

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. 24-031**

APPLICATION: Application of Randy Barna for a conditional use permit to establish a medical hardship dwelling on a 2.9-acre parcel in an AR (Acreage Residential) zone located at 1322 Hylo Rd SE, Salem (T8S; R3W; Section 26C; Tax lot 900).

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 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 **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 from the Marion County Building Inspection Division.
2. The applicant shall submit a Hardship Conversion Dwelling Removal Agreement (enclosed) to the Planning Division. This agreement specifies that use of the existing structure for a medical hardship is temporary and will be converted to a non-residence use after the hardship condition ceases.
3. The applicant shall sign and submit an SGO Declaratory Statement (enclosed) to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
4. The hardship will be assigned the address of **1320 Hylo Rd SE** effective when building permits are applied for.
5. The ADU (Accessory Dwelling Unit) will be assigned the address of **1318 Hylo Rd SE** effective when building permits are applied for.

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

5. The proposed hardship dwelling shall use the existing septic system if it is feasible.
6. The hardship dwelling shall be located as shown on the applicant's site plan.

7. All of the Conditional Use Hardship requirements found in MCC 17.120.040, and general conditional use requirements found in MCC 17.128.040, must be continuously met as a condition of this approval.
8. 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.

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. 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:

9. The applicants should contact the Salem Suburban 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.
10. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #7 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 **September 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 **September 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 rural residential in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding AR (Acreage Residential) zone is to meet the housing needs of a segment of the population desiring the advantages of a rural homesite.
2. The property is located at 1322 Hylo Rd SE, less than a half mile south of the Urban Growth Boundary of the City of Salem. The property contains a 1945 dwelling, two large accessory structures, and four small sheds/lean-tos. The property was the subject of a conditional use case in 2022 (CU22-027) to establish a dog kennel, a use which has ceased. The subject parcel was described in its current configuration on April 12th, 1976 recorded on Reel 44, Page 303 of the Marion County Book of Land Records, and is therefore a legal parcel for land use purposes.
3. The subject parcel is within a cluster of AR zoned parcels just south of Salem. Outside of the adjacent rural residential uses are parcels zoned SA (Special Agriculture). The nearest SA parcels in agricultural use are producing wine grapes. Several nearby SA parcels are in rural residential use.
4. Soil Survey of Marion County Oregon indicates 100% of the subject property is composed of high-value farm soils.

5. The applicant is proposing to establish a medical hardship dwelling using an existing structure. The applicant purchased the property in October of 2023. A large structure had previously been constructed on the property containing two unpermitted dwelling units. In seeking to permit this structure in compliance with Marion County Code, the applicant has proposed to bring one unit into compliance as an ADU (Accessory Dwelling Unit) and the other as a temporary medical hardship dwelling. At the end of the hardship the medical hardship dwelling will be converted to another permitted use.
6. A signed Primary Care Provider Certificate has been submitted for Faye Barna indicating she has medical conditions that preclude her from maintaining a complete separate and detached dwelling apart from her family.
7. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Land Development Engineering & Permits commented:

ENGINEERING REQUIREMENT

- A. At the time of application for building permits for the proposed medical hardship dwelling, an Access Permit will be required to remove several concrete-filled metal bollards from within the public right-of-way that are deemed as fixed object hazards within the roadway clear zone.

Marion County Building commented: “Permit(s) are required to be obtained prior to development of structures and/or utilities installation on private property. Proposed ADU and Hardship Dwelling would require a 1-hour fire rated separation, either at the floor/ceiling level, wall separations, or a combination of them, according to 2023 ORSC R302.3. The ADU is also required to comply with the Wildfire Hazard Mitigation provisions of ORSC R327, as adopted by the Marion County Code.”

Marion County Septic commented: “An authorization is required to connect the hardship to the existing system is required. The authorization is valid for up to 5 years, not exceeding the cessation of the hardship.”

Salem Fire Department commented: “Scale on site plan does not appear to be accurate. Fire Department access and water supply will be required per the Oregon Fire Code for the new structure.”

All other commenting agencies either did not respond or stated no objection to the proposal.

