers. Oregon Department of Environmental Quality removal requirements also apply.*
- (f) The mobile home or recreational vehicle shall to the extent permitted by the nature of the property and existing development:
 - (1) Be located as near as possible to other residences on the property;*
 - (2) On EFU, SA, FT and TC zoned property, be located on the portion of the property that is least suitable for farm or forest use, if it is not feasible to locate it near an existing residence;*
 - (3) Not require new driveway access to the street;*
 - (4) Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.**
- (g) The use is intended to be temporary, shall be subject to review every year, and shall continue to meet the above criteria in order to qualify for renewal.*

8. Physician's Certificates were submitted with the application that establish both Jennifer Sheldon and Glenna B. Martin's circumstances constitute a medical hardship. They each require full time assistance and are not able to fully perform day-to-day duties in caring for themselves. Jennifer Sheldon will live in the hardship dwelling and the care she needs will be provided by her husband, Lee Martin. Lee Martin and his son Race Martin together provide assistance with daily living activities for Glenna B. Martin, who is Lee Martin's mother and Race Martin's grandmother. The evidence also indicates the manufactured home will be relatively temporary in nature. A condition of approval will require a Manufactured Dwelling Removal Agreement be recorded that ensures that the manufactured home will be removed from the property no longer used for residential purposes when the hardship is no longer needed. The proposal satisfies the criteria #6(a), (b), (c), (d) and (f), the criteria in #6(e) and (g) can be made a condition of any approval.

9. Since the property is located in an FT zone, the proposal must also satisfy the compatibility criteria in MCC 17.139.060(A) MCC. Those requirements are:

- 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. The use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.*
- 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.*

10. The proposal will allow the placement of a temporary mobile home on the property. There is no evidence to indicate that the second temporary dwelling will have any adverse effects on surrounding properties in farm use. In addition, the County requires that a Declaratory Statement be recorded with the property deed because the subject property is in a resource zone. This serves to notify the applicants that farm or timber operations are

located in the area. The hardship dwelling will be placed on a 14.5 acre property that does not contain large stands of timber and is generally surrounding by farming or small woodlots. The placement of a hardship dwelling should not significantly increase fire hazard risk, fire suppression costs or risks to fire suppression personnel. The hardship dwelling will not significantly increase traffic on area roads. Fire protection is provided by the Silverton Fire District and the Marion County Sheriff provides policing. Other rural services such as well and septic are available on the property. Due to the temporary and residential nature of the use, the placement of a manufactured home will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality, create a significant amount of noise, impact potential water impoundments or conflict with mineral and aggregate sites. The proposal satisfied the criteria in #9 above.

11. Since the property is located in an FT zone, the proposal must also satisfy the special use and siting requirements in Section 17.139.070(A) of the Marion County Code (MCC). Those requirements are;

A. *Special Siting Requirements:*

1. *Dwellings and structures shall comply with the special requirements in subsection (A)(2) or (3) of this section. Compliance with the provisions in subsection (A)(2) of this section and subsections (B), (F) and (G) satisfies the criteria in (A)(3) of this section. Alternative sites that meet the criteria in subsection (3) of this section and may be approved as provided in MCC 17.110.680.*

The property cannot meet all of the Siting Standards in MCC17.139.070(A)(2), therefore the alternative siting requirements are addressed below.

Review criteria for alternative sites. Sites for dwellings or buildings that do not meet the siting requirements in subsection (A)(2) of this section may be approved if the proposed site will meet the following criteria:

- a. *The site will have the least impact on nearby or adjoining forest or agricultural lands.*
- b. *The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.*
- c. *The amount of agricultural and forestlands used to site access roads, service corridors, the dwelling and structures is minimized.*
- d. *The risks associated with wildfire are minimized.*

The location proposed for the hardship dwelling is located near the existing residence. The adjacent property located within 200 feet of the proposed dwelling site is 14.74 acres in size. Approximately 6.5 acres is in farm production or woodlot. The portion of the property that is farmed or managed for timber is over 600 feet from the home site on the subject parcel. The new dwelling will use existing access roads. Any approval can include conditions that minimize risks associated with wildfire. The temporary medical hardship dwelling can be placed so that the alternative site review criteria are met.

B. *Declaratory Statement. The owner of property for which a dwelling, structure or other specified use has been approved shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the subject lots or parcels:*

The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and I/We acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices I/We will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.

This can be made a condition of any approval.

C. Domestic Water Supply.

1. *The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).*
2. *Evidence of a domestic water supply means verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or a water use permit issued by the Water Resources Department for the use described in the application; or verification from the Water Resources Department that a water use permit is not required for the use.*
3. *If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report upon completion of the well.*

The proposed dwelling can use the existing well water supplied to the primary dwelling. This criterion is met.

D. Road Access. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the U.S. Forest Service, the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

Access to the proposed dwelling will be via an existing driveway. This criterion is met.

E. Tree Planting Requirements for Lots or Parcels over 10 Acres:

1. *Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in MCC 17.139.030(A), (B) or (C), on a tract of more than 10 acres in size, the landowner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.*
2. *At the time required by the Department of Forestry rules the owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met.*

Tax Assessor records indicate that a portion of the property is designated as a farm woodlot and the property is specially assessed, indicating that the property meets minimum stocking requirements. This criterion is met.

F. Fire Protection.

1. *The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.*
2. *If inclusion within a fire protection district or contracting for residential fire protection is impracticable, an alternative means for protecting the dwelling from fire hazards may be approved, pursuant to the procedures set forth in MCC 17.110.680, subject to the requirements of subsection (F)(3) of this section.*
3. *Alternative means of fire protection may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions. The following requirements apply:*
 - a. *If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or*

registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use.

- b. Road access to the water supply required in subsection (F)(3)(A) of this section shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posed along the access route to indicate the location of the emergency water source.*

The property is served by the Silverton Fire District. This requirement is met.

G. Fire Hazard Reduction.

- 1. The owners of a dwelling, or structure occupying more than 200 square feet, shall maintain a primary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provision in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.*
- 2. The dwelling shall have a fire retardant roof.*
- 3. The dwelling shall not be sited on a slope of greater than 40 percent.*
- 4. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.*

These requirements can be made a condition of any approval.

H. Road and Drainage Standards.

- 1. Public road access to structures of more than 200 square feet in area or a dwelling shall comply with Section 4 of the Marion County Department of Public Works Engineering Standards adopted by the board of county commissioners April 11, 1990.*
- 2. Except for private roads and bridges accessing only commercial forest uses, private road or driveway access to structures of more than 200 square feet in area or a dwelling shall meet the requirements of the local fire protection district or forest protection district, except that the county maximum grade standard for a private road is 15 percent. A greater grade may be approved by the fire district or, if the site is not in a fire district, by the State Department of Forestry.*
- 3. Drainage standards for private roadways shall be those in Section 5 of the Public Works Engineering standards except that corrugated metal culverts of equivalent size and strength may be used.*

Access to the proposed dwelling will be via an existing driveway.

12. Based on the above and subject to conditions, the applicants' request meets all applicable criteria to place a temporary dwelling for medical hardship and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: February 13, 2018

If you have any questions please 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.