

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. 18-036**

APPLICATION: Application of Jerry and Kathy Jackson for a conditional use for the temporary placement of a manufactured dwelling for medical hardship purposes on a 10 acre parcel in an EFU (Exclusive Farm Use) zone located at 16336 Silver Falls Hwy. SE, Sublimity. (T8S; R1E; Section 18; tax lots 1300, 1400, and 1500).

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 19, 2020**. 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.

WARNING: A decision approving the proposed use is for land use purposes only. Due to septic, well, and drainfield replacement areas, this parcel may not be able to support the proposed use. To ensure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.
2. The applicant shall submit a Manufactured Dwelling/RV Removal or Disconnect Agreement (enclosed) to the Planning Division. This agreement specifies that placement of the manufactured home or RV is temporary and it will be removed, or the RV disconnected and no longer used for residential purposes, after the hardship ceases.
3. Prior to issuance of a building permit, the applicant shall combine tax lots 1400 and 1500 into one tax parcel. A tax lot combination request form is available from the Marion County Assessor's Office.

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

4. 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:

5. The applicants should contact Sublimity Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations, the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200.00) 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 19, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 20, 2018** unless further consideration is requested.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations. A temporary manufactured home/RV under hardship conditions may be approved as a conditional use provided the need is justified and the residence will not have a detrimental impact upon the existing or potential farming and timber activity in the area.
2. The property is located on the south side of Silver Falls Hy SE approximately 1,660 feet west of its intersection with Drift Creek Rd SE. The 5.0 acre parcel identified as tax lot 1400 contains an existing 2005 manufactured home, accessory structures, well and septic system. The property was subject of a previous land use case, Conditional Use Case 04-36 (CU04-36), that approved a temporary mobile home hardship be placed on the property, which has since been removed, and is considered a legal parcel for land use purposes. The 2.69 acre parcel identified as tax lot 1500 and the 1.89 acre parcel identified as tax lot 1300 are undeveloped. Both parcels were created in their current configuration by deed recorded prior to September of 1977.
3. Surrounding properties in all directions are zoned EFU and in various types of farm use.
4. Soil Survey of Marion County Oregon indicates 100% of the property is composed of high-value farm soils.
5. A Physician's Certificate and a Physician's Certificate and a Physician's letter have been submitted for Jerry and Kathleen Jackson indicating they have medical conditions that preclude them from maintaining a complete separate and detached dwelling apart from their family. Based on the site plan submitted by the applicants, the proposed hardship dwelling will be placed on the 2.69 acre parcel identified as tax lot 1500. The hardship dwelling must be located on the same parcel as the dwelling. Therefore, the applicants are required to combine tax lots 1400 and 1500 into one 7.69 acre parcel.
6. Marion County Building Inspection commented that permits are required for any new construction or placement of a manufactured home.

Marion County Building Inspection Onsite Wastewater Specialist commented that septic permits are required.

Marion County Assessor's Office provided information regarding taxes on the subject properties.
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) *For the purposes of this subsection "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.*

- (b) *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.*
- (c) *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.*
- (d) *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.*
- (e) *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.*
- (f) *The mobile home or recreational 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.*
- (g) *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. Based on evidence provided by the applicants, including a signed Physician's Certificate and Physician's letter, Jerry and Kathleen Jackson's physical circumstances 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. Jerry and Kathleen Jackson will reside in the existing manufactured dwelling and their son and daughter-in-law, Mike and Megan Jackson, will live in the hardship dwelling and will provide the assistance needed. Based on the site plan submitted by the applicants, the proposed hardship dwelling will be placed on the 2.69 acre parcel identified as tax lot 1500. The hardship dwelling must be located on the same parcel as the existing dwelling. The applicants are required to combine tax lots 1400 and 1500 into one 7.69 acre parcel. This can be made a condition of approval. The evidence also indicates the proposed hardship dwelling would be relatively temporary in nature. The requirement that a Manufactured Dwelling/RV Removal or Disconnect Agreement be filed by the applicant ensures that the manufactured home will be removed from the property when the hardship no longer exists. The entire property is zoned EFU and the hardship is proposed to be located is near the existing dwelling, will share a driveway and septic system. The proposal satisfies the criteria #7(a), (b), (c), (d), and (f). The criteria in 7(e) and (g) can be made a condition of any approval.

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 the placement of a temporary mobile 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. In addition, the County requires that a Declaratory Statement be recorded with the property deed because the subject property is in a resource zone. This serves to notify the applicants that farm or timber operations are located in the area. A Declaratory Statement was previously filed with CU04-36. It will not significantly increase traffic on area roads, fire protection is provided by St Paul Fire District and the Marion County Sheriff provides policing. Other rural services, such as well and septic, are available on the property. Due to the temporary and residential nature of the use, the placement of a manufactured home will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality, create a significant amount of noise, impact potential water impoundments or conflict with mineral and aggregate sites. The proposal satisfied the criteria in #9 above.
11. Based on the above findings, it has been determined that the applicant's request meets all applicable criteria for placing a temporary manufactured home/RV for medical hardship purposes and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: June 4, 2018

If you have any questions regarding this decision contact Patty Dorr (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.