

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. 24-012

APPLICATION: Application of Linda R. Bryant for a conditional use to change the occupant of a medical hardship dwelling on a 3.07-acre parcel in an AR (Acreage Residential) zone located at 1980 Ash Ln SE, Jefferson (T10S; R3W; Section 2BA; Tax lot 3800).

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 14, 2026** (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 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 CU11-014 and CU19-038 shall remain in effect.
2. The applicants shall contact Marion County Septic to apply for a septic authorization.
3. 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.
4. 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, and the Farm/Forest Declaratory Statement as required in CU11-014 and CU19-038, remain in effect.

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. It is recommended that the agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits. 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 **June 14, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 15, 2024**, 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 (Acreage Residential) zone is to allow acreage home sites at a density that maintains the character and environmental quality of the County's rural residential areas.
2. The property is located on the south side of Ash Lane approximately 250 feet east of Pine Street. The property contains an existing dwelling, accessory structures, and septic system. The property was the subject of Conditional Use Case CU11-014 that approved a temporary medical hardship dwelling for Gene Doyle. In 2019 Conditional Use Case CU19-038 approved a change of occupant to Aaron Bryant, Jr., the son of Aaron Bryant. The hardship is now proposed to be converted to use by Danyelle Potter, granddaughter of Linda Bryant.
3. Surrounding properties to the east and south are zoned EFU (Exclusive Farm Use) and consist primarily of various sized parcels devoted to farm use. Parcels to the north and west are zoned AR and in rural residential use.
4. A signed Primary Care Provider Certificate has been submitted for Danyelle Potter indicating she has medical conditions that preclude her from maintaining a complete, separate, and detached dwelling apart from her family.
5. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Septic Division commented that an authorization is required and is to remain in effect for period not to exceed 5 years, and not exceeding the cessation of the hardship.

All other agencies contacted either failed to respond or had no comment.

6. 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:

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.

The property owner, Linda Bryant, has stated that they will be caring for the daily needs of Danyelle Potter. This hardship dwelling was originally used for the care of Gene Doyle and subsequently Aaron Bryant Jr, demonstrating the ability of the applicant to provide the care required. 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 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 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.*
 - 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.*

The applicants shall continue to adhere to the criteria stated in this section as a condition of approval. This was part of the conditions of approval for the initial approval in CU11-014, and the change of occupant authorized by CU19-038. The criterion 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 Section F. 30 days prior to the effective date of a revocation of the hardship permit made pursuant to Section F.1.*

The applicants have not addressed this in the Applicant Statement; however, the applicants shall adhere to the criteria stated in this section as a condition of approval. This was part of the conditions of approval for case CU11-014 and CU19-038. The criterion 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;*
 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.*

The applicants are proposing to use an existing manufactured home placed on the property as part of the temporary medical hardship originally approved by CU11-014. The manufactured home was established in compliance with all the points listed in this section as they were made part of the conditions of approval. Therefore, the criterion is met.

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 stated that the existing manufactured home established originally for the hardship dwelling in CU11-014, and used as the hardship approved by CU19-038, will be used for the new medical hardship. Therefore, this 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.*

The applicants have not addressed this in the Applicant Statement; however, the applicants shall adhere to the criteria stated in this section as a condition of approval. This was part of the conditions of approval for case CU11-014 and CU19-038. 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.*

The applicants are proposing to use an existing mobile home from the previous hardship. This section was part of the conditions of approval for case CU11-014. The condition shall continue to be in effect for the duration of the new medical hardship. 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.*
- 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*

This section was part of the conditions of approval for case CU11-014 and CU19-038. The condition shall continue to be in effect for the duration of the new medical hardship. The criterion 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 section was part of the conditions of approval for case CU11-014 and CU19-038. The condition shall continue to be in effect for the duration of the new medical hardship. The criterion is met.

7. Since the property is located in an AR zone, the proposal must also satisfy the general criteria in MCC 17.128.040 MCC. 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 current zoning of the subject property is AR (acreage residential) which has the primary purpose of providing acreage residences. The applicant proposes to use an already established temporary hardship dwelling on the site as an additional residence for a family member requiring extra assistance with daily tasks. The criterion is met.

- (b) The use will not increase traffic beyond the capacity of existing roads.*

No complaints about increased traffic in the area were raised to Marion County Planning in the years following the establishment of the temporary hardship dwelling for the previous occupant. It can be reasonably assumed that the change in occupant will not result in an increase in the amount of traffic in the area. The criterion is met.

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

The Jefferson Fire District and Marion County Sherriff's Department serve this property. Telephone, electricity, and other rural services are available to the property. 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 property is not located within a unique or specially classed watershed area and there are no fish bearing waters nearby. The property contains no identified sensitive wildlife habitat areas and is not in an identified floodplain or geological slide hazard area. The criterion is met.

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

There is no evidence indicating that noise generated by the proposal will be heard off the property or have any impact on surrounding uses. The hardship dwelling is not expected to produce noise other than typical residential sounds and no increase from the previous medical hardship occupation is expected. The criterion is 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 or mineral and aggregate sites for the hardship dwelling to adversely affect. The criterion is met.

8. Based on the above findings, it has been determined that the request to amend the approved occupant(s) as listed in CU19-038 meets all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: May 30th, 2024

If you have any questions regarding this decision contact John Speckman 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.




ZONING MAP

Input Taxlot(s): 061W190001000, 061W190001100

Owner Name: CRISELL, DIANE M

Situs Address: 9763 NUSOM RD NE
City/State/Zip: SILVERTON, OR, 97381
Land Use Zone: EFU
School District: GERVAIS
Fire District: MT ANGEL

Legend

-  Input Taxlots
-  Lakes & Rivers
-  Highways
-  Cities



scale: 1 in = 730 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.