

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. 24-025**

APPLICATION: Application of Anthony and Renee Hendricks for a conditional use permit to place a hardship dwelling on an 18.75-acre parcel in an EFU (Exclusive Farm Use) zone located at 12238 Sublimity Rd SE, Sublimity (T8S; R1W; Section 33D; Tax lot 100).

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 **August 31, 2026**. 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 **Primary Care Provider 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.

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 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. The applicant shall sign and submit a Farm/Forest and SGO Declaratory Statement 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.
4. The hardship will be assigned the address of **12236 Sublimity Rd SE** effective when building permits are applied for.

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

5. The proposed manufactured home/RV shall use the existing septic system if it is feasible.
6. The manufactured home/RV shall be located as shown on the applicant's site plan.

7. All of the Conditional Use Hardship requirements found in MCC 17.120.040 and MCC 17.136.060(A) must be continuously met as a condition of this approval.
8. 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. It is recommended that the agencies mentioned in Finding # 6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

9. The applicants should contact the Sublimity 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 Rd. NE, Salem, by 5:00 p.m. on **September 3, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 4, 2024**, 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 major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations. 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 at 12238 Sublimity Rd SE, less than a quarter mile east of the Urban Growth Boundary of the City of Sublimity. The property contains a 1962 farmhouse and several agricultural structures related to the farm use on the property. On the southern corner of the property is a large pond. Most of the property consists of fields dedicated to grass, hay and corn production. The property has been the subject of several land use cases, most recently a Property Line Adjustment in 2017 (PLA17-004) which created its current 18.75-acre configuration. It is therefore a legal parcel for land use purposes.
3. The subject parcel is on the southern tip of a large area of EFU zoned land in primarily commercial agricultural use. Highway 22 is near to the south, and south of the highway is the City of Stayton. Less than a quarter mile to the east is the City of Sublimity and residential developments at urban densities. Less than a quarter mile to the west is an area of mixed AR (Acreage Residential) and SA (Special Agriculture) zoned lands in uses for relatively dense rural residential development, hobby farms, and medium scale agricultural uses. To the north is the large expanse of EFU zoned agricultural lands stretching to the City of Silverton and the western foothills of the Cascade Range.
4. Soil Survey of Marion County Oregon indicates 100% of the subject property is composed of high-value farm soils.

5. A signed Primary Care Provider Certificate has been submitted for Anthony Hendricks indicating he has medical conditions that preclude him from maintaining a complete separate and detached dwelling apart from his family.
6. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Building commented: “No Building Inspection concerns. Permit(s) would be required to be obtained prior to the placement of a manufactured home and the installation of utilities on private property.”

Marion County Septic commented: “An authorization is required. The authorization notice will be in effect for up to 5 years, not exceeding the cessation of the hardship. If after the 5 years the hardship is still required, a new authorization will be required.”

All other commenting agencies either did not respond or stated no objection to the proposal.

7. 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 and is not applicable as a criterion.
 - B. This subsection contains various requirements for application submission, including “*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*” and “*identify whether the aged or infirm person(s) and/or caregiver(s) will be residing in the hardship permit dwelling.*”

The applicant has submitted a medical care provider certificate for Anthony Hendricks stating that he has certain medical conditions that preclude him from maintaining a complete separate and detached dwelling apart from his family. Scott Hendricks is Anthony’s son and will be moving onto the property to assist in taking care of his father. 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 in an EFU zone. The hardship is for one of the property owners. 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 applicants have attested that Scott will be primarily responsible for taking care of Anthony and has the necessary skills to do so. The applicants understand the rest of these requirements. 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 may be 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 subsection (E)(3)(d)(i) of this section, 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 may be 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. 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 this subsection (E)(5); provided, that the arrangement existed prior to the temporary absence or medically necessary absence.*

These shall be a condition of approval. These criteria can be 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 this subsection (F) 30 days prior to the effective date of a revocation of the hardship permit made pursuant to subsection (F)(1) of this section.*

These shall be 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;*

The applicants plan to place a manufactured home as the hardship dwelling. The proposed caregiver and his family will move into the primary dwelling, and the applicants will move into the hardship dwelling. The site plan refers to the proposed placement site as being 200-feet from the primary dwelling, but aerial imagery suggests that this proposed location is roughly 70-feet from the primary dwelling. The location is across a gravel parking area behind the residence and is quickly accessible. Regardless of measurement discrepancies, the proposed location is suitable for the purpose of providing frequent care. The criterion is met.

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;*

The indicated area for the medical hardship will remove approximately 1500-square feet from farm use on the northern most tip of one of the fields. This location is the most suitable location to maintain proximity to the primary dwelling due to the existing layout of accessory structures related to farm use, setbacks to the eastern property, and street setbacks. The criterion is met.

3. *Not require new driveway access to the street;*

No new driveway access is needed, the hardship dwelling will use the existing driveway. The criterion is met.

4. *Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.*

Inspection and approval by a county sanitarian, as required by Marion County Building Inspection Division, shall be a condition of approval. 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.*

The applicants are not proposing to convert an existing structure. The criterion does not apply.

1. *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.*

Approval shall be conditioned on a Manufactured Dwelling Removal Hardship Agreement being recorded with the Marion County Clerk's Office. The criterion 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.

This shall be a condition of approval. The criterion 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 subsection (A)(5) of this section, then the aged or infirm person's absence will be deemed an extended absence.

This shall be a condition of approval. The criteria 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.

This shall be a condition of approval. The criteria is met.

M. For hardships in a resource zone based on a natural hazard event, the temporary residence may include a recreational vehicle or the temporary residential use of an existing building when the temporary residence is established within an existing building if the hardship is located within 100 feet of the primary residence or the temporary residence is located further than 250 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.

This hardship is not related to a natural hazard event. The criterion does not apply.

8. Since the property is located 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.

The applicants are proposing to use a Manufactured Home as a temporary medical hardship dwelling. The temporary nature of this dwelling will not increase property values, nor create interference that could increase the cost of accepted farm practices. The criterion is met.

(b) Adequate fire protection and other rural services are, or will be, available when the use is established.

The property is served by the Sublimity Fire District and Marion County Sheriff's Department. Any other necessary rural services, such as a well and septic, are already present on the property. The criterion is met.

(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.*

The site where the applicants are proposing to place the Manufactured Dwelling is the northern tip of a field in agricultural use, adjacent to the applicant's pump house. Being in agricultural use, it is not fish and wildlife habitat. The proposed site is not within a geohazard overlay. The area is within a Sensitive Ground Water Overlay and an SGO declaratory statement will be required as a condition of approval. Any potential adverse impacts are expected to be negligible. The criterion is met.

(d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

The proposed medical hardship is not expected to generate any noise other than typical residential noises. The criterion is met.

(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.*

There are no nearby water impoundment or mineral and aggregate sites that the hardship dwelling could adversely affect. The criterion is met.

9. MCC 17.136.050(B) requires that a declaratory statement meeting the requirements of MCC 17.136.100(C) be filed and this serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. This shall be made a condition of approval.
10. 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: August 16, 2024

If you have any questions regarding this decision contact John Speckman 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.