

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. 20-011

APPLICATION: Application of Rocette Family Trust for a conditional use to change the occupant of an existing hardship dwelling, approved by CU94-12, on a 55 acre parcel in an EFU (Exclusive Farm Use) zone located at 22306 Bents Rd NE, Aurora (T4S; R1W; Section 09B; 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 **June 2, 2022**. 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 CU 94-12 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 after the hardship ceases, as required in CU 94-12, remains in effect.

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 #4 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 **June 2, 2020**. If you have

questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 3, 2020** 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 Exclusive Farm Use (EFU) zone is to promote farming and agriculture.
2. The property is located approximately one half mile north of the intersection of Ehlen Rd NE and Bents Rd NE, on the eastern side of Bents Rd NE. The property contains a dwelling, medical hardship dwelling, and three accessory structures. The property received approval for the medical hardship in 1994 (CU#94-12) and the manufactured dwelling/RV remains on the site in the same location. The subject property was subject to CU94-12 and therefore, is considered a lawful parcel for land use purposes.
3. Surrounding properties consist of all exclusive farm use land with one property directly to the south being zoned industrial (ID). All are in agriculture use with the industrial parcel being used as a truck stop.
4.

<u>Soil #</u>	<u>% of Parcel</u>	<u>SCS Soil Class</u>	<u>High Value?</u>
Amity Silt Loam	60.7%	2	Yes
Concord Silt Loam	18%	3	Yes
Woodburn Silt Loam	21.3%	2	Yes
5. The manufactured dwelling/RV was originally approved as a medical hardship for Ada L. Racette, under CU94-12. Available information indicates that Ada Racette no longer occupies the dwelling. The applicants are requesting to use the existing manufactured dwelling/RV so that they can provide daily care for Wayne Racette.
6. Marion County Building Department commented that a building permit would be required for any new construction or placement of a new manufactured home.

All other agencies either failed to comment or had no comment.

7. In order to approve a manufactured home/RV under hardship the applicant must demonstrate compliance with the specific criteria listed in Chapter 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. 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.*
 - (b) *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.*
 - (c) *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.*
 - (d) *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.*
 - (e) *The recreational vehicle or mobile home 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.*
- (f) *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. The Primary Care Provider Certificate submitted with the application establishes that Wayne Racette has circumstances that constitute a medical hardship. The applicants indicate that assistance will be provided by Linda Hill who will live in the primary dwelling on the property. The proposal satisfies the criteria 7(a), (b), (c), and (d). The applicant has demonstrated they can provide proper care as they have been caring for another family member with a hardship for many years, now they are just changing occupants. The applicant already has a removal agreement on file for CU 94-12. This removal agreement is considered to be valid for the proposed changes to the medical hardship approval. The criteria in 7 (e) is met.

The submitted site plan indicates that the hardship dwelling will remain in the same location as the previous hardship and will require no additional driveway access. The proposed hardship dwelling will be situated in an area that will not require removal of any productive farmland. Due to the location of the existing driveway, outbuildings and the existing well, it appears that the location will provide the least amount of disruption to the existing activities on the subject and adjoining properties. In addition, a condition of approval shall be placed stating that the temporary hardship dwelling will use the existing wastewater disposal system if feasible. The proposal satisfies the criteria in 7(f).

9. 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.*
- (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.*

10. The proposal will allow continued occupancy of a temporary home on the property. There is no evidence to indicate 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 Aurora Fire Department and the Marion County Sheriff provides policing. Other needed rural services are available on the property. 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.

11. Based on the above findings, it has been determined that the request to amend the approved occupant(s) as listed in CU94-12 meets all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

If you have any questions regarding this decision contact Austin Barnes 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.