

In the Matter of the Application of:) Case No. CU 25-010
)
SUSAN MALOCH,) **CONDITIONAL USE PERMIT**

I. Nature of the Application

II. Relevant Criteria

III. Public Hearing

1.	John Speckman	Marion County Planning
2.	Susan Maloch	Applicant
3.	James Hohnstein	Witness for Applicant
4.	Zack Leeth	Opponent
5.	Jim Main	Opponent
6.	Gerald Beyer	Opponent
7.	Devin Mahoney	Opponent
8.	Rob Garrison	Fire Chief, Aumsville Fire Chief
9.	Austin Barnes	Marion County Principal Planner

Exhibit 1: Written submission from James Brucher
Exhibit 2: Photograph submitted by Zach Leeth (man working on fence)
Exhibit 3: Photograph submitted by Zach Leeth (man on a tractor)
Exhibit 4: Photograph submitted by Zach Leeth (man driving white SUV)

CU 25-010 – ORDER
MALOCH
Page 1

IV. Executive Summary

Susan Maloch applied for a conditional use permit to establish a temporary medical hardship on a 3.07-acre parcel in an AR-3 (Acreage Residential) zone located at 5028 Dumore Drive SE, Aumsville for James Hohnstein. The Planning Director for Marion County approved the application subject to certain conditions. The decision was appealed by Ms. Maloch's neighbor and opposed by multiple neighbors. Testimony of the opponents and Mr. Hohnstein himself evidence factual inaccuracies in the application. Testimony of the opponents and Ms. Maloch herself evidence that there are currently violations of a prior land use order (CU 18-045).

Applicant has failed to demonstrate through substantial evidence in the record that the Application satisfies applicable approval criteria to establish a medical hardship dwelling. Additionally, MCC 17.110.680 precludes approval of the application. The Hearings Officer **DENIES** the application.

Ms. Maloch's intention to provide suitable and affordable housing for Mr. Hohnstein is acknowledged, but establishment of a medical hardship dwelling is not authorized by the provisions of the Marion County Code based upon the record as presented.

V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated rural residential in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding AR (Acreage Residential) zone is to meet the housing needs of a segment of the population desiring the advantages of a rural homesite.
2. The property is located at the corner of Dumore Dr SE and Edcliff Ct SE. The property has several accessory structures related to the golden retriever breeding and training kennel that was approved as a conditional use in 2018 by CU18-045. The dwelling on this property was destroyed by fire in 2023. Although the Notice of Decision indicated that there were currently two RVs on the parcel, Marion County Planning indicates that there are three RVs on the parcel. One is inhabited by the property owner, who is in the process of applying for building permits to rebuild the dwelling. The second RV is occupied by the property owner's daughter and her family. The third RV is inhabited by the individual for whom the proposed hardship dwelling is sought, Jim Hohnstein.
3. Surrounding uses directly adjacent to the subject parcel are all rural residential. The subject parcel sits roughly in the middle of a strip of exception lands on either side of Dumore Dr SE that zoned AR. On the other side of rural residential properties are large parcels in farm use zoned EFU (Exclusive Farm Use).
4. Applicant proposes the establishment of a medical hardship dwelling using a recreational vehicle for Mr. Hohnstein. The application indicates that Applicant will provide caregiving assistance as follows: "driving to appt. cash for food, lent my car for him for Dr. appts and groceries, taken to emergency several times."

5. A signed Primary Care Provider Certificate was submitted for James (“Jim) Hohnstein indicating he has medical conditions that preclude him from maintaining a complete separate and detached dwelling apart from his family. The Certificate states that Mr. Honstein is a patient of Matthew Noble, D.O., and that he is incapable of providing basic self-care due to chronic pain and limited mobility due to juvenile osteochondrosis of the pelvis.
6. Various governmental agencies were contacted about the proposal and given an opportunity to comment. The following comments were received:

Marion County Building Inspection commented: No Building Inspection concerns. RV type structures are not regulated by the state building code, however, if a manufactured home is proposed to be placed, then a placement permit is required to be obtained prior to the placement of the home.

Marion County Septic commented: An authorization for a hardship connection will be required. Drainfield must be located and staked out on ground, tank must be pumped and inspected, provide pumping document and create a map showing proposed connection to septic system as well as current connection.

