

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. 18-041**

APPLICATION: Application of Michael and Lynette Yoder for a conditional use and a variance to convert an existing structure to a temporary dwelling for medical hardship purposes on an 8.04 acre parcel in an AR (Acreage Residential) zone located at 4516 River Road S, Salem. (T8S; R4W; Section 12C; tax lots 1900 and 2100).

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

EXPIRATION DATE: This Conditional Use Permit is valid only when exercised by **July 26, 2020**. 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. The applicant shall submit an Existing Dwelling Removal (enclosed) to the Planning Division. This agreement specifies that use of the structure is for the hardship dwelling and it will be removed or converted to a non-residential use after the hardship ceases.

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

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

4. The applicants should contact the Salem Fire Department 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 26, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 27, 2018** 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 River Road S. in the 4500 block. The property contains a dwelling and three accessory structures. The property was described by deed (Volume 724, Page 833) as far back as April 18, 1972. The property was legally created.
3. Surrounding uses consist of rural homesites in an AR zone.
4. A signed Physician's Certificate has been submitted for Allison Yoder indicating she has medical conditions that preclude her from maintaining a complete, separate and detached dwelling apart from her family.
5. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

Salem Fire District commented on driveway and fire protection requirements.

Marion County Sanitarian commented that a septic authorization would be required.

Marion County Building Inspection commented that a change in use or occupancy permit would be required.

6. In order to approve a temporary dwelling for a 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, Allison Yoder'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. Allison Yoder would live in an accessory structure on the property and her parents would live in the dwelling on the property. The accessory structure and dwelling appear close enough to each other that the needed care would be available and the parents describe how they are able to provide the care needed for their daughter. While the applicants propose to use an existing structure on the property instead of a manufactured dwelling or recreational vehicle, it can be made a condition of approval that, if approved for a variance to use the existing structure, the property owners record an agreement that the structure be removed or converted to non-residential use after the hardship ceases. 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 hardship dwelling 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 Salem Fire Department 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 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. In order to obtain a variance the proposal must meet the criteria in found in Section 17.122.020 of the Marion County Rural Zone Code (MCC). These criteria are:
- (a) *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; and*
 - (b) *There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and*
 - (c) *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*
 - (d) *The variance will not have a significant adverse affect on property or improvements in the neighborhood of the subject property; and*
 - (e) *The variance will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and*
 - (f) *The variance will maintain the intent and purpose of the provision being varied.*
11. The applicants are requesting a variance to use an existing structure on the property instead of a manufactured dwelling or recreational vehicle. The applicants state that due to the nature of the illness, Allison Yoder must live in a separate residence from her parents. However, locating a manufactured dwelling or recreational vehicle is difficult because of existing driveway is steep and narrow and there are no cleared areas to locate the hardship dwelling. If this variance were not requested, it's possible the applicants would not be able to locate a hardship dwelling at all on the property. The hardship dwelling is residential in nature and is not likely to have any impact on neighboring properties. It can be made a condition of approval that the hardship dwelling be removed or converted to a non-residential use once the hardship ceases. The request meets the criteria for a variance to use an existing structure on the property instead of a manufactured dwelling or recreational vehicle as a hardship dwelling on a property.
12. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for a conditional use and a variance to convert an existing structure to a temporary dwelling for medical hardship purposes and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: July 11, 2018

If you have any questions regarding this decision contact Brandon Reich 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.