

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. 22-006

APPLICATION: Application of Connie Urrea & Juan Mendoza Diaz for a conditional use permit to place a manufactured home for medical hardship purposes on an 18.42-acre property in an EFU (Exclusive Farm Use) zone located at 12866 Duckflat Rd, Turner. (T9S, R2W, Section 21, tax lot 1300).

DECISION: The Planning Director for Marion County has **DENIED** the above-described Conditional Use application.

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 **November 8, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 9, 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 and zoned Exclusive Farm Use (EFU). The intent of both this designation and zone is to promote and protect commercial agricultural operations. Surrounding properties are also zoned EFU and are currently developed with farm dwellings and being used for farming.
2. The property is located off Duckflat Road SE, approximately one-eighth mile east from Duckflat Road's intersection with Pearson Road SE. Access to the property is via a private lane that intersects Duckflat Road approximately two-fifths of a mile north of the intersection with Pearson Road. The property contains wetlands identified in wetland inventories along the eastern and southern portions. Furthermore, a large portion of the property contains hydric soils.
3. The parcel on which the hardship shall be placed was created in its current configuration by a land sales contract recorded in Reel 70, Page 639 of the Deed Records of Marion County, Oregon. The parcel is listed as Parcel 3 in said sales contract. This contract was recorded prior to September 1, 1977, thereby meeting the definition a legal parcel as defined in Marion County Code 17.110.427.
4. Marion County Building Division commented that a building permit is required for new construction or placement of a manufactured home.
5. Marion County Septic Division commented that the connection of a hardship dwelling to the septic system on this site would be denied as the system is currently in failure and will need to be replaced. Please contact Marion County Onsite Septic Department as soon as possible to obtain an application and start the replacement process. A septic system that is failing and surfacing per State of Oregon Department of Environmental Quality Rules, OAR 340-071-0150(3) and OAR 340-071-0215(1) is considered a public health hazard and must be replaced immediately.
6. Oregon Department of State Lands commented that if proposed ground disturbance, including heavy equipment, is proposed to meet or exceed 50 cubic yards in total for the placement of the hardship dwelling, a site visit by a

wetlands professional is recommended to determine if wetlands are present. If less than 50 cubic yards of removal and fill are proposed, a state permit will not be needed. Please feel free to call me regarding any clarification of these terms.

7. All other contacted agencies either failed to comment or had no objection to the proposal.
8. In order to approve a manufactured home/RV under medical hardship the applicant must demonstrate compliance with the specific criteria listed in Section 17.120.040 of the Marion County Code (MCC). These include:
 - A. This subsection contains definitions for the section. Not applicable as a criterion.
 - B. This subsection requires that an application must be submitted in writing and include “*a signed statement from a licensed medical professional indicating whether the aged or infirm person has a hardship as defined in subsection (A) of this section. The statement shall also attest whether the licensed medical professional is convinced the person(s) with the hardship must be provided the care so frequently or in such a manner that the caregiver(s) must reside on the same premises.*”

The applicant has submitted a signed Medical Care Provider Certificate for Connie Urrea indicating that they have medical conditions that preclude them from maintaining a complete separate and detached dwelling apart from their family. The criterion is met.

- C. *In the EFU, SA, FT and TC zones, occupancy of a hardship permit dwelling is limited to the term of the hardship suffered by the existing resident or a relative as defined in ORS 215.283(2)(L).*

The applicant has not addressed this in the Applicant Statement; however, the applicant would adhere to the criteria stated in this section as a condition of approval. The criterion is met.

- 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 the caregivers (Enrique & Roxanne Urrea) will be able to assist with daily care. The applicant has stated that the caregiver will reside in the hardship dwelling. The applicant shall adhere to the criteria stated in this section as a condition of approval. The criterion 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.*
 2. *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:*
 - i. *Be submitted in writing;*
 - ii. *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;*
 - iii. *Provide an estimate as to when the aged or infirm person(s) will return to the property;*

- iv. *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.*
 - 1. *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.*
 - 2. *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).*
- v. *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).*
- vi. *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.*
- vii. *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 has not addressed this in the Applicant Statement; however, the applicant would adhere to the criteria stated in this section as a condition of approval. The criterion 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 has not addressed this in the Applicant Statement; however, the applicant would adhere to the criteria stated in this section as a condition of approval. The criterion 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 indicated that the home will be placed approximately 175 feet from the main dwelling. Currently, Marion County has an established policy that a hardship dwelling must be within 100 feet of the primary dwelling in order to meet criteria G(1). Exceptions can be made when evidence shows that a distance of 100 feet or less cannot be achieved. Special circumstances may include extreme terrain or features of the property which prevent this standard from being met.

The applicants stated that they could not place the hardship dwelling closer due to wet soils; however, only limited evidence was provided to support this. Soils data shows that much of the property contains hydric soils (soils which are saturated with water and typically do not drain well). The wet soils alone may be a legitimate reason for moving the hardship dwelling further away, but the proposed location also would place a ditch between the two dwellings.

The purpose of keeping the two dwellings together is to maintain proximity for the sake of emergencies. A ditch would make it even more difficult for a caretaker to assist the person with the hardship.

The septic system was indicated to be located to the south of the primary dwelling. While gathering information from the applicant, it was discovered that the existing septic system is failing and appears to be actively leaking. Given that there are hydric soils on the property, a new septic system may be required, and a new septic location may also be necessary. Due to the uncertainty of how the system could be fixed, it was unclear how this would affect the location of the hardship dwelling. It was also unclear if the hardship dwelling would even be able to connect to the existing system.

Given these circumstances, the applicant was given extra time to attempt to resolve the septic and location issues. No new information was provided which could show that the septic failure or location of the hardship would meet the criteria. Specifically, criteria G(1) and G(4) have not been 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 a temporary new manufactured dwelling will be placed on site, rather than using an existing building. Therefore, this criterion 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.
 - i. 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.*
 - ii. 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.
 - i. The existing building shall be returned to similar conditions as its previous use; or*
 - ii. 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.*

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.*

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. 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.*

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 not addressed these criteria in the Applicant Statement; however, the applicant would adhere to the criteria stated in this section as a condition of approval. Criteria (I), (J), (K), and (L) are met.

9. Since the property is in an EFU zone, the proposal must also satisfy the conditional use 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 proposed use is a temporary residential use that is expected to be in harmony with the purpose and intent of the zone. Adequate fire protection is available through the Stayton Fire District. The manufactured home will be placed near the existing home on a vacant piece of land; there is no evidence that this placement will have a significant effect on groundwater or wildlife. This use is not expected to increase noise levels, as the use is residential. There are no nearby water impoundments to adversely affect. The proposal meets the criteria described under 17.136.060(A) listed above.

10. Furthermore, due to the failing septic, it was determined that approval cannot be granted per Marion County Code 15.05.180: no permit shall be issued if the parcel of land, or the use of the land on which the building, structure, or equipment is to be placed, erected, altered, equipped, or used is in violation of any Marion County ordinance

11. Based on the above findings, it has been determined that the applicants' request **does not meet** all applicable criteria for placing a temporary manufactured home/RV for medical hardship purposes and is, therefore, **DENIED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: October 24, 2022

If you have any questions regarding this decision contact Daniel Jansen 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.