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

7. John Speckman, Marion County Planning, testified at the hearing. Mr. Speckman presented the staff report. Mr. Speckman testified that after the Notice of Decision (that determined that the request satisfied all applicable criteria) was issued, additional information contradicting the application was received, in addition to allegations of violations of the conditional use permit issued in 2018 (CU 18-045). Mr. Speckman addressed that there were currently three RVs on the property, and explained that after the fire, the property owner is entitled to dwell in an RV on the property while the residence was rebuilt. Mr. Speckman also indicated that if the application were to be approved, he would recommend additional conditions of approval with respect to connection to existing septic and placement of the hardship RV where it could be reached by emergency vehicles. Mr. Speckman indicated that Mr. Hohnstein presently reaches his RV from a different point of access than the main driveway. Mr. Speckman presented Exhibit 1, which was a written statement from James Brucher that was received prior to the hearing, but after the file was sent out of the office. Exhibit 1 was admitted without objection.
8. A written statement from Gerald and Anita Beyer was submitted in opposition to the application based upon the position that Ms. Maloch is not in compliance with the dog kennel conditional use permit. The Beyers do not believe that Ms. Maloch will comply with the required conditions. Mr. and Mrs. Beyer state that Mr. Hohnstein has been living on the property for approximately six years and indicate that the RV is well established with a garden, lean-to, and chicken coop. Mr. and Mrs. Beyer also state that Mr. Hohnstein is able to drive, mow the property, and perform property maintenance. Photographs included in Exhibit 1 appear to illustrate Mr. Hohnstein mowing the lawn and driving.

9. Susan Maloch testified at the hearing. Ms. Maloch testified that Jim Hohnstein was born with a “bad hip” and had to wear braces. Ms. Maloch testified that Mr. Hohnstein has many medical issues and that she has taken him to urgent care on several occasions, as well as provided him with food. Ms. Maloch testified that Mr. Hohnstein has nothing to do with her dog kennel business. Ms. Maloch testified that her son-in-law also lives on the property and that he assists with the kennel operations. Ms. Maloch testified that Mr. Hohnstein has a portable system for waste, and that her family uses her RV’s bathroom, and that she has HoneyBucket come to the property each week to clean her waste system. Ms. Maloch testified that the stories presented by her neighbors about her home and property are not true. Ms. Maloch testified that she has raised golden retrievers for many years, and that her dogs are very quiet. Ms. Maloch testified that she believes that the appellant, Zack Leeth, is really trying to work through Jim Hohnstein to “get rid of” Ms. Maloch. Ms. Maloch testified that Mr. Leeth knew that there was a kennel on her property when he moved onto his property. Ms. Maloch testified that she is actively working on rebuilding her home after the fire, and the foundation is in place. Ms. Maloch testified that her building permit application is submitted, and that she hopes to start building in the next couple of weeks.

With respect to Mr. Hohnstein’s access to his RV, that Jim could park on her driveway and then walk to his trailer rather than access his trailer from Edcliff Court.

Ms. Maloch confirmed that she does have more dogs than is permitted by the conditional use permit for a kennel.

10. James (“Jim”) Hohnstein testified in favor of the application at the hearing. Mr. Hohnstein testified that he has seen Dr. Nobel for approximately one year at Kaiser Permanents and that Dr. Noble is aware of his health condition. Mr. Hohnstein stated that, “Susan is not really a caregiver” and that he does not need daily help. Mr. Hohnstein testified that he can walk around the front of the property. Mr. Hohnstein testified that he will not participate in any more burning on the property and will clean up the messes. Mr. Hohnstein testified that he is investigating connection to the septic system, but that he currently uses Rhino Tanks to take to the dump station. Mr. Hohnstein testified that without Susan Maloch’s friendship, he would be living “under a bridge.” Mr. Hohnstein testified that he has to help care for his 87-year old mother. Mr. Hohnstein testified that he is “just a guy trying to survive” and that he is quiet and stays out of trouble.
11. Zack Leeth testified at the hearing. Mr. Leeth is the Appellant. Mr. Leeth testified that he is not trying to run Susan Maloch out, but he wants her to rebuild her house and stop having people live in trailers on her property. Mr. Leeth stated that Mr. Hohnstein does not present as quiet to his neighbors. Mr. Leeth stated that on March 25, he was moving the laws, and Mr. Hohnstein was in the roadway yelling obscenities at him. Mr. Leeth testified that both Mr. Hohnstein and Ms. Maloch yelled at him about not having any compassion. Mr. Leeth testified that his objections include the appearance of the trailers, the tarps, loud barking, Susan Maloch’s yelling at the dogs, the fact that there are approximately 40 cats living in a travel trailer, and Ms. Maloch’s hoarding animals. Mr. Leeth stated that he does not want to live next to those conditions. Mr. Leeth testified that Mr. Hohnstein also has yelled at his son, perhaps mistaking him for Mr. Leeth. Mr. Leeth testified that Mr. Hohnstein has told him that he is Ms. Maloch’s “slave” and that he can’t go anywhere. Mr. Leeth testified

