

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. 22-020**

**APPLICATION:** Application of Esthela & Victor Zendejas for a conditional use to use an existing medical hardship approved by CU91-37 as a new medical hardship dwelling on a 2.46-acre parcel in an EFU (Exclusive Farm Use) zone located at 5853 Silverton Rd NE, Salem (T7S; R2W; Section 09B; Tax lot 700).

**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 **May 31, 2024**. 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 that the hardship situation continues. The Planning Division will mail renewal forms to the property owner approximately two months prior to permit expiration.

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

1. All conditions of approval listed in Conditional Use Permit 91-037 shall remain in effect.
2. 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 septic systems prior to renewal of hardship conditional uses.
3. The applicant is advised that the Manufactured Dwelling/RV Disconnect Agreement, which specifies that placement of the manufactured dwelling or RV, is temporary and that it will be removed, disconnected, or decommissioned after the hardship ceases, as required in Conditional Use Permit 91-037, remains in effect.
4. The applicant must file an application for an Authorization Notice with Marion County Septic Department and meet all the requirements of OAR 340-071-0205(7). The existing hardship authorization hardship cannot be renewed, and a new application must be filed because per Marion County Septic Procedures, a hardship authorization may only be renewed if the application is for the same occupants (primary and hardship dwelling) as the original hardship authorization.
5. The applicant shall meet the following criteria as a condition of approval: MCC 17.120.040(E), (F), (I), (J), and (K); see below.

**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 #6 below be contacted to identify restrictions or necessary permits.

**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 **May 31, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 1, 2022**, 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 purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the northwest side of Silverton Road NE, Salem. Additionally, it is approximately 475 feet northeast of the intersection of Silverton Road NE and Feddern Lane NE. The property received approval for the medical hardship in 1991 (CU91-037) and the manufactured dwelling remains on the site in the same location. The property was also the subject of Major Partitioning Case 78-62. The deeds from CU91-037 and the current case, match, and therefore are legal for land use purposes.
3. The adjacent properties are exclusively in the EFU zone. The uses consist of a mix of small to large farms with residential uses.
4. Soil Conservation Service Soil Classifications for Marion County indicate that the parcel is composed of 100% high-value soils.
5. The manufactured dwelling was originally approved as a medical hardship for Luis and Irma Trevino, under CU91-037. The current application is for the new owners of the property, Victor and Esthela Zendejas, which means the manufactured used for CU91-037 was not in use from the previous owners. The applicants are requesting to change the occupant of the hardship dwelling to Rafael Zendejas. Victor and Esthela Zendejas will live in the primary dwelling and be Rafael's caretaker.
6. Marion County Building Division commented no Building Inspection concerns if manufactured dwelling was previously approved as a hardship dwelling. If it is to be moved or altered, then permits may be required.  
Marion County Septic Division commented that per OAR 3340-071-0205(1) an Authorization Notice is required for the connection of the hardship dwelling/RV to the existing septic system. The applicant must file an application for an Authorization Notice with this office and meet all the requirements of OAR 340-071-0205(7). The existing hardship authorization hardship cannot be renewed, and a new application must be filed because per Marion County Septic Procedures, a hardship authorization may only be renewed if the application is for the same occupants (primary and hardship dwelling) as the original hardship authorization.
7. Various governmental agencies were contacted about the request. All contacted agencies either failed to respond or had no comment.

8. To approve a manufactured home/RV under medical hardship the applicant must demonstrate compliance with the specific criteria listed in MCC 17.120.040. These include:

*D. When the aged or infirm person must be provided care so frequently or in such a manner that caregiver(s) must reside on the same premises, the aged or infirm person and/or those caregivers providing care for the aged or infirm person may temporarily reside in the hardship permit dwelling for the term necessary to provide care.*

- 1. Those providing the care must show that they will be available and have the skills to provide the care required, as described by the licensed medical professional.*
- 2. Caregivers may reside within a hardship permit dwelling during periods of absence and medically necessary absence.*
- 3. Caregivers shall not have any financial or expense obligation increased for residing in the hardship dwelling during periods of absence and medically necessary absence.*

The applicant has stated that Rafael Zendejas will live in the mobile home that is currently on-site for the duration of the medical hardship. Both Victor and Esthela Zendejas will assume care of Rafael and reside in the primary dwelling on-site. The care will include meal preparation, transportation to medical appointments, and assistance with personal hygiene. The criterion (D) is met.

*E. A temporary absence or medically necessary absence from the property by the aged or infirm person(s) will not result in the revocation or denial of a hardship permit.*

- 1. When a medically necessary absence results in the aged or infirm person(s) living off of the property for more than 165 days in one calendar year or 165 consecutive days, they must provide notice of the medically necessary absence to prevent the absence from being considered an extended absence.*
- 3. Notice of a medically necessary absence that will result in the aged or infirm person(s) living off of the property for more than 165 days in one calendar year or 165 consecutive days must be provided within 14 days of learning that the absence from the property will result in the aged or infirm person having to live away from the property for more than 165 days in one calendar year or 165 consecutive days.*

- 3. Notice of a medically necessary absence must:*

*a. Be submitted in writing;*

*b. Include a statement from a licensed medical provider outlining that the absence from the property is necessary for the care or medical treatment of the aged or infirm person;*

*c. Provide an estimate as to when the aged or infirm person(s) will return to the property;*

*d. Include an assessment from the licensed medical professional on whether or not the aged or infirm person(s) will be able to reside on the property again.*

*i. If a licensed medical professional cannot provide an assessment on whether the aged or infirm person will be able to return to the property at the time when notice of a medical necessary absence is due, a hardship permit maybe approved for the amount of time necessary, not to exceed one year, for the licensed medical professional to make the assessment as to whether the aged or infirm person(s) will be able to return to the property.*

