

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. 23-013

APPLICATION: Application of Tyler and Lisa Lockhart for a conditional use permit to place a manufactured home for medical hardship purposes on a 0.57-acre property in an EFU (Exclusive Farm Use) zone located at 5451 Lardon Rd NE, Salem. (T7S, R2W, Section 08DD, Tax Lot 600).

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 **April 29, 2025 (two years)**. 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 continues to exist.

WARNING: A decision approving the proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed use. To ensure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.
2. The applicant shall submit a Manufactured Dwelling/RV Removal or Disconnect Agreement (enclosed) to the Planning Division. This agreement specifies that placement of the manufactured home or RV is temporary and it will be removed, or the RV disconnected and no longer used for residential purposes, after the hardship ceases.
3. The applicant shall submit a Farm/Forest Declaratory Statement (enclosed) to the Planning Division.
4. If the manufactured home or recreational vehicle is connected to the existing septic system, a shared system evaluation shall be performed every 5 years as per Marion County Building Inspection Policy.

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

5. The proposed manufactured home shall use the existing septic system if it is feasible.
6. The manufactured home or recreational vehicle shall be located as shown on the applicant's site plan.
7. 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 Primary Care Provider 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 systems prior to renewal of hardship conditional uses.
8. 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 the

absence or if absent from the property for at least 30 consecutive days prior to submission of the renewal application.

9. 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.
10. 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.
11. Prior to issuance of a building MD placement permit for the medical hardship dwelling, acquire an Access Permit, and under the Permit consolidate the two driveway access approaches into a single access not to exceed 24 feet in width measured at the front property line.
12. Driveway access to the public R/W must meet PW Engineering standards. Notwithstanding exception granted for topographical, drainage and/or other legitimate spatial constraints (such as conflict with a septic drain field), residential properties are authorized a total of one (1) access. In 2001 the shop building was constructed, and an approved Driveway Exemption #01-06096 on-record documented a single (northwest) access. Subsequently to that time, a 35-foot wide, secondary access serving the shop was apparently installed to the southeast without permits, potentially by a prior owner.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or another 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 any restrictions or conditions thereon.

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) based on 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 **May 1, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 2, 2023**, unless further consideration is requested.

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

1. The property is designated Primary Agriculture in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to allow for the creation of acreage home sites at a density that maintains the character and environmental quality of the County's rural residential areas.
2. The property is located on the north side of Lardon Road NE, approximately 140 feet northwest of the intersection of Lardon Road NE and 55th Avenue NE, near Salem. The property currently contains a dwelling and an accessory structure. The parcel was created as Lots 10 and 11 of the Fletcher's Subdivision in 1968 and is therefore a legal parcel for land use purposes.
3. The zoning surrounding the subject parcel is exclusively EFU. This mainly consists of a mix of rural residential and small to large farms. All adjacent parcels are developed with dwellings.
4. A signed Primary Care Provider Certificate has been submitted for Dovie Bertolucci indicating she has medical conditions that preclude her from maintaining a completely separate and detached dwelling apart from her family.
5. The following comments were submitted by various agencies who had been notified about this land use case:

Marion County Land Development, Engineering, and Permits (LDEP) commented:

Engineering Condition

Condition A – Prior to issuance of a building MD placement permit for the medical hardship dwelling, acquire an Access Permit, and under the Permit consolidate the two driveway access approaches into a single access not to exceed 24 feet in width measured at the front property line.

Driveway access to the public R/W must meet PW Engineering standards. Notwithstanding exception granted for topographical, drainage and/or other legitimate spatial constraints (such as conflict with a septic drain field), residential properties are authorized a total of one (1) access. In 2001 the shop building was constructed, and an approved Driveway Exemption #01-06096 on-record documented a single (northwest) access. Subsequently to that time, a 35-foot wide, secondary access serving the shop was apparently installed to the southeast without permits, potentially by a prior owner.

Marion County Building Division commented that there are no Building Inspection concerns. Permit(s) are required to be obtained prior to the manufactured home installation. If the proposed home is less than 3 feet to any adjoining property line, additional fire resistive construction may be required on the closest exterior wall.

6. All other commenting agencies state no objections or did not 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.*

The applicant has stated that their mother, Dovie Bertolucci, has a medical condition that does not allow her to live apart from family that can provide care. In particular, the applicant has stated that they intend to provide care by driving the applicant's mother to doctors appointments, cooking, cleaning, and other various tasks. The criterion is met.

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.*

This shall be made a condition of approval. Therefore, the criterion is met.

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.*

This shall be made a condition of approval. Therefore, the criterion is met.

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.*

Based on the applicant's statement and site plan, the applicant is proposing to place the medical hardship dwelling will within 100 feet of the main residence. Though the parcel is zoned EFU, it totals 0.57 acres and has been developed solely as a residential use which is a part of the Fletcher's Subdivision. As a result, little to no farming activities have been conducted and the placement of a medical hardship dwelling will not impact that. Additionally, the applicant is proposing that the medical hardship dwelling be connected to the existing well and septic system and the applicant is not proposing to create a new driveway access to Lardon Road NE. The criterion is met.

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.*

Applicant is proposing to place a manufactured dwelling. The criterion does not apply.

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.*

This shall be made a condition of approval. Therefore, the criterion is met.

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.

These shall be made a condition of approval. Therefore, the criterion 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*

This shall be made a condition of approval. Therefore, the criterion is met.

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.

This shall be made a condition of approval. Therefore, the criterion is met.

8. Since the property is located in an AR zone, the proposal must also satisfy the compatibility criteria in MCC 17.128.040 MCC. Those requirements are:
- A. *The conditional use as described by the applicant will be in harmony with the purpose and intent of the zone.*
- The zone is intended to provide residential lands and the hardship is a residence for infirmed persons. Therefore, the criterion is met.
- B. *The use will not increase traffic beyond the capacity of existing roads.*
- Any driving related to the hardship dwelling will be minimal and within the capacity of the existing roads to support that traffic. This criterion does not apply.
- C. *Adequate fire protection and other rural services are, or will be, available when the use is established.*
- The property is served by the Marion County No. 1 Fire District and the Marion County Sheriff. Any other necessary rural services, such as well and septic, are already present on the property. The criterion is met.
- D. *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air, and water quality.*
- The manufactured dwelling will be connected to well water and a septic system and is residential in nature; no adverse impacts are expected. The criterion is met.
- E. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- The hardship is not expected to create any noise other than typical residential sounds. The criterion is met.
- F. *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.*
- As indicated in (d), the temporary dwelling will be connected to a well and septic system and will not significantly impact water impoundments, or any significant mineral and aggregate sites identified in the comprehensive plan. The criterion is met.
9. Based on the available evidence, Dovie Bertolucci'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, Tyler and Lisa Lockhart, live together in the primary residence. The evidence also indicates the proposed manufactured dwelling would be relatively temporary in nature. The requirement that a Manufactured Dwelling Removal be filed by the applicant ensures that the manufactured dwelling will be removed from the property when the hardship is no longer needed. The applicant is proposing to connect to the existing septic system and well on-site and is within 100 feet of the main dwelling.
10. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for placing a temporary manufactured home/RV for medical hardship purposes and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: April 14, 2023

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173.

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.