that Mr. Hohnstein is an able-bodied man who only has a financial problem. Mr. Leeth presented Exhibits 2, 3, and 4, which were admitted without objection. Exhibits 2, 3, and 4 are photographs taken by Mr. Leeth of Mr. Hohnstein performing work on a fence, on a tractor, and driving a white SUV. Mr. Leeth stated that the photographs indicate that Mr. Hohnstein does not need a care provider. Mr. Leeth testified that Ms. Maloch has been living in the trailer since the house fire, Mr. Hohnstein lived in a trailer before the fire, and that Ms. Maloch's daughter and son-in-law lived in approximately a year after the fire. Mr. Leeth stated that there are too many trailers, and it looks like a trailer park.

12. Jim Main testified at the hearing. Mr. Main testified that he is a retired Douglas County Sheriff. Mr. Main testified that he is duty-bound with respect to the animal issues. Mr. Main testified that he has no problem with a well-run kennel, and that he hears Ms. Maloch yelling at the dogs more than the dogs barking. Mr. Main testified that Mr. Hohnstein's trailer has been there approximately two years, and that he accesses the trailer through the field, and not the driveway. Mr. Main stated that he has seen Mr. Hohnstein pick up materials from the ditch and that he is able to physically move. Mr. Main testified that Ms. Maloch is not in compliance with the kennel permit, and that he believes that in preparation for an inspection, Ms. Maloch requested that other individuals hold some of the dogs so that she was in compliance. Mr. Main testified that the house fire resulted in the loss of over 65 dogs.

Mr. Main testified that there are 20-40 cats living in the trailer with Ms. Maloch and that he can see them in the windows. Mr. Main testified that he was concerned that Ms. Maloch would repair the roof of the residence and proceed to use it as a kennel. Mr. Main suggested that if the conditional use permit were to be granted, strict compliance with conditions should be in place because Ms. Maloch is not in compliance with the conditional use permit for the kennel.

13. Gerald Beyer testified at the hearing. Mr. Beyer testified that he and his wife live to the south of the property near where the field fire. Mr. Beyer testified that the fire started by Mr. Hohnstein was on a day that there was a burn ban and blowing wind with dry conditions. Mr. Beyer testified that he lost 10-15 trees on his property because of the fire that got out of control. Mr. Beyer stated his concern that there is already a debris pile in the same location where the field fire originated last year. Mr. Beyer stated that there is the sound of dogs barking, but more yelling by Ms. Maloch of "shut up" to the dogs. Mr. Beyer testified that he has damages from the field fire including replacement of 600 feet of fencing and the loss of trees that are still being removed.
14. Devin Mahoney testified at the hearing. Ms. Mahoney testified that she is very concerned because when Mr. Hohnstein started the field fire last August, he tried to put it out with a leaf blower. Ms. Mahoney testified that she was out of town at the time of the fire, but that she experienced \$60,000.00 in damage to her property. Ms. Mahoney testified that she believes Mr. Hohnstein is a fully functioning person who is always working on Ms. Maloch's property. Ms. Mahoney testified that she is very concerned about fire danger. Ms. Mahoney testified that RVs are not designed for full-time residential use, and with the presence of multiple trailers, likely using portable heaters, and Mr. Hohnstein's "poor fire judgment," she is concerned for her safety.

