

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Upholding the Planning )  
Director's Approval and Denying the Appeal of )  
a Temporary Hardship Dwelling in an Existing ) Board Order 19-156  
Manufactured Home Located in the AF-10 )  
Zone at 16785 NE Welch Road, Newberg, )  
Tax Lot 3206-3700; Planning Docket CTS-01-19 )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on May 16, 2019, Commissioners, Mary Starrett and Casey Kulla being present, and Commissioner Richard L. "Rick" Olson excused.

IT APPEARING TO THE BOARD as follows:

A. On February 13, 2019, the Planning Director approved, with conditions, a request by Gloria Dreske for a conditional use permit to use an existing manufactured home on her property (Tax Lot 3206-3700) as a temporary health hardship dwelling for Joe and Sue Roberts.

B. The Planning Director's decision was appealed to the Board, which held a public hearing regarding the application on April 25, 2019. Following the close of the hearing, the Board deliberated and voted unanimously (3-0) to uphold the Planning Director's decision, deny the appeal, and approve the application, with additional conditions; NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Director's decision to approve Docket CTS-01-19 is hereby upheld, the appeal filed in this matter is denied, and the application is approved.

Section 2. The findings and conditions attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of, and as part of, this order.

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DONE this 16<sup>th</sup> day of May, 2019 at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

Unavailable for signature

BRIAN VAN BERGEN

County Clerk

Chair

RICHARD L. "RICK" OLSON

By:

Deputy Carolina Rook

Commissioner

MARY STARRETT

FORM APPROVED BY:

Commissioner

CASEY KULLA

Timothy S. Sadlo

Senior Assistant County Counsel

**Exhibit A  
Board Order 19-156**

**Findings in Support of Approval of  
Docket No. CTS-01-19 and Conditions of Approval**

**FINDINGS OF FACT:**

**A. Background Facts**

DOCKET NO.: CTS-01-19

REQUEST: Approval of a temporary health hardship dwelling for Gloria Dreske to care for Joe & Sue Roberts during the term of their health hardship. An existing manufactured home is proposed to be used as the temporary residence.

APPLICANT: Gloria Dreske

APPELLANT: Gerhard Taeubel

TAX LOT: 3206-3700

LOCATION: 16785 NE Welch Road, Newberg

ZONE: AF-10, Agriculture/Forestry Small Holding

CRITERIA: Sections 501.03(B) and 1202 of the Yamhill County Zoning Ordinance

1. *Lot Size:* Approximately 17.25 acres.
2. *Access:* Welch Road.
3. *On-site Land Use and Zoning:* The parcel contains a single-family dwelling, a manufactured home and accessory buildings. The structures are located in the southeastern portion of the property, near the corner of Welch Road and Chehalem Drive.
4. *Surrounding Land Use and Zoning:* The surrounding area to the north, northwest and east is zoned AF-10. Parcels within this area range in size from 2 to 10 acres, many with residences. To the south and southwest is zoned EF-20. The area to the southwest is a Measure 37 subdivision of approximately 41 one-acre lots. To the south are parcels of 2.5 to 4-acres with homes.
5. *Water:* City of Newberg water.
6. *Sewage Disposal:* The main home and the hardship home share the same on-site septic system.

7. *Fire Protection:* Tualatin Valley Fire and Rescue.

8. *Previous Actions:* In 1997, there was a conditional use approval for a metal recycling business through Docket C-29-97 which is no longer in operation.

In 1998, a temporary hardship dwelling was approved for relatives to care for Mr. Dreske. Mr. Dreske renewed the hardship in 2000. In 2006, the County sent Mr. Dreske a letter stating that the permits for the hardship home were expired and the home needed to be removed. The Planning Director at the time directed the code enforcement officer to wait on the home removal as the Dreske's had filed a Measure 37 claim and, if approved, it would have allowed the hardship as a permanent residence once partitioned. It appears at this point the previous director also stopped sending notices to the property owner for hardship renewal. In response to the letter from code enforcement Mr. Dreske obtained final inspections on the manufactured home. In 2006, the Measure 37 claim was approved through Docket M37-39-06. Soon after that approval the law changed and it doesn't appear the Dreske's followed through with any further actions to change their Measure 37 claim to a Measure 49 claim and divide the property or renew the hardship approval. The appellant is correct in stating that the hardship dwelling should have been removed or converted once the hardship no longer existed.

