

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. 19-031**

APPLICATION: Application of Janice Dixon for a conditional use to change the occupant of an existing hardship dwelling, approved by CU02-009, on a 1.42 acre parcel in an EFU (Exclusive Farm Use) zone located at 8822 Umatilla Street NE, Salem (T6S; R2W; Section 12B; tax lot 1000).

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 **October 30, 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 CU02-009 remains in effect. This agreement specifies that the 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 **October 30, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or the office. This decision is effective **October 31, 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 south side of Umatilla Street NE, approximately 1,000 feet east of its intersection with 86th Avenue NE. The property contains a single family dwelling, accessory structures, well and septic system. The property was the subject of Conditional Use Case CU02-009 that approved a temporary medical hardship dwelling for Dale Lively, however it is no longer needed for him. The hardship is now proposed to be converted to Janice Dixon, the daughter of Dale Lively.
3. Surrounding properties in all directions are zoned EFU and in residential and farm use.
4. A signed Primary Care Provider Certificate has been submitted for Janice Dixon 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 Onsite Wastewater Specialist commented that septic authorization is required. Marion County Fire District No. 1 commented that the use must comply with fire code and access requirements.
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. Based on the evidence provided by the applicants, including a signed primary care provider certificate, Janice Dixon'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 her family. Janice Dixon will live in the hardship dwelling and the care she needs will be provided by her son, Shawn Hoover. The evidence also indicates the hardship dwelling will be relatively temporary in nature. In CU02-009, 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 continued occupancy 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 Marion County Fire District No. 1 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, now for Janice Dixon, and is **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: October 15, 2019

If you have any questions please contact Seth Thompson 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.