15. Susan Maloch provided rebuttal testimony. Ms. Maloch testified that there were not 60 dogs lost in the house fire, but rather 12 puppies and 12 adult dogs. Ms. Maloch testified that she lost so many animals that it has given her terrible anxiety. Ms. Maloch testified that he is dedicated to working on getting into the rebuilt house. Ms. Maloch testified that her dogs are not loud and do not bark all the time. Ms. Maloch testified that she agreed that she does not need as many dogs as she has, and that she is dedicated to getting the number of dogs down. Ms. Maloch testified that she has been cleaning up the property and moving a lot of materials. Ms. Maloch testified that she does not like confrontation and is attempting to address Mr. Leeth's concerns regarding the appearance of her property. Ms. Maloch confirmed that she does have more dogs that are permitted at this time, and has been trying to reduce the number of dogs on the property. Ms. Maloch also acknowledged that there are significantly more than four cats on the property.
16. John Speckman provided additional information. Mr. Speckman stated that inspections revealed that an unpermitted cat operation was also occurring on the property, and that the home had previously been used to house kennel operations. Mr. Speckman suggested that additional conditions of approval include compliance with the conditional use permit for the kennel. Mr. Speckman also stated that Edcliff Court is not an access, and that the RV cannot access Edcliff. Mr. Speckman stated that Edcliff Court should be permanently closed as an access for compliance with the Code. Mr. Speckman also stated that the medical hardship dwelling should be moved so that it is accessible from the main driveway to allow for emergency access.
17. Susan Maloch responded that large equipment is necessary to rebuild the house and that placement of the RV near the driveway could hinder access. Ms. Maloch stated that she would like to link into the septic, but the VF could not park on the driveway because it would be more than 100 feet from the septic. Ms. Maloch testified that her goal is to have a residential home and not a kennel in the home. Ms. Maloch stated that she has gone two years with out a litter of puppies which contributes to reduction of the number of dogs. Ms. Maloch testified that she needs to work on taking care of herself and not making her life more difficult with too many dogs. Ms. Maloch testified that she does want to have fewer dogs, and that she considered that cats are smaller and less work than raising golden retrievers. Ms. Maloch states that she does not sell the cats. Ms. Maloch stated that the cats are not spayed or neutered.
18. Zack Leeth testified that there were no cats on the property before the fire, and that after the fire, three sheds full of cats were moved onto the property. Mr. Leeth testified about his concerns regarding animal hoarding and that the entire property constitutes a fire hazard.
19. Aumsville Fire Department Fire Chief Rob Garrison testified at the hearing. Chief Garrison testified regarding the house fire at the subject property. Chief Garrison testified that the report indicated that there were approximately 65 dogs in the house fire because that was the number that Susan Maloch stated were in the home. Chief Garrison testified that there were difficulties in putting out the house fire because of all the kennels. Chief Garrison testified that there was only one bed in the house, and that every other room held animals. Chief Garrison was told by both Susan Maloch and Jim Hohnstein that Jim was there to work with the dogs. Chief Garrison testified that the second fire, the field fire, was

the result of absolute negligence. Chief Garrison stated that the two largest fires in recent years in Aumsville were on Ms. Maloch's property. Chief Garrison agreed that RVs are more flammable, and that whenever there is a call from the property, he worries about the involvement of animals. In response to a question from Mr. Speckman, Chief Garrison stated that if the RV intended as the hardship dwelling were in its current location, emergency vehicles could not reach it in a timely manner and could not access it in winter.

20. Austin Barnes, Marion County Principal Planner, addressed the Marion County Code with respect to the definition of a kennel. Ms. Maloch testified that she did not sell the cats. The evidence presented indicated that Ms. Maloch kept at least 20-40 cats and Ms. Maloch indicated that the cats were not spayed or neutered. Mr. Barnes referenced MCC 17.110.300, which defines a kennel as any lot or premises on which four or more dogs and/or cats or pets over the age of four months are kept for sale, lease, breeding, boarding, shows or training. Such term does not include kennels and dog training facilities meeting the standards set forth in EFU, SA, and FT zones. Mr. Barnes noted that the Code's definition for "kennel" includes "breeding" without a sale requirement.
21. Ms. Maloch testified that on the date of the fire, she was so distraught and does not recall speaking to Chief Garrison.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria apply as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395 (1987).

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicants have not met their burden and the application must be denied. If the evidence for every criterion is even slightly in Applicants' favor, the burden of proof is met and the application is approved.
2. Under MCC 17.119.100, the Planning Director has the power to decide applications for conditional uses. The Planning Director decided this matter on March 3, 2025.
3. Under MCC 17.119.140, after the Planning Director's action on the application, interested persons may appeal the decision no later than 15 days after the decision is mailed. The Planning Director's approval was dated March 3, 2025. Zach Leeth (and the additional individuals who reside on Dumore Drive and are included on the Appeal of Planning Division Decision) are interested persons and appealed the Planning Director's decision on March 17, 2025. The appeal objects to conditional use application on the grounds that the application includes false statements upon which the decision relied.

