

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. 24-024

APPLICATION: Application of Jamie Coleman on behalf of Thomas & Janice Coleman for a conditional use permit to change the occupant of a medical hardship dwelling on a 6.13-acre parcel in an AR (Acreage Residential) zone located at 13495 Duckflat Rd SE, Turner (T9S; R2W; Section 28B; Tax lot 3600).

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 **September 6, 2026**. 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 CU16-023 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 after the hardship ceases, as required in CU16-023, 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 #5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. The applicants should contact the Jefferson Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

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 **September 6, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 9, 2024**, 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 Rural Residential in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding Acreage Residential (AR) zone is to provide small acreage homesites.
2. The property is located at 13495 Duckflat Rd SE on the west side of Duckflat Rd, roughly a half-mile north of the community of Marion and 800-feet south of the intersection between Duckflat Rd and a private road named Puppy Tail Ln SE. The property contains a single-family dwelling designated as the primary dwelling and a manufactured home, which is the hardship manufactured dwelling, which is located south of the primary dwelling across the main parking pad. The property received approval for the medical hardship in 2016 (CU16-023) and the manufactured dwelling remains on the site in the same location. The subject property was legally created in the Broken Diamon subdivision in 1973 and has remained in the same configuration since. As such, the property is considered legal for land use purposes.
3. Surrounding properties consist of similarly zoned AR parcels with acreage homesites, which are all located on the west side of Duckflat Rd. On the east side of Duckflat Rd are large EFU farm parcels in use in commercial agriculture. Finally, to the south are smaller SA zoned parcels, mostly in uses as natural forested areas that are not in active agricultural use.
4. The manufactured dwelling was originally approved as a medical hardship for Janice K Coleman under CU16-023. Available information found that Janice no longer occupies a dwelling on the property. The applicants are requesting to use the existing manufactured dwelling so that Thomas J. Coleman can be provided care by his grandson, Thomas G. Coleman, as the grandson was the care provider for Janice during the previous hardship.
5. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Septic commented: "An authorization with a field visit is required. The authorization notice will be in effect for up to 5years, bot exceeding the cessation of the hardship. If after the 5 years the hardship is still required, a new authorization will be required."

All other commenting agencies stated no objection to the proposal or failed to provide comments.

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. Those that apply to this case 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 applicants are proposing a change for the individual with the medical hardship to be Thomas J. Coleman. The caregiver, Thomas G. Coleman, is his grandson and was the care provider living in the mobile home when Thomas J.'s wife Janice Coleman was the individual with the medical hardship. Thomas G. will continue to provide care in the same manner as he did during the previous medical hardship by helping with daily tasks, medications, appointments and meals. 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 may be 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.*

The applicants shall adhere to the criteria stated in this section as a condition of approval. This was part of the conditions of approval for case CU16-023.

- 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.*

The applicants have not addressed this in the Applicant Statement; however, the applicants shall adhere to the criteria stated in this section as a condition of approval. This was part of the conditions of approval for case CU16-023.

- 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.*

The applicants are proposing to use an existing manufactured home placed on the property as part of the temporary medical hardship approved by CU16-023. The manufactured home was established in compliance with all the points listed in this section as they were made part of the conditions of approval. Therefore, 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.*

The applicants stated that the existing manufactured home established for the previous hardship CU16-023 will be used for the new medical hardship. Therefore, this 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.*

The applicants have not addressed this in the Applicant Statement; however, the applicants shall adhere to the criteria stated in this section as a condition of approval. This was part of the conditions of approval for case CU16-023.

- 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.*

This section was part of the conditions of approval for case CU16-023. The condition shall continue to be in effect for the duration of the new medical hardship.

- 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 section was part of the conditions of approval for case CU16-023. The condition shall continue to be in effect for the duration of the new medical hardship.

- 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 section was part of the conditions of approval for case CU16-023. The condition shall continue to be in effect for the duration of the new medical hardship

7. Since the property is located in an AR zone, the proposal must also satisfy the general 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 current zoning of the subject property is AR (acreage residential) which has the primary purpose of providing acreage residences. The applicant proposes to use an already established temporary hardship dwelling on the site as an additional residence for a family member requiring extra assistance with daily tasks. The criterion is met.

- (b) *The use will not increase traffic beyond the capacity of existing roads.*

No complaints about increased traffic in the area were raised to Marion County Planning in the years following the establishment of the temporary hardship dwelling for the previous occupant. The proposed new occupant for the hardship was also the spouse of the former occupant of the hardship dwelling and was already living in the house during the duration of that medical hardship. It can be reasonably assumed that the change in occupant will not result in an increase in the amount of traffic in the area beyond any increases resulting from the previous hardship occupation. The criterion is met.

- (c) *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The property is serviced by the Jefferson Fire District and 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.*

Marion County Planning has not received any complaints about significant adverse impacts to any of the above-listed characteristics of the area since the temporary hardship dwelling was established on the property. The proposed new occupant was already living in the temporary hardship dwelling since it was established for their spouse. With the passing of their spouse, there will now be one less person living in the hardship dwelling, which will likely result in a decrease in adverse impacts caused by the hardship dwelling to the above listed environmental characteristics. The criterion is met.

- (e) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

Marion County Planning has not received any complaints about noise generated by the previous occupancy of the medical hardship dwelling. The hardship dwelling is not expected to produce noise other than typical residential sounds and no increase from the previous medical hardship occupation is expected. 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.*

There are no nearby water impoundments or mineral and aggregate sites for the hardship dwelling to adversely affect. The criterion is met.

14. Based on the above findings, it has been determined that the request to amend the approved occupant(s) as listed in CU16-023 meets all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: 8/22/2024

If you have any questions regarding this decision contact Alexander Seifer 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.