

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. 21-050**

**APPLICATION:** Application of Bret and Karen Lytle for a conditional use permit to use an existing structure and an expansion of the existing structure as a medical hardship dwelling on a 2.95 acre property in an SA (Special Agriculture) zone located at 357 Rees Hill Road, Salem. (T8S, R3W, Section 21DA, Tax Lot 600).

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

**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 **December 23, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 24, 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 Special Agriculture (SA) zone is to promote the continuation of commercial agriculture and forestry operations.
2. The property is located north of Rees Hill Road, approximately 0.32 miles northwest of the intersection of Rees Hill Road SE and Trillium Lane SE. The property is developed with a home and one outbuilding. The parcel was first described in its current configuration on June 21, 1972 via deed recorded as Volume 729, Page 172. The parcel is considered legal for the purposes of land use.
3. Surrounding properties are zoned SA and are developed with single-family homes and residential accessory structures. Several surrounding properties are in a mix of farm and forest uses.
4. Soils Survey of Marion County Oregon indicates that 47.5% of the subject property soils are High-Value Farmland with soils consisting of McAlpin Silty Clay Loam 0-3% slopes, Nekia Silty Clay Loam 30-50% Slopes, Nekia Stony Silty Clay Loam 2-12% Slopes, and Nekia Very Stony Silty Clay Loam 2-30% slopes.
5. A signed Primary Care Provider Certificate has been submitted for Daphne Lytle indicating she has medical conditions that preclude her from maintaining a complete separate and detached dwelling apart from her family.
6. Marion County Septic Division commented that "the structure to be remodeled to a hardship dwelling must be served by an onsite sewage treatment system approved by Marion County. If the applicant wishes to connect to the existing septic system, an authorization notice is required. If the applicant wishes to replace the septic system, a site evaluation and construction/installation permit is required".

Marion County Building Division commented that a building permit is required for the conversion of the structure.

Salem Suburban Fire District commented that there may be water and access improvements necessary to support the new type of development.

Marion County Addressing commented that the medical hardship dwelling will be assigned an address of 359 Rees Hill Road SE if approved.

All other contacted agencies either failed to comment or had no objection to the proposal.

7. In order to approve a manufactured home/RV under medical hardship the applicant must demonstrate compliance with the specific criteria listed in Section 17.120.040 of the Marion County Code (MCC). 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. 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.*

8. Based on the available evidence, Daphne Lytle'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 narrative states that the occupants of the hardship dwelling need assistance as needed due to knee and hip deterioration; the applicant does not provide information showing that the proposed caregiver has the necessary skills to provide medical care. The applicants were contacted twice via mailed letter for additional information but none was provided to staff. The applicants propose to convert and expand an existing garage on the property. Conversion of the garage is allowed to serve as a medical hardship, however an expansion is not allowed as it would constitute new construction which is not allowed pursuant to ORS 215.283(2)(L) and MCC 17.120.040(H). The applicant was contacted twice via mail to address this standard; however staff never receive a response. The requirement that a Manufactured Dwelling/RV Removal or Disconnect Agreement be filed by the applicant ensures that the conversion of the existing structure will be removed from the property or disconnected and no longer used for residential purposes when the hardship no longer exists. The applicant also does not address how the hardship dwelling will be removed and how the occupants of the hardship dwelling would be removed upon termination of the hardship dwelling. Based on these facts, the criteria in 17.120.040 (D)(H)and (J) are not satisfied.
9. Since the property is located in the SA zone, the proposal must also satisfy the compatibility criteria in MCC 17.136.060(A). Those requirements are:
  - (1) *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.*
  - (2) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
  - (3) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
  - (4) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
  - (5) *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 applicant does not provide any findings addressing criterion (1), therefore, staff is unable to determine that this criterion is satisfied. The property is served by the Salem Suburban Fire District and the Marion County Sheriff's office. Water and sewage treatment is provided by a well and existing septic system. Comments submitted by affected agencies indicate that services would be available when the use is established. Based on this fact, criterion (2) is met. The applicant does not address if there would be any impacts on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, or air and water quality. The subject property is located within a Sensitive Groundwater Overlay, a floodplain (Battle Creek), and a Geologically Hazardous Area. As the applicants did not address criterion (3), staff is unable to determine that there would be no significant

adverse impacts. With the exception of installation, the use is not expected to increase noise levels beyond those generated by other nearby residential uses, based on this, criterion (4) is satisfied. There are no identified water impoundments or significant mineral and aggregate sites near the property, therefore criterion (5) is satisfied. Based on the above listed facts, criteria (1) and (3) are not met.

11. Based on the above findings, it has been determined that the applicants' request to use an existing structure and an expansion of an existing structure as a medical hardship dwelling does not satisfy all applicable decision criteria and is **DENIED**.

Brandon Reich  
Planning Director

Date: December 8, 2021

If you have any questions regarding this decision contact Alyssa Schrems 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.