

**NOTICE OF DECISION
CONDITIONAL USE CASE NO. 19-004**

APPLICATION: Application of Harold W. and Gail A. Krueger, Trustees of the Harold W. Krueger Jr. Living Trust, for a conditional use to change the occupant of a temporary mobile home for medical hardship, approved by Conditional Use Case 18-051, on a 104.21 acre parcel in an EFU (Exclusive Farm Use) zone located at 1187 Victor Point Road NE, Silverton. (T7S; R1W; Section 24; tax lot 2100).

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 **February 21, 2021**. 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 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 proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support an additional dwelling. To be sure the subject property can accommodate the proposed use the applicant should check with the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met.

1. 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 prior to renewal of hardship conditional uses.
2. The existing Dwelling Removal Agreement submitted for CU18-051 remains in effect. This agreement specifies that hardship dwelling is temporary and that it will no longer be used for residential purposes, when the hardship is no longer necessary on the property.

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 restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits.

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 Road, Salem, by 5:00 p.m. on **February 21, 2019**. If you have

questions about this decision contact the Planning Division at (503) 588-5038 or the office. This decision is effective **February 22, 2019** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions which the decisions was based are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations. A temporary manufactured home/RV under hardship conditions may be approved as a conditional use provided the need is justified and the residence will not have a detrimental impact upon the existing or potential farming and timber activity in the area.
2. The property is located on the west side of Victor Point Road NE approximately 2,470 feet south of the intersection with Finlay Road NE. The subject parcel contains an existing dwelling, farm and accessory structures, well, and septic system. The property was subject of Conditional Use #CU98-73 that approved a medical hardship dwelling and was closed in 2000. Conditional Use (CU18-051) was recently approved to place a temporary home for medical hardship purposes for Barbara Sheridan Winderbaum, however it is no longer needed for her. The hardship is now proposed to be converted to Emily Rowley-Krueger, the daughter-in-law of Harold and Abigail Krueger.
3. Surrounding properties in all directions are medium-sized parcels zoned EFU and in various types of farm use.
4. A signed Physician's Certificate has been submitted for Emily Rowley-Krueger indicating she has medical conditions that preclude her from maintaining a complete, separate, and detached dwelling apart from her family.
5. Marion County Building Inspection commented that permits are required for any new construction or placement of a manufactured home.

Marion County Building Inspection Onsite Wastewater Specialist commented that septic permits are required.

Silverton Fire District commented that the use would have to comply with fire code and access requirements.

Marion County Assessor's Office provided information regarding taxes on the subject properties.

6. To approve a manufactured home/RV under hardship provisions, the applicants 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. A Physician's Certificate was submitted with the application that establishes Emily Rowley-Krueger's circumstances constitute a medical hardship. She requires full time assistance and is not able to fully perform day-to-day duties in caring for herself. Emily Rowley-Krueger will live in the hardship dwelling with her husband, Aram Krueger, and the care she needs will be provided by her mother-in-law and father-in-law, Harold and Abigail Krueger. The evidence also indicates the hardship dwelling will be relatively temporary in nature. In CU18-051 the applicants filed a Removal Agreement that ensures that the hardship dwelling will be removed when the hardship is no longer needed. This removal agreement is considered to be valid for the proposed changes to the medical hardship approval. The proposal satisfies the criteria #6(a), (b), (c), (d), (e), and (f), the criterion in #6(g) can be made a condition of any approval.
8. Since the property is located in an EFU zone, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:
 - (a) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*
 - (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
 - (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
 - (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
 - (e) *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.*

The proposal will allow the placement of a temporary home on the property. There is no evidence to indicate that the temporary dwelling will have any adverse effects on surrounding properties in farm use. It will not significantly increase traffic on area roads. Fire protection is provided by Silverton 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 existing hardship dwelling has not had any significant adverse impact on farm or forest practices in the area, watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality, created a significant amount of noise, impacted potential water impoundments or conflicted with mineral and aggregate sites. The proposal meets the criteria for a conditional use in the EFU zone.

9. Based on the above and subject to conditions, the applicants' request meets all applicable criteria to continue the existing medical hardship approval for Emily Rowley-Krueger and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: February 6, 2019

If you have any questions please contact Patty Dorr 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.