

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. 24-002**

APPLICATION: Application of Larry and Nancy Urrutia for a conditional use permit to place a hardship dwelling on a 4.17-acre parcel in an AR (Acreage Residential) zone located at 25758 Taylor Park Rd SE, Lyons (T9S; R2E; Section 15AB; Tax lots 1200, 1400, 1500, 1600, 1700).

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 **March 2, 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 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 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 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 (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.

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 proposed manufactured home/RV shall be located within 100 feet of the primary dwelling.
6. The manufactured home/RV shall be located as shown on the applicant's site plan.
7. 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 Primary Care Provider 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:

8. The applicants should contact the Stayton 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 **March 4, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 5, 2024**, 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 approximately 1.50 miles east of the intersection of Taylor Park Road SE and Pioneer Road SE. Surrounding properties in all directions (except to the south) are also zoned Acreage Residential. To the south, the adjacent properties are zoned Timber Conservation (TC). The parcel contains a single-family dwelling on tax lot 1400 which was established in 2023 to replace a dwelling destroyed by fire. There is also an accessory structure on the property located on tax lot 1500. Noroma Creek (a perennial stream) flows down and along the eastern edges of the property.
3. The subject parcel currently contains 5 different tax lots. However, through Partition case P23-016, the parcel was determined to be one legal lot. At the time of this application for a temporary hardship dwelling, the property owners have not started the partition plat process. The proposed location of the hardship dwelling on the site plan shows the hardship dwelling and primary dwelling on different lots created by the partition. If the approved partition is completed while the medical hardship is active, and the hardship dwelling exists on a separate legal lot from the primary residence of the original legal lot, then the hardship dwelling shall no longer be considered a medical hardship building.
4. A signed Primary Care Provider Certificate has been submitted for Sherry Chase indicating she has medical conditions that preclude her from maintaining a completely separate and detached dwelling apart from her family.
5. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Building commented: "Permit(s) are required to be obtained prior to the placement of a manufactured home on private property. It is suggested to be placed at least 3 feet from property lines, otherwise additional fire resistive materials may be required to be applied to the exterior wall less than 3 feet to the adjacent property line."

Marion County Septic Division commented: Permits to connect the hardship dwelling to the existing septic system are required.

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 MCC 17.120.040. 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.*

The owners, Larry and Nancy Urrutia, have provided statements that they have the skills able to provide for Sherry Chase. Nancy will provide assistance with tasks necessary for daily life. 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 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.

This shall be made a condition of approval.

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.

This shall be made a condition of approval.

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.

This shall be made a condition of approval.

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 not proposing an existing building conversion. They are using a Manufactured Home. The criterion is 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 habitation 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.

This shall be made a condition of approval.

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.

Applicants have indicated they will disconnect the RV or remove the mobile home when the hardship ends, and this shall be made a condition of approval.

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

This shall be made a condition of approval.

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 made a condition of approval.

7. Since the property is located in an AR zone, the proposal must also satisfy the general 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.

The current zoning of the subject property is AR (acreage residential) which has the primary purpose of providing acreage residences. The applicant proposes to put a temporary hardship dwelling on the site as an additional residence for a family member requiring extra assistance with daily tasks. The criterion is met.

(b) The use will not increase traffic beyond the capacity of existing roads.

Any additional traffic created by the establishment of the hardship dwelling will be minimal and within the existing capacity of the roads. The criterion is met.

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

The property is serviced by the Stayton Fire District and Marion County Sheriff. Any other necessary rural services, such as well and septic are already present 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 site where the applicants propose to establish the hardship dwelling is currently an open area on a residential property with an existing driveway access in place. The location is not within a geohazard or sensitive groundwater area and will be required to connect to the existing septic system. Any adverse impacts are expected to be negligible. The criterion is met.

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

The hardship dwelling is not expected to produce noise other than typical residential sounds. 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 or mineral and aggregate sites for the hardship dwelling to adversely affect. The criterion is met.

8. 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.

Brandon Reich
Planning Director/Zoning Administrator

Date: February 16, 2024

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