The appellant states that the manufactured home has remained on the property after the expiration of previous approvals and that during the intervening years, Ms. Dreske has permitted several persons to reside in the dwelling without Planning Department approval and for reasons not related to a hardship. The appellants also state that the current occupants, Mr. and Mrs. Roberts, lived in the manufactured home for several months prior to Ms. Dreske applying for approval with the Planning Department. On December 28, 2018 the County received a complaint that the manufactured home was occupied without approval. The County code enforcement officer did a site visit and then followed up with a phone conversation with Ms. Dreske on January 9, 2019 to inform her that she needed a hardship approval. Ms. Dreske stated that she was unaware the approval had expired. On January 25, 2019, Ms. Dreske applied for the hardship dwelling.

## **B. Hardship Dwelling Provisions and Analysis**

1. Section 501.03(B) allows the conditional use approval of a hardship dwelling:

“One manufactured dwelling or recreational vehicle, or the temporary use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or relative, as defined in ORS 215, of the resident, subject to the following:

(1) The resident or relative of the resident is aged, infirm, or for health-related reasons, is incapable of maintaining a complete separate residence.

(2) The permit for the manufactured dwelling for the term of hardship shall be valid for a period of two years or a shorter period as determined appropriate by the Director or hearings body. A permit may be revoked by the Director at any time, if

any of the reasons for which the permit was granted are no longer applicable, or if any imposed condition is violated.

(3) The permit for the temporary dwelling for the term of hardship shall be granted to the applicant only and shall not be deemed to run with the land.

(4) The temporary dwelling shall use the same subsurface sewage disposal system as the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling.

(5) When a recreational vehicle is allowed to be used as a temporary structure the recreational vehicle site shall have services, inspected and approved by the building department which includes electricity, plumbing and connection to an approved septic system.

(6) Within three months of the end of the hardship, the manufactured dwelling shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. In the case of a recreational vehicle, within three months of the end of the hardship, it shall be removed, demolished or may remain on the property and used in accordance with Section 501.06(H). A temporary residence approved under this paragraph is not eligible for replacement.”

2. The appellants emphasize that in order to qualify for a temporary hardship dwelling the person with the hardship must be a resident or relative of the resident. The appellant has maintained that they need to be relatives of the property owner however, this is not the standard. When this complaint was submitted Mr. and Mrs. Roberts were, and continue to be, residents of the property. It should also be noted that the language in the Yamhill County Zoning Ordinance, resident or relative of the resident is identical to ORS 215.283(2)(L). It is significant that the legislature, when it enacted this provision, did not use the words ‘owner or relative of the owner’ but instead used ‘resident or relative of the resident.’

To address the above criterion 501.03(B)(1) and to demonstrate that there is a need for a hardship dwelling, the applicant has submitted notes from medical doctors for both Joe and Sue Roberts. The appellants contend that Ms. Dreske “is neither in need of care nor does she provide care for the persons residing in the manufactured dwelling.” Ms. Dreske’s response notes that Joe Roberts is 73 and Sue Roberts is 70 and that they both have medical conditions that have severely affected their ability to be able to care for themselves. Ms. Dreske’s letter, received March 15, 2019, states:

“Joe is currently experiencing full on stage 3 COPD and congestive heart failure, also Stage 3. Sue is currently under treatment for stage 4 cancer and was recently released to my care from the intensive care unit after a long hospitalization at Saint Vincent’s hospital. She has 3 separate issues currently that require either daily trips to the doctor, follow-ups, medications, or monitoring. Notwithstanding her chemotherapy treatments. She has neither the strength nor mobility to be able to

care for her husband and his dependent needs. She has been unable to work for some time due to her inability to heal properly in her compromised state. She relies on my assistance to render even the most basic of daily household chores while she tries to regain her strength. At any given time, I am assisting with providing care as necessary or needed. This care includes daily check-ins, transportation to and from doctors' appointments, hospital visits and stays, shopping for basic needs, running for medications, light housework, preparing meals, dispensing medications when necessary, and a myriad of other needs as requested."

Additionally, the Land Use Board of Appeals issued a decision in a hardship dwelling case, Kukaska v. Linn County (LUBA No. 2014-004). The first paragraph of page 9 of the decision states: "However, petitioners are correct that whether aged or infirm or both, as defined by the administrative rule the person must require "care." OAR 660-033-00130 defines hardship to mean hardship "for the care" of an aged or infirm person. Therefore, the qualifying person must require care due to age or infirmity. Petitioners suggest that such a person must require extensive or "24/7" care in order to qualify; however, the statute, rule and code do not so provide. All that is required is "care" due to age or infirmity." In this case both people residing in the hardship dwelling qualify under the hardship standard due to both age and infirmity. Based on the evidence in the record, the Roberts clearly require care under the state and local standards.

