

**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. 20-006**

**APPLICATION:** Application of Randy & Elizabeth Johnson for a conditional use to place a recreational vehicle for medical hardship purposes on a 2.09 acre parcel in an AR (Acreage Residential) zone located at 6158 78<sup>th</sup> Ave SE, Salem. (T8S; R2W; Section 23B; tax lot 1600).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to certain conditions.

**EXPIRATION DATE:** This Conditional Use Permit is valid only when exercised by **April 22, 2022**. 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 continues to exist.

**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. Prior to issuance of a building permit, the applicant shall submit a Manufactured Dwelling/RV Removal or Disconnect Agreement (enclosed) to the Planning Division. This agreement specifies that placement of the manufactured home or RV is temporary and will be removed or the RV disconnected and no longer used for residential purposes, after the hardship ceases.

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

3. The proposed manufactured home/RV shall use the existing septic system if it is feasible.
4. The manufactured home/RV shall be located as shown on the applicant's site plan. Minor variations are permitted upon review and approval of the Planning Director.
5. 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.
6. The applicant shall sign and submit a Sensitive Groundwater Overlay Zone Declaratory Statement (enclosed) to the Planning Division for each resulting parcel. This statement shall be recorded by the applicant with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director.

**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 #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. The applicant should contact Aumsville 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.

**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 **April 22, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 23, 2020** unless further consideration is requested.

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

1. The property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow for the creation of 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 east side of 78<sup>th</sup> Ave SE, approximately 670 feet southeast of its intersection with Aumsville Highway SE. The property contains an existing site built dwelling, accessory structures, well and septic system. The property was previously approved for a medical hardship dwelling pursuant to CU98-57 and CU71-16.
3. Properties to the north, south, east and west are zoned AR (Acreage Residential) and consist of acreage residential home sites.
4. A signed Physician's Certificate has been submitted for Randy and Elizabeth Johnson indicating they have medical conditions that preclude them from maintaining a complete separate and detached dwelling apart from their family.
5. Marion County Code Enforcement commented that there was an open violation on the property for an occupied RV that would be solved by approving the medical hardship dwelling.

All other commenting agencies stated no objection to the proposal.

6. In order to approve a manufactured home/RV under medical hardship the applicant must demonstrate compliance with the specific criteria listed in Section 17.120.040 of the Marion County Code (MCC). These include:
  - (a) *For the purposes of this subsection "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.*
  - (b) *A doctor of medicine or licensed psychologist shall sign a statement indicating the physical or mental condition that prevents the person(s) with the hardship from providing the basic self care needed to live on a separate lot. The statement shall also attest that the physician or licensed psychologist is convinced*

*the person(s) with the hardship must be provided the care so frequently or in such a manner that the caretaker must reside on the same premises.*

- (c) *Those providing the needed assistance shall be related by blood, marriage or legal guardianship and reside in another residence on the property. If evidence is presented that there is no family member able to provide the needed care the caretaker may be someone else provided the property is located in a zone other than the EFU, SA, FT or TC zones. In the EFU, SA, FT and TC zones, occupancy of the hardship mobile home or recreational vehicle is limited to the term of the hardship suffered by the existing resident or a relative as defined in ORS 215.283.*
- (d) *Those providing the care must show that they will be available and have the skills to provide the primary care required by the doctor or psychologist.*
- (e) *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. In the case of a recreational vehicle it shall be rendered uninhabitable by disconnection from services. An agreement to comply with this requirement shall be signed by the property owner and the care providers. Oregon Department of Environmental Quality removal requirements also apply.*
- (f) *The mobile home or recreational vehicle 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.**
- (g) *The use 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.*

7. Based on the evidence provided by the applicants, including a signed physician's certificate, Randy and Elizabeth Johnson's physical circumstances constitute a hardship condition relating to the aged, the infirm, or persons otherwise incapable of maintaining a complete, separate and detached residence apart from their family. Randy and Elizabeth Johnson will live in the primary dwelling and the care they require will be provided by David Neal, son of the property owners, residing in the temporary dwelling. The evidence also indicates the proposed manufactured home/RV would be relatively temporary in nature. The requirements that a Manufactured Dwelling/RV Removal or Disconnect Agreement be filed by the applicant, ensures that the manufactured home will be removed from the property or the RV removed or disconnected and no longer used for residential purposes when the hardship no longer exist. The proposal satisfies the criteria #6(a), (b), (c), (d) and (f), the criteria in #6(e) and (g) can be made a condition of any approval.

8. Since the property is located in an AR zone, the proposal must also satisfy the compatibility 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.*
- (b) *The use will not increase traffic beyond the capacity of existing roads.*
- (c) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (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.*
- (e) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- (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.*

9. The AR zone permits dwellings outright and hardship dwellings as a temporary use associated with the dwelling on the property. A manufactured home or recreational vehicle used as a hardship is residential in nature and uses the same driveway as the dwelling on the property. It will not significantly increase traffic on area roads. Fire protection is provided by Aumsville Fire District and the Marion County Sheriff provides policing. Other needed rural services are available on the property. Due to the temporary and residential nature of the use, the placement

of a manufactured home or recreational vehicle as a hardship dwelling will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality, create a significant amount of noise, impact potential water impoundments or conflict with mineral and aggregate sites. The proposal meets the criteria for a conditional use in the AR zone.

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**, subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: April 7, 2020

If you have any questions please contact Alyssa Schrems 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.