

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. 20-036**

**APPLICATION:** Application of Daryl and Diana Fitzpatrick for a conditional use to place a temporary manufactured home for hardship purposes on a 3.78 acre lot in an AR (Acreage Residential) zone located at 6605 Hays Ln SE, Aumsville (T8S, R01W, Section 19C, Tax lot 600).

**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 **November 9, 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 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 Manufactured Dwelling/RV Removal or Disconnect Agreement to the Planning Division. This agreement specifies that placement of the manufactured home or RV is temporary and it will be removed, or the RV disconnected and no longer used for residential purposes, after the hardship ceases.
3. The applicant shall sign and submit a Farm/Forest Declaratory Statement 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.

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

4. The proposed manufactured home/RV shall use the existing septic system if it is feasible.
5. The manufactured home/RV shall be located as shown on the applicant's site plan.
6. 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:

7. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for an Engineering Advisory, listed in Finding #6 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 **November 9, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 10, 2020** 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 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 at the intersection of Hays Lane and Brownell Dr. SE. The property contains a dwelling and an accessory building. The property is developed with a dwelling, placed in 1997 and is considered legal for land use purposes.
3. Surrounding uses are residential on all sides, with parcels zoned AR and containing dwellings.
4. A signed Primary Care Provider Certificate has been submitted for Nicholas Fitzpatrick, indicating he has a medical condition that precludes him from maintaining a complete separate and detached dwelling apart from his family.
5. Marion County Building Inspection commented that a building permit shall be required.

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

### **ENGINEERING ADVISORY**

Upon review of remote imagery showing the Hayes Lane private easement connection with Brownell Drive, the public road edge-of-pavement appears to be eroding due to traffic level. The connection is in need of paving with hot mix asphalt. Hayes Lane currently serves seven residences, and there are still two parcels yet to be developed. Since the proposal at hand for a medical hardship dwelling is temporary in nature, we will not obligate paving of the private easement approach at this time. However, with future development on this Lane a requirement under a PW Engineering permit to do so should be anticipated, and you may be requested to participate financially in that endeavor. Please be advised that per *Oregon Revised Statutes*, it is the collective responsibility of easement users to adequately maintain it, including the public road connection.

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:

*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.*

*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 maybe 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.*

*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.*

*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.*

*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.*

*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.*

*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.*

*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**

*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.*

7. *Based on the available evidence, Nicholas Fitzpatrick'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. The evidence also indicates the proposed manufactured home would be relatively temporary in nature. The requirement that a Manufactured Dwelling Removal be filed by the applicant ensures that the manufactured home will be removed from the property and no longer used for residential purposes when the hardship ceases.*

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. This proposal is in harmony with the purpose and intent of the zone; this will not increase traffic capacity and will not have a significant effect on groundwater or wildlife. This use will not increase noise levels and will not have any adverse effects on water impoundments. The proposal meets criteria #10 (a), (b), (c), (e) and (f).
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  
Planning Director

Date: October 23, 2020

If you have any questions regarding this decision 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.