

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. 22-028**

APPLICATION: Application of Charles Stacy & Tamara Lyons for a conditional use permit to change the occupant of an existing medical hardship dwelling on a 1.42-acre parcel in an AR (Acreage Residential) zone located at 6273 Shaw Lane SE, Aumsville. (T8S, R2W, Section 24A, Tax Lot 700).

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 **September 22, 2024**. 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.

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

1. All conditions of approval listed in CU16-026 shall remain in effect.
2. 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 septic systems prior to renewal of hardship conditional uses.
3. The applicant is advised that the Manufactured Dwelling/RV Disconnect Agreement, which specifies that placement of the manufactured dwelling or RV is temporary and that it will be removed/disconnected after the hardship ceases, as required in CU16-026, remains in effect.
4. Because the property has sold since the last hardship, a new Manufactured Dwelling/RV Disconnect Agreement (enclosed) will be required to be signed and recorded into the property's deed.

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 thereon. The applicant is advised of the following:

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 **September 22, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 23, 2022**, 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 Rural Residential in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding AR-3 (Acreage Residential, 3 acre minimum) is to provide rural acreage homesites.
2. The property is located at the very end of Shaw Ln, on the western side, where the right of way ends, approximately 0.2 miles south of its intersection with Shaw Sq SE. The property contains a manufactured home designated as the primary dwelling and a park model home that is the hardship manufactured dwelling/RV, which is located directly west of the primary dwelling, within 30 feet. The property received approval for the medical hardship in 1988 (CU88-035) and the manufactured dwelling/RV remains on the site in the same location. The subject property was legally created as part of the Waldo Hills Fruit Farms Subdivision. As such, the property is considered a lawful parcel for land use purposes.
3. Surrounding properties consist of acreage residential zone land to the north, east and west which contain dwellings and hobby farms. To the south is a large farm parcel zoned SA (Special Agriculture) that is in farm production.
4. The property is composed of 97.9% high value soils.
5. The manufactured dwelling/RV was originally approved as a medical hardship for Alta Harvey, under CU88-35. Available information indicates that Mrs. Harvey no longer occupies the dwelling. The applicants are requesting to use the existing manufactured dwelling/RV so that they can provide daily care for their daughter Autumn Brown.
6. All 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. Those that apply to this case include:
 - 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).*
 - 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.*
 - 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 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.

ii. 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).

4. 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).

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.

a. 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.

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 Section F. 30 days prior to the effective date of a revocation of the hardship permit made pursuant to Section F.1.

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;

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.

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.

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.*

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.*

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.*
 - a. *If the aged or infirmed person does not return to the property within the time period described in Section A.6., then the aged or infirm person's absence will be deemed an extended absence*

L. *The use of a hardship permit dwelling is intended to be temporary, shall be subject to review every year, and shall continue to meet the above criteria in order to qualify for renewal.*

8. Based on the available evidence, Autumns' 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 their family. The evidence also indicates the proposed manufactured home/RV would be relatively temporary in nature. The requirements that a Manufactured Dwelling/RV Removal or Disconnect Agreement be filed by the applicant ensures that the manufactured home/RV will be removed from the property/ RV removed or disconnected and no longer used for residential purposes when the hardship ceases.

The submitted site plan indicates that the hardship dwelling will remain in the same location as the previous hardship and will require no additional driveway access. The proposed hardship dwelling will be situated in an area that will not require removal of any productive farmland. Due to the location of the existing driveway, outbuildings and the existing well, it appears that the location will provide the least amount of disruption to the

existing activities on the subject and adjoining properties. In addition, a condition of approval shall be placed stating that the temporary hardship dwelling will use the existing wastewater disposal system if feasible. The proposal satisfies the criteria in 7(f).

The requirements in 8(e) and (g) can be made conditions of approval.

9. 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:

The following criteria apply to all conditional uses in the AR zone:

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

The intent of the zone is to provide rural housing, the criteria is met.

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

The hardship has existed since 1988 and will only add one occupant onto to the roadways which is not unreasonable. The criterion is met.

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

The property is served by the Aumsville Fire Department and the Marion County Sheriff's Office. The criterion is 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 home is connected to a septic system and will only generate common residential impacts which are not adverse to the fish and wildlife in the area.

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

The hardship dwelling is not expected to generate additional noise that is not uncommon for dwellings and families.

- 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 water impoundments on the subject property. The criterion does not apply.

10. Based on the above findings, it has been determined that the request to amend the approved occupant as listed in CU16-026 meets all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: September 7, 2022

If you have any questions regarding this decision contact Austin Barnes 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.