4. Under MCC 17.119.150, on appeal of the Planning Director's decision, the hearings officer shall conduct a *de novo* public hearing on the decision. The hearings officer may hear and decide the matter.
5. Under MCC 17.119.020, a conditional use application may only be filed by certain people, including the owner of the property subject to the application. A Bargain and Sale Deed recorded at 2024-038073 indicates that Applicant Susan Maloch owns the subject property. MCC 17.119.020 is satisfied.
6. Under MCC 17.119.025, a conditional use application shall include signatures of certain people, including all owners of the subject property. Susan Maloch owns the subject property and signed the application. MCC 17.119.025 is satisfied.
7. In order to approve a recreational vehicle for use as a medical hardship dwelling 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."*

Applicant submitted a signed Medical Care Provider Certificate for James Hohnstein that states that Mr. Hohnstein is a patient of Matthew Noble, D.O. and that Mr. Hohnstein is incapable of providing basic self-care due to chronic pain and limited mobility due to juvenile osteochondrosis of pelvis. Dr. Noble writes that it is his opinion that Mr. Hohnstein's "physical condition requires care and attention, and the above-named person should be permitted to reside nearby one who can provide aid and comfort when the need arises." "Hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons. MCC 17.120.040(A)(6).

MCC 120.040(B)(1)(b) requires the licensed medical professional "is convinced the person with the hardship must be provided the care so frequently or in such a manner than the caregiver must reside on the same premises." Dr. Noble's statement states that the caregiver could provide "aid and comfort when the need arises." Dr. Noble's statement is not sufficient to satisfy the requirement of MCC 120.040(B)(1)(b). Because the sufficiency of the Medical Care Provider Certificate is in question, testimony of the witnesses and additional submissions are considered.

Included with the application is a statement from James Hohnstein. Mr. Hohnstein writes, in relevant part, "I am one of millions of Americans who have fallen on hard time. In turn I help Susan do chores on the property to earn my keep" Mr. Hohnstein signed the statement and included "As friends we help each other."

In his testimony, Mr. Hohnstein stated “Susan is not really a caregiver” and that he does not need daily help. Mr. Hohnstein further testified that he has to help care for his 87-year-old mother. Mr. Hohnstein testified that he is “just a guy trying to survive.” Mr. Hohnstein’s testimony does not evidence that he suffers from a medical hardship due to age or infirmity that requires care be provided such that he must reside on the same premises as a care provider. It is acknowledged that Ms. Maloch’s friendship and/or compassion allows Mr. Hohnstein a place to reside on her property during difficult times. However, such willingness to assist Mr. Hohnstein does not support a hardship medical dwelling.

Photographs submitted by Mr. Leeth as Exhibits 2, 3, and 4 further evidences Mr. Hohnstein’s ability to perform maintenance tasks on the property and drive himself.

The Statements of Interested Persons included with the Appeal of Planning Division Decision support a determination that Mr. Hohnstein has resided on Ms. Maloch’s for a substantial period of time, and that Mr. Hohnstein has acted as a “hired hand” and/or “gardener.”

There is insufficient evidence to support a determination by a preponderance of the evidence that Mr. Hohnstein has a medical condition that precludes him from maintaining a separate and detached dwelling apart from his family. The criterion is not 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 AR zone, the criterion does not apply.

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.*

Susan Maloch states that she possesses the necessary skills to provide the requisite care for Mr. Hohnstein. Ms. Maloch’s application states that the care she provides includes driving to appointments and lending her vehicle to Mr. Hohnstein, and providing cash for food and groceries. She states that she has taken him to seek emergency treatment “several times.”

Susan Maloch is a friend who is capable of assisting Mr. Hohnstein with trips to the doctor or providing financial assistance. However, such assistance is insufficient to be considered a caregiver for Mr. Hohnstein as described in MCC 120.040(D). The criterion is not 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.