7. In order to approve the conversion of an existing structure to a temporary 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 Primary Care Provider Certificate for Faye Barna indicating she has medical conditions that preclude her from maintaining a complete separate and detached dwelling apart from her family. Randy Barna is Faye’s grandfather and proposes moving his granddaughter onto the property so that he and Shaelynn Barna may provide Faye the necessary care. 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 AR zone, the criterion does not apply.

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 applicant has attested in submission of this application that between himself and the primary caregiver (Shaelynn Barna) they possess the necessary skills provide the requisite care. The applicant understands the rest of these requirements. 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. These criteria can be 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 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 proposed location of the hardship dwelling is approximately 103-feet from the primary dwelling. This distance will shrink due to a proposed addition to the primary dwelling. The driveway separates the primary dwelling from the proposed hardship dwelling making it quickly accessible for the caregivers. This proposal is for a conversion to create the hardship dwelling so relocating it is not possible. 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 subject parcel is zoned AR and not in farm use, the criterion does not apply.

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

No new driveway access is needed, the hardship dwelling 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.*

Inspection and approval by a county sanitarian, as required by Marion County Building Inspection Division, shall be a condition of approval. 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 proposing to convert an unpermitted dwelling unit within an existing structure. The permitting process through Marion County Building Inspection will ensure that the dwelling is suitable for human habitation, connects to the existing wastewater disposal system if feasible, and that compliance with all building and specialty codes is met. The existing driveway serves both the primary dwelling and the structure proposed for the hardship dwelling. The criteria are met.

- 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.*

MCC 17.120.040(I)(2) is the relevant criterion for this proposal. Approval shall be conditioned on a Hardship Conversion Dwelling Removal 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 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 shall be a condition of approval. 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 AR zone, the proposal must also satisfy the conditional use criteria in MCC 17.128.040. 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 purpose and intent of the AR zone is to provide for establishment of acreage homesites for the segment of the population who chooses to live in the rural area, and who may not be involved in agricultural or timber uses. Density restrictions imposed by minimum lot sizes in the AR zone ensure the properties are large enough to facilitate wells and septic systems, and maintain the rural character of the area. The construction of two unpermitted dwelling units by a previous owner was not in harmony with the purpose and intent of the zone because it created three dwellings on a property in a zone where a single-family dwelling and one ADU are permitted uses. Temporary medical hardship dwellings area conditional use in the AR zone, and increase the residential density only temporarily. The solution sought by the applicant is to decrease the size of one of these dwellings and permit it as an ADU and convert the other into a temporary medical hardship dwelling. Compliance with the conditions of approval for the proposed hardship dwelling will be in harmony with the purpose and intent of the zone. The criterion is met.

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

Hylo Rd SE is within a public right-of-way and classified as a minor collector in Marion County. The area is characterized by a mix of low density rural residential and agricultural uses, and the traffic on Hylo Rd SE reflects these uses. The proposed temporary medical hardship dwelling will not incur a noticeable increase in traffic, let alone increase traffic beyond the capacity of the existing roads 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 subject parcel is served by the Salem-Suburban Fire Department and the Marion County Sheriff's Department. The property already contains a well, and the applicant will obtain septic permits to ensure wastewater will be appropriately on 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 residential use in an existing structure will have no adverse impact on the watershed, fish and wildlife habitat, soil or slope stability, nor air and water quality. The subject parcel is within the Sensitive Ground Water overlay indicating potential issues with the aquifer now or in the future. The proposed structure contains another dwelling unit that the applicant is bringing into compliance by getting permits for an ADU. As part of this simultaneous permitting process, the applicant will be required to install a holding tank of at least 1,000 gallons to the well on the property. The purpose of this requirement for ADUs is mitigate fluctuations in demand upon the aquifer. The tank is not a requirement for temporary medical hardships, but this medical hardship and the aquifer will benefit from it. Adverse impacts on the groundwater will therefore be mitigated. The criterion is met.

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

The noise created by the proposed temporary medical hardship dwelling will be those standard to a residence. All adjacent properties also contain residences, therefore the noise associated with the proposed use will not be incongruent with the area, and will have no adverse impact. 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, nor are there nearby aggregate sites. The criterion is met.

9. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria to convert an existing structure for a temporary medical hardship dwelling and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: September 10, 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.