



Marion County **OREGON**

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MEMORANDUM

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Lisa Milliman
SUBJECT: Conditional Use 19-010/Maddux
DATE: April 3, 2019

The Marion County Planning Division has reviewed the above-referenced application and offers the following comments:

FACTS:

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 hardship dwelling 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 subject property is located on the north side of Parker Lane SE, approximately 1,150 feet east of the intersection of Woodpecker Drive SE and Parker Lane SE. The property contains a dwelling, pool house occupied as a dwelling, an ag-exempt building, well and septic drainfields. The ag-exempt building is described as an equine facility with four stalls, wash bay, feed storage area and tack room in Ag-Exempt documents filed with Marion County Building Inspection. There is no pool on the property, nor does the equine facility appear to have ever been used to house and feed horses. The property was the subject of Conditional Use #CU87-73 that approved a manufactured home as a temporary medical hardship dwelling and considered a legal parcel for land use purposes.
3. The applicant applied for a medical hardship dwelling after being served with notice by Marion County Building Inspection to correct violations of the Marion County building code. The violations were regarding modifications to the pool house that were not permitted by Building Permit #555-16-001866-STR issued for construction of a pool house. The building permit approved construction of a building designed to provide changing rooms, bathrooms, gathering room, and a pool mechanical room. The pool house was later converted to a dwelling with the addition of a full kitchen and closets and occupied by the applicant's mother without building permits or other authorization by Marion County. Additional building code violations also exist with respect to improper construction and use of the septic system that serves the pool house.

4. All surrounding properties are zoned EFU and in various types of farm use.
5. According to the Soil Survey of Marion County Oregon, 100% of the property is composed of high-value farm soils.

COMMENTS:

Marion County Code Enforcement commented that there is an active code enforcement case on the property regarding use of the pool house as a dwelling.

Marion County Building Inspection commented that building permits will be required to convert the accessory structure to a dwelling unit. Also, septic permits will be required. It is strongly recommended to contact Marion County Building Inspection at 503-588-5147.

All other commenting agencies stated no objection to the proposal.

STAFF FINDINGS AND ANALYSIS:

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:
 - (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.*

The applicant submitted Medical Care Provider Certificates for Doris Hutmacher, mother of Eric Maddux, and Leilani Maddux, niece of the applicants. Based on this evidence, it is determined that Doris Hutmacher's and Leilani Maddux'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 applicant's statement indicates that Doris Hutmacher is the guardian of Leilani Maddux and is responsible for providing the care that Leilani Maddux needs. The applicant's statement indicates that the applicants, Jessica and Eric Maddux, will provide assistance to Doris Hutmacher as needed, but does not indicate how care will be provided to Leilani Maddux in the event that Doris Hutmacher cannot provide the needed care. It is not clear how a person with a medical hardship that leaves them unable to maintain a separate residence apart from their family can be the primary caregiver for another individual with needs that preclude independent living. It cannot be determined that the criterion in 6(a) is met. The criterion in 6(b) is met.

- (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.*

Mr. Maddux is related to both people with medical hardship, and resides in the primary dwelling on the subject property. This criterion is met.

- (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.*

The applicants stated they will provide care for Ms. Hutmacher when needed. It was not stated what care might be needed by Ms. Hutmacher or how care will be provided to Ms. Maddux if Ms. Hutmacher is unable to provide her care. It cannot be determined if this criterion is met.

- (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.*

If approved, the requirement to sign and record a Removal Agreement and render the hardship dwelling uninhabitable within 90 days of the date the person with the hardship or the care provider no longer reside on the property should be made a condition of any approval.

- (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.*

The proposed hardship dwelling is neither a manufactured home nor a recreational vehicle. A variance to this requirement is also requested and the criteria for approving such a variance will be addressed below. The existing pool house is located approximately 50 feet from the primary dwelling and uses the same driveway as the primary dwelling. The pool house is served by an onsite sewage system that is currently in violation of Marion County building code. This criterion is partially met. Any approval would have to include a requirement to bring the septic system into compliance and obtain approval for the system 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.*

If approved, this can be made a condition of any approval.