If all criteria for a hardship permit dwelling were satisfied, these criteria could be met by conditions 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 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.*

The criteria could be met as conditions 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;*

The proposed location of the hardship dwelling is in dispute. Mr. Leeth indicates that the RV is located over 100 feet from the primary dwelling. Chief Garrison testified that the location of Mr. Hohnstein's RV is too far to reach it in a timely basis from the driveway, which further supports the conclusion that the RV is not within 100-feet of the proposed location for the primary dwelling. There is insufficient evidence to conclude that 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 subject parcel is zoned AR and not in farm use, the criterion does not apply.

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

No new driveway access is needed to reach the RV, but the proposed hardship dwelling has not been using the existing driveway for access. However, use of the driveway could be a condition of approval and the criterion could be 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, could be a condition of approval sufficient to meet the criterion.

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 proposed hardship dwelling is a recreational vehicle, 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.*

MCC 17.120.040(I)(1) is the relevant criterion for this proposal, and could be met with conditions 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.*

The criterion could be met as 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.*
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.

The criterion could be met as 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.

The criterion could be met as a condition of approval.

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 AR zone, the proposal must also satisfy the conditional use criteria in MCC 17.128.040. Those requirements are:

A. The conditional use as described by the applicant will be in harmony with the purpose and intent of the zone.

The purpose and intent of the AR zone is to provide for establishment of acreage homesites for the segment of the population who chooses to live in the rural area, and who may not be involved in agricultural or timber uses. Density restrictions imposed by minimum lot sizes in the AR zone ensure the properties are large enough to facilitate wells and septic systems, and maintain the rural character of the area. The subject parcel is within the AR-3 zone, which designates the minimum parcel size at three acres, and the parcel is 3.07-acres. The home on this property was destroyed by fire in 2023 and the property owner has been occupying an RV while preparing to rebuild. The property owner has plans to rebuild the home this year, 2025, at which point Applicant would cease occupation of an RV. However, the evidence established that there are actually three RVs on the property. The evidence indicates that Ms. Maloch's daughter and her family moved onto the property after the fire, and Mr. Hohnstein also resides in an RV on the property (and has for up to six years). RV habitation is limited to 120 days out of a calendar year except in certain situations such as a home being unintentionally destroyed (like Ms. Maloch), or for an approved conditional use hardship. A conditional use hardship may be permitted in conjunction with a single-family dwelling on an AR zoned property. However, because there are actually three RVs on the property, and the timeline for the rebuild is uncertain, the use is not in harmony with the purpose and intent of the code. The criterion is not met.

B. The use will not increase traffic beyond the capacity of existing roads.

Dumore Rd SE is classified as a local road. The proposed medical hardship is in part due to the occupant's need to assistance making trips to the doctor and grocery store. The slight increase in trips resulting from one person's needs will not increase traffic beyond the capacity of existing roads in the area. The criterion would be met.

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

The subject parcel is served by the Aumsville Fire District and the Marion County Sheriff's Department. The property already contains a well, and the applicant will obtain septic permits to ensure wastewater will be appropriately disposed of on the property. However, the siting of the potential hardship dwelling does not allow adequate fire protection, and it has not been shown with sufficient evidence that the hardship dwelling could be sited to allow adequate fire protection. Although the subject parcel may be adequately served by the Aumsville Fire District, the proposed hardship dwelling in its current location, is not. The criterion is not met.

D. 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 subject parcel is within the Sensitive Ground Water overlay indicating potential issues with the aquifer now or in the future. The additional water use of one person on the property will not significantly affect the aquifer. Permitting for septic would ensure that any temporary connection from the RV will not overload the system. In the situation where connection is not possible, use of the RV holding tank and removal to a permitted wastewater site will ensure proper disposal that mitigates any potential environmental impacts. The residential use of the RV would likely not have significant adverse impact on the watershed, fish and wildlife habitat, soil or slope stability, nor air and water quality. The criterion could be met.

E. Any noise associated with the use will not have a significant adverse impact on nearby land uses.

The noise created by the proposed temporary medical hardship dwelling will be standard to a residence. All adjacent properties also contain residences, therefore the noise associated with the proposed use will not be incongruent with the area and will have no adverse impact. The subject parcel was approved in 2018 for a conditional use dog kennel for breeding and training of Golden Retrievers (CU18-045). There are specific criteria for that conditional use permit intended to avoid significant adverse impact on the neighborhood. Noise impacts created by these two conditional uses are not related and should be considered separate in the event of complaints. The criterion could be met.