*ii. If a licensed medical professional cannot provide an assessment after the period of time described in Section E.3.b.ii then a determination will be made as to whether the hardship permit is still necessary for the care of the aged or infirm person(s).*

*4. Notice of a medically necessary absence maybe submitted by the Owner(s), aged or infirm person(s), caregiver(s) of the aged or infirm person(s), or other agent of the aged or infirm person(s).*

*5. Caregivers may not be charged any rent or otherwise required to provide financial compensation to live in the hardship dwelling during a temporary absence or medically necessary absence.*

*a. If as a part of any agreement to provide caretaking services, the caregiver was required to provide financial compensation or incur a financial obligation in order to reside within the hardship dwelling then that arrangement will not violate Section E.4, provided that the arrangement existed prior to the temporary absence or medically necessary absence.*

The applicant shall adhere to the criteria stated in this section as a condition of approval. The criterion (E) is met.

*F. Extended absence from the property by the aged or infirm person(s), or caregiver(s) when the hardship permit dwelling is only being inhabited by caregiver(s), creates a rebuttable presumption that the hardship permit is no longer necessary to provide care to the aged or infirm person(s).*

*1. Extended absence from the property may result in revocation of the hardship permit; issuance of a citation pursuant to MCC 1.25.030; and/or initiation of civil action in circuit court pursuant to MCC 1.25.050.*

*2. Notice will be provided to the owner of any substantiated violation of Section F. 30 days prior to the effective date of a revocation of the hardship permit made pursuant to Section F.1*

The applicant shall adhere to the criteria stated in this section as a condition of approval. The criterion (F) is met.

*G. A mobile home or recreational vehicle being used as a hardship dwelling 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.*

The applicant has stated that the existing mobile home is from a previous hardship case that was approved in 1991 (CU91-037). The existing mobile home is approximately 200 feet from the primary dwelling. Additionally, the mobile home does not and will not have new driveway access and is connected to its own septic system, which existed prior to the current occupant purchasing the property. Therefore, the criterion (G) is met.

*H. For an existing building to be used as a hardship dwelling it must:*

- 1. Be suitable for human habitation;*
- 2. Comply with all building and specialty codes (for example, but not limited to, electrical, plumbing, and sanitation) applicable to dwellings;*
- 3. Not require new driveway access to the street; and*
- 4. Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.*

The applicant has stated that the existing mobile home will be used as the hardship dwelling. Therefore, the criterion (H) does not apply.

*I. 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.*

- 1. In the case of a recreational vehicle, it shall be rendered uninhabitable by disconnection from services.
  - a. An agreement to comply with this requirement shall be signed by the applicant, and the owner of the recreational vehicle if different than the applicant.*
  - b. Oregon Department of Environmental Quality removal requirements also apply.**
- 2. In the case of an existing building, the renovations or modifications made to an existing building to be used for inhabitation must be removed.
  - a. The existing building shall be returned to similar conditions as its previous use; or*
  - b. If the existing building is not going to be returned to its previous use then the building must be used for either a permitted use or a new use application for the existing building must be obtained.**
- 3. In the case where an agricultural exemption is sought for an existing building, a new application must be approved regardless of any previously approved agricultural exemption.*

The applicant has stated that they understand this criterion and will comply with the requirements. This criterion (I) is met.

*J. Applicants are responsible for ensuring that all caregivers and/or other persons residing in the hardship dwelling are removed from the hardship dwelling within 90 days of the date that the person with the hardship or the care provider no longer resides in the hardship dwelling or on the property.*

- 1. Applications for a hardship dwelling must include a description of how the applicant will ensure this condition is met.*

The applicant shall adhere to the criteria stated in this section as a condition of approval. The criterion (J) is met.

*K. At the time of renewal of a hardship dwelling permit, if the aged or infirm person has been on a temporary absence or medically necessary absence from the property for at least 30 consecutive days prior to submission of the renewal application, the application must include:*

- 1. In the event of a medically necessary absence, an assessment by a licensed medical professional stating that it is reasonably likely that the aged or infirm person will return to the property within the renewal period; or*
- 2. In the event of a temporary absence, a statement from the owner or aged or infirmed person setting forth*

*the date on which the aged or infirm person will return to the property.*

- a. If the aged or infirmed person does not return to the property within the time period described in Section A.6., then the aged or infirm person's absence will be deemed an extended absence*

The applicant shall adhere to the criteria stated in this section as a condition of approval. The criterion (K) is met.

*L. The use of a hardship permit dwelling 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.*

The applicant has stated that they understand and will comply with the criterion to apply for renewal of the hardship dwelling every year. Therefore, this criterion (L) is met.

9. Since the property is located in a EFU zone, the proposal must also satisfy the compatibility criteria in MCC 17.136.060(A). 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) *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.*

The proposal will allow continued occupancy of a temporary home on the property. There is no evidence that the temporary dwelling will have any adverse effects on surrounding properties in farm use. It will not significantly increase traffic on area roads. Fire protection is provided by the Marion County Fire District and the Marion County Sheriff provides law enforcement. Due to the temporary and residential nature of the use, the existing hardship dwelling has not had any significant adverse impact on farm or forest practices in the area, watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air, and water quality, created a significant amount of noise, impacted potential water impoundments or conflicted with mineral and aggregate sites. The proposal meets the criteria for a conditional use in the EFU zone.

10. Based on the above findings, it has been determined that the request to amend the approved occupant(s) as listed in CU22-019 meets all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich  
Planning Director/Zoning Administrator

Date: May 13, 2022

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173.

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.