

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. 21-027

APPLICATION: Application of Rick and Katherine Thompson for a conditional use to change the occupant of an existing medical hardship dwelling on a 15.8 acre parcel in an SA (special Agriculture) zone located at 8794 Shaw Sq. SE, Aumsville (T8S; R2W; Section 24B; Tax Lot 1400).

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

EXPIRATION DATE: This conditional use permit is valid only when exercised by **July 22, 2023**. 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 situation continues. The Planning Division will mail renewal forms to the property owner approximately two months prior to permit expiration.

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

1. All conditions of approval listed in Conditional Use Permit 13-031 shall remain in effect.
2. 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 septic systems prior to renewal of hardship conditional uses.
3. The applicant is advised that the Manufactured Dwelling/RV Disconnect Agreement, which specifies that placement of the manufactured dwelling or RV, is temporary and that it will be removed, disconnected, or decommissioned after the hardship ceases, as required in Conditional Use Permit 13-031, remains in effect.

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 #6 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 Rd. NE, Salem, by 5:00 p.m. on **July 22, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 23, 2021** unless further consideration is requested.

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

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding SA (Special Agriculture) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the west side of Shaw Sq. Rd. SE, approximately 2100 feet south of its intersection with Silver Falls Hwy SE. The property contains an existing dwelling, accessory structures, well and septic system. The property received approval for the medical hardship in 2013 (CU13-031) and the manufactured dwelling remains on the site in the same location. The property was the subject of Conditional Use 74-11. It is therefore considered a lawfully created parcel.
3. Adjacent properties to the north are zoned AR and consist of rural residential homesites. Surrounding properties to the west, east, and south are zoned SA and consist of various sized farm parcels. The subject property on the southwest is bordered by the North Santiam Highway.
4. Soil Conservation Service Soil Classifications for Marion County indicate that the parcel is composed of 100% high-value soils.
5. The manufactured dwelling was originally approved as a medical hardship for Bert and Jeanette Bailey, under CU13-031. The application indicates that Bert and Jeanette Bailey no longer occupy the dwelling. The applicants are requesting to change the occupant of the hardship dwelling to Rick and Katherine Thompson. Rick and Katherine's son will live in the primary dwelling and be Rick's caretaker.
6. Various governmental agencies were contacted about the request. All contacted agencies either failed to respond or had no comment.
7. 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.*

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.*

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.*

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.*

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.*

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 inhabitation 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.*

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.*

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**

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.

9. Based on the available evidence, Rick Thompson'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 evidence suggests the caretaker, Jacob Thompson, will reside in a dwelling on the property and has the necessary skills to assist the applicant. The criterion in 8 (D) is met.

The manufactured home already exists, is located in close proximity to the primary dwelling, and is connected to the same septic system as the primary dwelling. The dwellings are clustered towards the north end of the property in a way that allows for the remaining land to be farmed. The structure will not be moved and no additional access is being proposed. The criterion in 8 (G) is satisfied.

Moreover, the applicant has previously signed a Manufactured Dwelling Removal declaratory statement through the approval in CU13-031. The statement is located in the records of Marion County at Reel 3577 and Page 78. This ensures that the manufactured home will be removed from the property or converted to an allowed use and no longer used for residential purposes when the hardship ceases to exist. This satisfied criteria in 8 (I) and (J).

9. Since the property is located in a SA zone, the proposal must also satisfy the compatibility criteria in MCC 17.137.060(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.*
10. 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 Aumsville 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 SA zone.
11. Based on the above findings, it has been determined that the request to amend the approved occupant(s) as listed in CU13-031 meets all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: July 7, 2021

If you have any questions regarding this decision contact Ryan Dyar 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.