

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. 23-011

APPLICATION: Application of Walt and Tammy Magby for a conditional use permit to use an RV for medical hardship purposes on a 16.69-acre property in an SA (Special Agriculture) zone located at 10151 Leverman Rd SE, Aumsville. (T8S, R1W, Section 30D, Tax Lot 1000 & 1100).

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 **April 6, 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: Once exercised, 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. Permits will be necessary for any utility installation for the proposed RV, such as underground electrical and/or plumbing.
2. Connecting the RV to the existing septic system may require review and permits from the Marion County Building Inspection Division's Septic team. Please consult with the Marion County Septic team for any requirements.
3. Per the requirement in Marion County Code 17.120.040(I)(1)(a), 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. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director. This statement can be obtained from Marion County Planning.

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

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

6. 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.

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. It is recommended that the agencies mentioned in the Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. The applicants should contact the Aumsville 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 **April 6, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 7, 2023** unless further consideration is requested.

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

1. The subject properties are designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The property is located just east of Aumsville along Leverman Road SE, approximately 650 feet east of the intersection with Mill Creek Road SE. The property is currently developed with one dwelling and multiple accessory structures. The dwelling appears to have existed since at least 1983 and appears to be legal.
3. The subject property consists of two tax lots. The property has been transferred by deed as either one parcel or two in the past. However, a review of the deed history seems to indicate that this parcel must be considered one legal parcel for land use purposes. The definition of Marion County Code 17.110.427 states that a parcel "means a unit of land created by a partitioning as defined in ORS 92.010 in compliance with all applicable zoning and partitioning code provisions contained in Chapter 17.172 MCC, or created by deed or land sales contract prior to September 1, 1977, excluding units of land created solely to establish a separate tax account." The most recent deed *prior* to September 1, 1977, transferred the property as *one parcel*. This deed was recorded in Reel 48, Page 1749 of the Deed Records of Marion County, Oregon. In the next transfer of the property (post September 1, 1977), the property again was deeded as one parcel. That deed was recorded in Reel 804, Page 374 of the Deed Records of Marion County. Therefore, the property is considered **one legal parcel** for land use purposes per MCC 17.110.427.
4. Marion County Building Division commented that permits would be required for any future construction or any utility installation for the proposed RV, such as underground electrical and/or plumbing.

5. All other contacted agencies either failed to comment or had no objection to the proposal.
6. In order to approve a hardship dwelling 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 Gaylyn Gardner 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 shall adhere to the criteria stated in this section as a condition of approval. The hardship is suffered by a relative, and the care providers are the residents of the property. 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.*
 - a. *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.*
 - b. *Caregivers may reside within a hardship permit dwelling during periods of absence and medically necessary absence.*
 - c. *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 indicated that they will be able to provide care for the sister (Gaylyn Gardner) by assisting with physical labor, mental health checkups, finances, and other day-to-day tasks. 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.*
 - a. *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.*
 - b. *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.*
 - c. *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 shall 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).*
- a. *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.*
 - b. *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 shall 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:*
- a. *Be located as near as possible to other residences on the property;*
 - b. *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;*
 - c. *Not require new driveway access to the street;*
 - d. *Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.*

Based on the applicant site plan and aerial imagery, the hardship dwelling will be located approximately 110 feet from the main dwelling. While this distance does barely exceed the suggested 100-foot limit established by Marion County Planning, the applicant has shown in their site plan that the location of existing improvements (such as the existing RV shelter) suggest that this is the best possible location. The proposed location does not negatively impact the farm or forest use of the property, especially because the hardship location is clustered with other existing structures at the front of the property. The criterion is met.

- H. For an existing building to be used as a hardship dwelling it must:*
- a. *Be suitable for human habitation;*
 - b. *Comply with all building and specialty codes (for example, but not limited to, electrical, plumbing, and sanitation) applicable to dwellings;*
 - c. *Not require new driveway access to the street; and*

- d. 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 an RV will be used. 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.*
 - a. 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.*
 - b. 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.*
 - c. 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 proposed to use an RV for the hardship dwelling. The applicant has not addressed the removal of the home after the hardship ends in the Applicant Statement; however, the applicant shall adhere to the criteria stated in this section as a condition of approval. 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.*
 - a. Applications for a hardship dwelling must include a description of how the applicant will ensure this condition is met.*

The applicant has proposed to use an RV. The applicant has not addressed the removal/disconnect of the home after the hardship ends in the Applicant Statement; however, the applicant shall adhere to the criteria stated in this section as 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:*
 - a. 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*
 - b. 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.*

- 7. In summary: the applicant has shown that Gaylyn Gardner does meet the criteria for hardship conditions, and that Walt & Tammy Magby will be able to provide care for Gaylyn. The applicant will be required to sign a removal agreement before placement of the hardship dwelling. The applicant has indicated that no additional traffic, noise, or other impacts will be created by this hardship dwelling.
- 8. "MCC 17.137.050(B) requires that a declaratory statement be filed, which serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. This is made a condition of approval.

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**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: March 22, 2023

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.