

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. 22-043

APPLICATION: Application of Mary Martushev and Vasily and Efrasia Martusheff for a conditional use permit to place a manufactured home for medical hardship purposes on a 1.00-acre property in an EFU (Exclusive Farm Use) zone located at 1800 E Lincoln Rd, Woodburn. (T5S, R1W, Section 17A, Tax Lot 200).

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 **January 27, 2025**. 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 continues to exist.

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 proposed use. To ensure 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: 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 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. If the manufactured home is connected to the existing septic system, a shared system evaluation shall be performed every 5 years as per Marion County Building Inspection Policy.

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

4. The manufactured home shall be located as shown on the applicant's site plan.
5. 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 Primary Care Provider 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.
6. 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 the absence or if absent from the property for at least 30 consecutive days prior to submission of the renewal application.

7. The manufactured home must be removed within 90 days after the expiration of the Conditional Use permit.
8. 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.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or another 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.

9. The applicants should contact the Woodburn 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) based on 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 **January 27, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 28, 2023**, unless further consideration is requested.

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

1. The 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 and protect the continuation of commercial agricultural and forestry operations.
2. The property is located on the south side of E Lincoln Rd approximately 1,800 feet east of its intersection with State Hwy 99E. The property contains one legal dwelling built in 1975 and accessory structures. The parcel was depicted in MCSR (Marion County Survey of Record) 24664 dated Feb 4, 1975, and conveyed using the exact same legal description in deed Reel 400 Page 212 recorded on June 28, 1985. The parent parcel this property came from was conveyed in Vol. 439 Page 614 recorded May 10, 1952. In this deed there is a reference to *"Except a Mortgage to Michael Weinacht and Margaret Weinacht, his wife, which the grantees assume and agree to pay."* Based on the balance of evidence it has been determined that the parcel was created prior to 1977 and is therefore legal for planning purposes.
3. Surrounding properties to the east, west, and south are also zoned EFU. The properties to the north, across the street (E Lincoln Rd), are zoned RS (Single-Family Residential) and lay within the Woodburn UGB (Urban Growth Boundary).
4. A signed Primary Care Provider Certificate has been submitted for both Domnika Martushev and Andre Martushev indicating they have medical conditions that preclude them from maintaining a complete separate and detached dwelling apart from their family.
5. Marion County Building commented: "A placement permit is required for the proposed manufactured home. If the hardship home location is over an inground swimming pool, a geotechnical analysis of the backfill would be required before the placement permit could be issued."

Marion County Septic commented: “An authorization notice approval is required for connection of the hardship dwelling into the existing septic system.”

Woodburn Fire District commented: “Driveway needs to maintain a minimum of 20’ clear width with 14’ clear height for fire access to all buildings. Fire access must assure fire vehicles can get within 150’ of all sides of the first floor of all buildings.”

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

6. In order 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:

- 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 both Domnika Martushev and Andre Martushev 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 application is for the adult children of the applicant. The manufactured home will be removed within 90 days of the hardship ending as per the Manufactured Home Removal Agreement that will be recorded as a condition of this approval. This 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 and property owner are the mother of Domnika and Andre, who will reside in the hardship. Applicant has stated they will oversee their day-to-day needs, meals, hygiene, and home safety. 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:

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.

This shall be made a condition of approval.

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.

This shall be made a condition of approval.

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 hardship will not require a new driveway, is within 65 feet of the main dwelling and will be connected to the existing septic system. The criterion 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.*

Applicant proposes to use a manufactured home. The 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.
 - 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.*

This shall be made a condition of approval.

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.

These shall be made a condition of approval.

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**

This shall be made a condition of approval.

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.

This shall be made a condition of approval.

7. Based on the available evidence, Domnika and Andre's medical circumstances constitute a hardship condition relating to the aged, the infirm, or persons otherwise incapable of maintaining a complete, separate, and detached residence apart from their family. The evidence also indicates the proposed manufactured home would be relatively temporary in nature. The requirement that a Manufactured Home Removal be filed by the applicant ensures that the manufactured home will be removed from the property when the hardship ceases. The dwelling is also proposed to use the existing driveway and is within 65 feet of the main dwelling. The proposal meets the criteria to place a hardship dwelling on the property.
8. 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:
 - 1) *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.*
 - 2) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
 - 3) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air, and water quality.*
 - 4) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
 - 5) *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 parcel it will lay on and of the parcels to its north. The parcel it will lay on while zoned EFU is more closely aligned to the RS (Single Family Residential) zone of its northern neighbors as it is a 1.00-acre lot with no active farming. The location of this new, temporary dwelling is not expected to have any negative impact on its EFU zoned neighbors to the east, west, and south.

Adequate fire protection is available through the Woodburn Fire District. The manufactured home will be placed near the existing home; 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.

9. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for placing a temporary manufactured home/RV for medical hardship purposes and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: January 12, 2023

If you have any questions regarding this decision contact Nicole Inman at (503) 566-4165.

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.