

**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 the county notify property owners within a certain distance from this property. The proposal and address 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. 19-011**

**APPLICATION:** Application of Lillian Kuenzi for a conditional use to place a temporary home for medical hardship purposes on a 5.43 acre parcel in an EFU (Exclusive Farm Use) zone located at 1390 119th Avenue SE, Salem (T7S; R1W; Section 33; tax lot 2200).

**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 11, 2021**. 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 proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposal. To ensure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division at (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 all required permits from the Marion County Building Inspection Division.
2. The applicant shall submit a Manufactured Home/RV Removal or Disconnect Agreement (enclosed) to the Planning Division. This agreement specifies that placement of the manufactured home or RV is temporary and will be removed or the RV disconnected and no longer used for residential purposes after the hardship ceases.
3. The proposed hardship dwelling shall be located outside of the floodplain on the subject property.

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

4. The proposed manufactured home or RV shall use the existing septic system if feasible.
5. The manufactured home or RV shall be located as shown on the applicant's site plan, outside of the floodplain on the subject 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 for Lillian Kuenzi, 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 restrictions or conditions. It is recommended agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. The applicants should contact the Silverton 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.
8. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

**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 11, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 12, 2019** 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 east side of 119<sup>th</sup> Avenue SE, approximately 175 feet southeast of its intersection with State Street. The 5.43 acre parcel identified as tax lot 2200 contains an existing manufactured dwelling, well and septic system.

Conditional Use Case CU06-53 approved a non-farm dwelling on the subject property. Administrative Review AR07-05 approved the reduction of a required special setback for the non-farm dwelling. The subject property also received approval for Property Line Adjustment PLA06-32. Therefore, the property is considered legally created for land use purposes.

3. Surrounding properties in all directions are zoned EFU and are developed with existing dwellings and farm structures.
4. Soil Survey of Marion County, Oregon indicates 96.8% of the property is composed of high-value farm soils.
5. A signed Physician's Certificate has been submitted for Lillian Kuenzi, indicating she has medical conditions that preclude her from maintaining a complete separate and detached dwelling apart from her family.
6. Marion County Septic commented that authorization would be required.

Marion County Building Inspection commented that permits would be required.

Silverton Fire commented on access requirements.

Public Works Land Development and Engineering Permits requested that the following be included in the decision:

“A. Per Marion County Code 17.120.040, no new driveway access will be permitted.”

All other commenting agencies stated no objection to the proposal.

7. In order to approve a manufactured home/RV under 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 manufactured 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 the available evidence, including a signed Physician’s Certificate, Lillian Kuenzi’s physical circumstances constitute a hardship condition relating to the aged, the infirm, or persons otherwise incapable of maintaining a complete, separate and detached residence apart from family. Lillian Kuenzi will live in the existing dwelling on the subject property. Lillian Kuenzi’s son, Kelly Kuenzi, will live in the proposed hardship dwelling and provide the assistance she needs. The evidence also indicates the proposed hardship dwelling will be relatively temporary in nature. The requirement that a Manufactured Home/RV Removal or Disconnect Agreement be filed by the applicant ensures that the proposed hardship dwelling will be removed from the property and will no longer be used for residential purposes when the hardship ceases. For these reasons, the applicant’s proposal satisfies the criteria #7(a), (b), (c), and (d). The criteria #7(e) and (g) can be made a condition of any approval.
9. The entire property is zoned EFU and the proposed location of the hardship dwelling is near the road in an area that has been cleared and is not farmed. The proposed hardship dwelling will share a driveway with the main dwelling and will share the existing septic system. It appears the hardship dwelling would be located less than

100 feet from the main dwelling. Based on the applicant's submitted site plan, existing structures and development of the property, this appears to be as close as possible to the existing residence. For these reasons, the proposal meets the criteria #7(f).

10. 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.*
11. The proposal will allow the placement of a temporary manufactured home or RV 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, in CU06-053 the applicant filed a Farm/Forest Declaratory Statement with the property deed acknowledging the property is in a resource zone and may be affected by nearby farming and forestry uses. There is no evidence to indicate that the temporary dwelling will significantly increase traffic on area roads. Fire protection is provided by the Silverton 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 or RV 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. For these reasons, the proposal satisfies the criteria #10 (a), (b), (c), (d) and (e).
12. Based on the above findings, it has been determined that the request meets all applicable criteria for placing a temporary manufactured home/RV for medical hardship purposes and is, therefore, **APPROVED**.

Joe Fennimore  
Planning Director

Date: April 1, 2019

If you have any questions regarding this decision contact Seth Thompson 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.