

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. 24-015

APPLICATION: Application of Lyle and Sally Johnson for a conditional use to change the occupant of a medical hardship dwelling on a 5.08-acre parcel in an EFU (Exclusive Farm Use) zone located at 6886 Waconda Rd NE, Salem (T6S; R2W; Section 03C; Tax lot 4100).

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 **July 25, 2026**. 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 CU98-012 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 CU98-012 remains 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 #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. The applicants should contact Paula Smith at MCFD#1/(503) 588-6513 as the contact person 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) 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 **July 25, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 26, 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 Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to encourage large-scale farm operations and minimize other potentially conflicting uses.
2. The property is located at 6886 Waconda Rd NE, about half a mile east of the intersection of Waconda and Portland Rd (Hwy 99E). The property contains a several structures including a 1967 dwelling designated as the primary dwelling, a 1998 manufactured home that is an existing medical hardship dwelling, and several accessory structures. The property received approval for a medical hardship in 1998 (CU98-012) and the manufactured dwelling/RV remains on the site in the same location south of the primary dwelling. The subject property has not changed its configuration since the original hardship approval in 1998. As such, the property is considered a lawful parcel for the purposes of changing the occupant of the existing hardship dwelling. This is not, however, a legal determination of the property lines or legal lots within the bounds of tax lot 062W03C004100.
3. Surrounding properties consist of a mixture of large-scale agriculture fields and a number of smaller lots in use as rural residences not engaged in agriculture. All of the lots within a quarter mile of the subject property are zoned EFU.
4. The Marion County Soils Analysis tool identifies that 100% of the soils on the subject property are high value.
5. The manufactured dwelling/RV was originally approved as a medical hardship for Kenneth and Katherine Maxon under CU98-012. Available information indicates that Mr. & Mrs. Maxon no longer occupy the dwelling. The applicants, Lyle and Sally Johnson, are requesting to use the existing manufactured dwelling so that their granddaughter can reside on the property and provide them with daily assistance.
6. Various agencies were contacted about the proposal and given the opportunity to comment.

Marion County Septic commented: “An authorization to connect to the hardship is required every 5 years or until the cessation of the hardship. The last authorization occurred in 2021, so an authorization renewal will be required in 2026.”

All other commenting agencies stated no objection to the proposal or failed to respond.

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 medical care provider certificate for both Lyle and Sally Johnson stating that they have certain medical conditions that preclude them from maintaining a complete separate and detached dwelling apart from their family. The Johnson's granddaughter will live in the existing hardship dwelling and will help maintain the property and provide assistance with daily tasks. 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 owners and will house a caretaker. 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.*

The applicants have stated that they require assistance with daily tasks related to the necessary maintenance of their property and occasionally with regularly 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 were part of the conditions of approval from the previous hardship approval. All conditions of approval from CU98-012 are still in effect. The criteria are 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 were part of the original conditions of approval for CU98-012. These conditions of approval are still in effect. 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;*

The applicants are proposing to change the occupant of an existing hardship dwelling already established on the property. The location met the requirements for a medical hardship in the previous land use case CU98-012. 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 dwelling already exists on the property and is not proposed to be moved. Keeping the dwelling in the current location would adversely impact farm or forest use the least of all options. The criterion is met.

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

No new driveway access is proposed, and the existing hardship will use its approved access from CU98-012. 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.*

This was a part of the conditions of approval for the original temporary medical hardship in case CU98-012. These conditions of approval remain in effect. 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 are using a building previously established for a medical hardship and are just changing the occupant of the dwelling. 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.

The applicants were required to sign a declaratory statement for the removal of the manufactured home as part of the conditions of approval for the previous hardship. The agreement is still in effect for this new conditional use. 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 was part of the conditions of approval for CU98-012. All conditions of approval from CU98-012 are still in effect. 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 was part of the conditions of approval for CU98-012. All conditions of approval from CU98-012 are still in effect. 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 was part of the conditions of approval for CU98-012. All conditions of approval from CU98-012 are still in effect. The criterion 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 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 applicants are proposing to change the occupant of an existing medical hardship dwelling. Since the date of the original approval of the medical hardship in 1998 there have not been any complaints by neighbors of negative impacts to farming operations in the surrounding area. The applicants are not actively farming the property as it functions mostly as an acreage homesite. Since the applicants are only applying to change the occupant of the hardship dwelling it is reasonable that the impacts shall not change from what they have been for the past 26 years. The criterion is met.

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

The property is serviced by the Marion County No. 1 Fire District and Marion County Sheriff. Any other necessary rural services, such as a well and septic, are already present on the property. The criterion is met.

(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.

The applicants are not proposing any changes to the existing hardship dwelling other than the occupant. Any adverse impacts are expected to continue to be negligible and not increase from what they have been since 1998. The criterion is met.

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

The medical hardship is not expected to generate any noise other than typical residential noises. The criterion is met.

(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.

There are no nearby water impoundment or mineral and aggregate sites for the hardship dwelling to adversely affect. The criterion is met.

9. Based on the above findings, it has been determined that the request to amend the approved occupant(s) as listed in CU98-012 meets all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director

Date: July 10, 2024

If you have any questions regarding this decision contact Alexander Seifer 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.