F. 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 impoundments, nor are there nearby aggregate sites.

9. MCC 17.110.680 addresses the administration of the Marion County Rural Zoning Code. MCC 17.110.680, in the relevant part, provides that no permit for the use of land or structures shall be issued if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action. MCC 17.110.680 also provides that a hearings officer may deny any land use application if it is determined that the application includes misleading information.

The use of the word “shall” in this code provision indicates a mandatory directive. If the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action the hearings officer is mandated to deny the Application (unless issuance would correct the violation). Issuance of the conditional use permit for a hardship dwelling would not correct the violations of the conditions of approval for CU 18-045.

Ms. Maloch acknowledged that she has more dogs that is permitted with the kennel permit, and the evidence indicates that Ms. Maloch also operates a cat kennel as kennel is defined in MCC 17.110.300.

Ms. Maloch is in violation of a condition of approval of any land use action, and therefore, no permit for the use of land or structures shall be issued. This finding is in addition to the determination that the applicable criteria for issuance of a hardship permit is not satisfied.

10. Based on the available evidence, James Hohnstein's physical circumstances do not constitute a medical hardship condition relating to the aged, the infirm, or persons otherwise incapable of maintaining a complete, separate and detached residence apart from their family. Mr. Hohnstein himself stated that did not need a caregiver, and his testimony supports the conclusion that he needs an affordable place to live as opposed to a medical hardship dwelling.
11. Based on the above findings, it has been determined that the request does not satisfy all applicable criteria and is, therefore, **DENIED**.

VII. ORDER

It is hereby found that Applicant has not met the burden of proving applicable standards and criteria for a conditional use permit to establish a temporary medical hardship on a 3.07-acre parcel in an AR-3 (Acreage Residential) zone located at 5028 Dumore Drive SE, Aumsville. (T8S, R2W, Section 13B, Tax Lot 400). Therefore, the conditional use application is **DENIED**.

VIII. Effective Date

The application approved herein shall become effective on the 19th day of June, 2025, unless the Marion County Board of Commissioners, on their own motion or by appeal timely filed, is asked to review this Order. In the event of Board review, this Order shall be stayed and shall be subject to such final action as is taken by the Board.

IX. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court Street NE, Salem, Oregon) by 5:00 on the 18th day of June, 2025. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500.00, and must state wherein this Order fails to conform to the provisions of the applicable code provision(s). If the Board denies the appeal, \$300.00 of the appeal fee will be refunded.

DATED this 3rd day of June, 2025.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Applicant
Susan Maloch and James Hohnstein
5028 Dumore Dr. SE
Aumsville, OR 97325

Gerald Beyer
5118 Dumore Dr. SE
Aumsville, OR 97325

Anita Beyer
5118 Dumore Dr. SE
Aumsville, OR 97325

James Brucher
5117 Dumore Dr. SE
Aumsville, OR 97325

Jim Main
4937 Dumore Dr. SE
Aumsville, OR 97325

Zach Leeth
4928 Dumore Dr. SE
Aumsville, OR 97325

Lee Jones
5237 Dumore Dr. SE
Aumsville, OR 97325

Shawn Jolly
5028 Dumore Dr. SE
Aumsville, OR 97325

Devin Mahoney
5158 Dumore Dr. SE
Aumsville, OR 97325

Rob Garrison
8734 Shaw Sq SE
Aumsville, OR 97325

Area Advisory Committee #3:
N/A

Roger Kaye (*rkaye2@gmail.com*)
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

County Agencies Notified:

Assessor's Office (via email)
assessor@co.marion.or.us

Tax Collector (via email)
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us

Surveyor's Office (via email)
KInman@co.marion.or.us

Fire District: (via email)
ARFD@wbcable.net

Planning Division (via email)
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abarnes@co.marion.or.us
jspeckman@co.marion.or.us
ediaz@co.marion.or.us

Building Inspection (via email)
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Kaldrich@co.marion.or.us
CTate@co.marion.or.us

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mclddep@co.marion.or.us
JShanahan@co.marion.or.us

School District: (via email)
charmon@cascade.k12.or.us

Code Enforcement (via email)
CGoffin@co.marion.or.us

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the _____ day of June, 2025 and that the postage thereon was prepaid.

Administrative Assistant to the
Hearing Officer