

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

NOTICE OF DECISION
CONDITIONAL USE CASE NO.23-036

APPLICATION: Application of Doris Wright and Sandra Currey for a conditional use to change the occupant of a medical hardship dwelling on a 5.53-acre parcel in an EFU (Exclusive Farm Use) zone located at 7366 Lakeside Drive NE, Salem (T6S; R2W; Section 28; Tax lot 700).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to conditions. **PLEASE READ ALL CONDITIONS BELOW.**

EXPIRATION DATE: This Conditional Use Permit is valid only when exercised by **October 21, 2025** (two years). The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

RENEWAL: This permit may be renewed for successive one-year periods if the applicant submits to the Planning Division, on an annual basis, a new Primary Care Provider Certificate which indicates that the hardship situation continues. The Planning Division will mail renewal forms to the property owner approximately two months prior to permit expiration.

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

This decision does not include approval of a building permit.

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

1. The applicant shall obtain approval for all required permits, including septic, from the Marion County Building Inspection Division.
2. The applicant shall record a combination Manufactured Dwelling/RV Removal or Disconnect Agreement and Farm/Forest Declaratory Statement (enclosed) with the Marion County Clerk after it has been reviewed and signed by the Planning Director. This agreement specifies that the manufactured home will be removed within 90 days after the hardship ceases and serves as a notice that farm practices are conducted within the area.
3. If the manufactured home is connected to the existing septic system, a shared system evaluation shall be performed every 5 years as per Marion County Building Inspection Policy.

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.
5. The manufactured home must be removed within 90 days after the expiration of the Conditional Use permit.

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:

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 **October 23, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 24, 2023**, unless further consideration is requested.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding Exclusive Farm Use (EFU) zone is to promote and protect commercial farm operations.
2. The property is located on the south side of Lakeside Dr NE approximately 1,200 feet east of its intersection with 54th and 55th Ave NE. The property contains three dwellings, two of which are permanent legal dwellings while the third is a temporary medical hardship. The two legal dwellings were built in 1930 and 1965. The medical hardship is a 1995 single wide Redman manufactured home. The subject property also has farm/accessory structures located on it and Lake Labish Ditch runs along its southeastern border. Approximately 1/3 of the property is within the 100 year flood plain. The 100 year flood plain follows and runs roughly parallel to the ditch/southeastern border of the property. Based on 2023 aerial imagery there are not structures or debris within the flood plain.
3. The parcel was subject to several land use cases; CU86-017, P/CU90-012, and CU91-036. Conditional Use cases 86-017 and 91-036 were approved by Planning. The subject property's configuration has not changed since these cases. Therefore, per the definitions in Marion County Code 17.110.427 and 17.110.680, the subject parcel is considered legal for land use purposes.
4. Surrounding properties to the west, south, and east are small to medium sized parcels. The smaller parcels are being used solely as homesites, while the medium sized parcels are being farmed in addition to having a homesite. The property to the north, across Lakeside Dr NE, is a large commercial farm. All surrounding properties are zoned EFU.
5. Soil Survey of Marion County Oregon indicates that approximately 100% of the subject property is composed of high-value soils.
6. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Building Division commented: "No Building Inspection concerns if previously permitted and approved as a hardship dwelling."

Marion County Code Enforcement commented: "Solid waste is observed on the property, please clean up before this becomes a code enforcement issue."

All other contacted agencies either failed to comment or stated no objection to the proposal.

7. In order to approve a manufactured home/RV under medical hardship the applicant must demonstrate compliance with the specific criteria listed in MCC 17.120.040. These include:

- A. This subsection contains definitions for the section 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.”

The applicant has submitted a signed Medical Care Provider Certificate for Doris Wright indicating that she has a medical condition that precludes her from maintaining a complete separate and detached dwelling apart from her family. Sandra Currey, the applicant’s daughter, will reside in the primary dwelling. Doris, the applicant and property owner, will live in the medical hardship. The criterion is met.

- C. *In the EFU, SA, FT and TC zones, occupancy of a hardship permit dwelling is limited to the term of the hardship suffered by the existing resident or a relative as defined in ORS 215.283(2)(L).*

The application is in an EFU zone. The hardship is for the property owner, who is the existing resident. The criterion is met.

- D. *When the aged or infirm person must be provided care so frequently or in such a manner that caregiver(s) must reside on the same premises, the aged or infirm person and/or those caregivers providing care for the aged or infirm person may temporarily reside in the hardship permit dwelling for the term necessary to provide care.*
 - 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.*

Sandra has stated she will oversee Doris’s daily care, including medication management and transportation. The criterion is met.

- E. *A temporary absence or medically necessary absence from the property by the aged or infirm person(s) will not result in the revocation or denial of a hardship permit.*
 - 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.

These shall be a condition of approval. The criteria is met.

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.*

These shall be a condition of approval. The criteria is met.

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 medical hardship dwelling is already in place. This application is for a change of occupant. The medical

hardship is approximately 58 feet from the permanent dwelling being used by the caregiver per the applicant's site plan and aerial imagery measurements. 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 medical hardship already exists and is located within a cluster of other dwellings and structures near a public right of way. The criterion is met.

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

No new driveway access is needed as per the applicant's site plan the home will use the existing driveway. The criterion is met.

4. *Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.*

Per a phone call with Sandra on 10/3/2023, the primary dwelling and the medical hardship share a septic system. Inspection and approval by a county sanitarian, as required by Marion County Building Inspection Division, shall be a condition of approval.

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 applicants are not proposing to convert an existing structure. 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.*

Approval shall be conditioned on a new Manufactured Home Removal Hardship Agreement being recorded with the Marion County Clerk's Office. The criterion is met.

J. Applicants are responsible for ensuring that all caregivers and/or other persons residing in the hardship dwelling are removed from the hardship dwelling within 90 days of the date that the person with the hardship or the care provider no longer resides in the hardship dwelling or on the property.

1. Applications for a hardship dwelling must include a description of how the applicant will ensure this condition is met.

This shall be a condition of approval. The criterion 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.

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.

This shall be a condition of approval. The criteria is met.

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

This shall be a condition of approval. The criteria is met.

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 EFU zone, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:

A. The following criteria apply to all conditional uses in the EFU zone:

1. The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.

The proposed use, an existing dwelling within the homesite area, will not impact accepted farm practices in the area. The recording of a Farm/Forest Declaratory Statement shall be made a condition of approval. The criterion is met.

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

The existing home is served by the county Sheriff's Department and the Marion County No. 1 Fire District, therefore rural services are available and the criterion is met.

3. *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 dwelling is approximately 225 feet from Lake Labish Ditch and is not located in the flood plain. The home is not expected to have an impact on any nearby watersheds, groundwater, fish or wildlife habitats, nor is it expected to degrade soil, slope stability or air and water quality. The criteria is met.

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

The continued use of a non-permanent dwelling on the parcel will not cause any additional noise beyond that of a residence, which is already present on the property. The criterion is met.

5. *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

The subject parcel is not near any mineral or aggregate sites and will not cause conflicts. The criterion is met.

9. MCC 17.136.050(B) requires that a declaratory statement meeting the requirements of MCC 17.136.100(C) be filed. This serves to notify the applicant and subsequent owners that there are farm or timber operations in the area and shall be made a condition of approval.
10. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for placing a temporary manufactured home/RV for medical hardship purposes and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: October 6, 2023

If you have any questions regarding this decision contact Nicole Inman (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.