7. 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.*
8. If approved, the proposal will allow the continued habitation of the pool house as a dwelling on the property. The pool house replaced an accessory building that previously existed at the same location. There is no evidence to indicate that the second temporary dwelling will have any adverse effects on surrounding properties in farm use if existing building code violations are corrected. In addition, the county requires that a Farm/Forest Declaratory Statement be recorded with the property deed acknowledging the property is in a resource zone and may be affected by nearby farming and forestry uses. The hardship will not significantly increase traffic on area roads, fire protection is provided by the Stayton Fire District and the Marion County Sheriff provides policing. Other rural services such as well and septic are available on the property. Due to the temporary and residential nature of the use, habitation of the existing pool house as a temporary 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 appears to satisfy the criteria above.
9. The Marion County Zone Code does not allow for a medical hardship in an existing structure other than a recreational vehicle or manufactured home. However, in Oregon Revised Statutes 215.283(2)(L) indicates “One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship” is allowed if the county chooses to include it in their zone code. Marion County chose not to include this section in the Marion County Code. The applicant requests a variance to MCC 17.120.040 (f), to allow a temporary residence other than a mobile home or recreational vehicle be used for a medical hardship. The requirements for a variance are found in MCC 17.122.020 and include:
- (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.*

The applicant requested the variance so that Doris Hutmacher and Leilani Maddux could continue living in the pool house, which is a site built structure intended to remain permanently on the property. The applicant did not address any of the criteria for a variance in the applicant's statement. The applicant did not provide any information on why a manufactured home or recreational vehicle could not be placed on the 19.54-acre parcel. The need for the variance appears to be the fact that the pool house on the property has been converted into a dwelling. The conversion was done after the applicant constructed the building under a building permit that explicitly stated that the structure was not approved for habitation as a dwelling. This does not constitute an "unreasonable hardship or practical difficulty" that can only be relieved by a variance to the requirement for the hardship dwelling to be a manufactured home or recreational vehicle. Moreover, since the property has been listed for sale since at least September of 2018, it is apparent that the applicants do not intend to maintain residence on the property for an extended period of time.

10. Marion County Code 17.110.680 states:

"No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, or is being used or has been divided in violation of the provisions of this title, unless issuance of the permit or land use approval would correct the violation."

The pool house was approved as an accessory structure for occasional use and not to be lived in as a dwelling and was later converted to a dwelling without building permits. This structure is currently being occupied by Doris Hutmacher. The septic system for the pool house was not constructed in accordance with the Marion County building code and is currently under code enforcement to bring it into compliance.

When the property was listed for sale in September of 2018, the property was advertised as having 6 bedrooms and 7 bathrooms, as well as a separate guest house. The listing was revised to a four bedroom, four bathroom house after Marion County Code Enforcement contacted the listing agent. This does not indicate that the applicants intended to use the pool house for its intended use. In addition, Marion County Code Enforcement was unable to verify that the structure built as an ag-exempt equine structure is being used for agricultural purposes and not as an additional residence or another non-agricultural purpose. Based on this evidence, it cannot be determined that approval of this conditional use would remedy all of the land use violations on the property.

CONCLUSION:

11. Based on the above evidence, the applicant's request does not appear to meet all applicable criteria for using the pool house as a temporary medical hardship and the Planning Division recommends the request be denied. In addition, the request cannot be approved because the property is in violation of state land use laws.
12. If approved, Planning recommends the following conditions be placed upon the approval:
 - A. The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division and correct all existing building code violations.
 - B. The applicant shall provide documentation satisfactory to the Planning Director that the ag-exempt structure is being used for agricultural purposes only or shall obtain a building permit for use of the structure as an allowed accessory use of the structure.

- C. The applicant is 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 Planning Division Physician's Certificate verifying that the hardship conditions continue to exist.
- D. Within 90 days of the date the person(s) with the hardship or the care provider no longer resides on the property, the pool house which is used as a hardship dwelling shall be rendered uninhabitable by removal of the kitchen and bedroom closets and returning the structure to the configuration approved in Building Permit Number 555-16-001866-STR.
- E. The applicants shall submit an Existing Dwelling Removal Agreement to the Planning Division. 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. The applicants shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
- F. 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.
- G. This hardship approval is applicable to Doris Hutmacher and Leilani Maddux only and is not transferrable.