

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. 23-039**

APPLICATION: Application of Deborah and Donald Bernt for a conditional use permit to place a hardship dwelling on a 16.38-acre parcel in an EFU (Exclusive Farm Use) zone located at 10599 Kahut Lane NE, Woodburn (T5S; R1W; Section 29, Tax lot 300).

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 **November 7, 2025** (two years). 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 sign and submit a combination Manufactured Dwelling/RV Removal & Farm/Forest Declaratory Statement (enclosed) 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.
3. The hardship will be assigned the address of **10597 Kahut Ln NE** effective when building permits are applied for.

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

4. The proposed manufactured home shall use the existing septic system if it is feasible.
5. The manufactured home shall be located as shown on the applicant's site plan.
6. The applicant shall continuously comply with the standards of using a hardship dwelling on the property.
7. 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. The applicant is advised of the following:

8. 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) 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 7, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 8, 2023**, 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 zone in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding Exclusive Farming Use (EFU) zone is to promote the continuation of commercial agricultural 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 south of Woodburn, and a quarter mile east of the intersection where Kahut Ln NE meets Miller Rd NE. The property consists of flat, and currently farmed, agricultural field with a pond on the southwest corner closest to Kaut Ln NE. Per tax assessor data, there is an 1880s site built primary farm dwelling and three accessory structures on the property. There is also the site of a previous hardship dwelling which is where the applicant plans on placing a manufactured home for the new hardship dwelling. The surrounding land is all EFU zoned farmland.
3. The parcel was subject to an approved land use case, CU79-037, and its configuration has not changed since that time. Therefore, the parcel is considered legal for land use purposes per the definitions in Marion County Code 17.110.427 and 17.110.680.
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 Donald and Deborah Bernt indicating they have medical conditions that preclude them from maintaining a complete separate and detached dwelling apart from their family.
6. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Building Division commented: "No building inspection concerns. Permits are required to be obtained prior to the placement of the hardship dwelling and utilities installation on private property."

All other commenting agencies 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. Not applicable as criteria.
- 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 Donald and Deborah Bernt indicating that they have medical conditions that preclude them from maintaining a 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 parcel is in the EFU (Exclusive Farming Use) zone. The hardship is suffered by the existing residents of the property; the caregiver will be their son and their daughter-in-law. 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 due to Donald and Deborah Bernts’ conditions, assistance is required with activities of daily living. Their caregivers (son and daughter-in-law) will be able to provide care. 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.*

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).*
- 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.*

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:*
- 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's statement, the hardship dwelling will be a manufactured home, and it will be located approximately 150 feet from the existing dwelling at the site of a previously approved (CU79-37) and subsequently removed hardship dwelling. This distance is within the normal guidelines to meet this criterion. The proposed site for the hardship dwelling is near other structures that are located on the property, and not in an area that is being used for farm production. The proposal uses one driveway as well. The applicant proposes to connect to the existing septic system that was used by the previously existing hardship dwelling from 1979-1986. 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 a manufactured home will be placed on the proposed site. 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 a manufactured home for the hardship dwelling. The applicant has indicated that they understand they will be required to remove the hardship dwelling after the hardship ends. 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.*

This 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:*
 - 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.*

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.

In summary: the applicant has shown that Donald and Deborah Bernt do meet the criteria for hardship conditions, and that their son Shawn and daughter-in-law Tracie Kahut will be able to assist with their care. The applicant will be required to sign a removal agreement before placement of the hardship dwelling.

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 hardship dwelling placed within the existing homesite area will not impact accepted farm practices in the area. Approval of the application shall be conditioned on the applicant submitting an approved Farm/Forest Declaratory Statement acknowledging the local farm/forest use. 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 within the Woodburn and Mt. Angel fire districts, and serviced by the Marion County Sheriff's office, therefore rural services are available, and 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 proposed hardship dwelling will not have a significant impact on watersheds, groundwater, fish and wildlife habitat, nor is it expected to degrade soil, slope stability or air and water quality. The criterion is met.

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

The proposed hardship dwelling will create noise normal to a residence dwelling inhabited by two people, near the primary residence which currently creates noise of a residential nature. No significant change in noise would result from this second dwelling. 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.*

The proposed hardship dwelling is not near any water impoundments or mineral and aggregate sites. 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. This serves to notify the applicant and subsequent owners that there are farm or timber operations in the area and 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: October 23, 2023

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.