3. Regarding criterion (2), a condition is imposed by this approval to require that the applicant renew the permit after a two-year period. To assure compliance with this standard a letter is sent to the applicant just prior to the two-year period requiring them to renew the request. Renewal requires the applicant to file a renewal request and justify that the hardship still exists.

4. Regarding criteria (3) and (6), the approval is personal to Gloria Dreske and Joe and Sue Roberts. A condition is placed on any approval to recognize that the medical hardship dwelling is personal to those individuals noted in the conditions, and does not run with the land. If the property is sold, the manufactured dwelling would need to either be removed, demolished, or the new owners would need to obtain approval for a hardship dwelling. Additionally, if the occupants of the hardship home or main home change, a new application with notice to surrounding property owners would be required.

5. Regarding criterion (4), the existing manufactured home is connected to the existing septic system that serves the primary residence. The system was inspected and repaired in 1999 when the manufactured home was placed. The system is adequate to accommodate the additional dwelling.

6. Regarding criterion (5), the applicant is not proposing to place a recreational vehicle, but rather a manufactured dwelling, so criterion (5) does not apply.

### **C. Conditional Use Provisions and Analysis**

1. The conditional use criteria of YCZO Section 1202.02 are as follows:

"(A) The use is listed as a conditional use in the underlying zoning district;

(B) The use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed use;

(C) The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements, and natural features.

(D) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district.

(E) The proposed use is appropriate, considering the adequacy of the public facilities and services existing or planned for the area affected; and

(F) The use is or can be made compatible with existing uses and other allowable uses in the area.”

2. The request is consistent with criterion (A) above in that a hardship dwelling is listed as a conditional use in the AF-10 zone.

3. Regarding criterion (B), the Yamhill County goals and policies do not provide standards or criteria for review of hardship dwellings.

4. Regarding criterion (C), the parcel must be suitable for the proposed use considering its size, shape, location, topography, existence of improvements, and natural features. The subject parcel is approximately 17.25 acres and is large enough to support the proposed use, with no limiting natural features or topographic restrictions. The property has an existing residence and the manufactured home has been on the property since 1999. The parcel is located approximately one-half mile from the city limits of Newberg, has city water, an existing septic system and police and fire department services. The request satisfies the above criterion (C).

5. Regarding criterion (D), the permitted uses and the uses occurring in the area are primarily rural residential with some small farm uses. The hardship dwelling has been located on the property since 1999, with no complaints on record until the one filed December 28, 2018. The appellant commented that the increase in traffic on Welch Road is a concern as well as the obstruction of Welch Road from vehicles parking near the manufactured home. It is the applicant’s responsibility to provide off-street parking spaces, and a condition is imposed by this approval to so require. The increase in traffic from this use will be insignificant as the hardship is for two people. The temporary use of a manufactured home in a rural area will not substantially limit, impair or prevent the use of surrounding properties for the permitted uses listed in the underlying zoning district.

6. Regarding criterion (E), as noted above, the manufactured home is served by a septic system and city water, and is served by Tualatin Valley Fire and Rescue. Other public facilities and services are generally available in the area.

7. Regarding criterion (F), public notice was mailed to neighboring property owners and a public notice was printed in the newspaper. The appeal of the decision was filed noting that the approval of the application “will permit a situation to continue that negatively affects the character of our neighborhood, our quality of life and safety.” The appeal goes on to note the following consequences:

“Building of incomplete, substandard structures without property setbacks to Welch Rd.”

Ms. Dreske responded that the canvas storage shed has been removed, the addition that was built on the manufactured home has been torn down and she plans to rebuild the structure to code. Regarding the shed, staff doesn’t know what the size of the structure is, but it might be small enough that it does not require a building permit. For example, a small shed of 200 square feet or less would not require a permit and it therefore is not subject to setbacks.

“An inoperable vehicle parked adjacent to the manufactured home”

Ms. Dreske responded that the vehicle is a family heirloom, is fully drivable, and has been relocated.

“A recreational vehicle parked unlawfully for several weeks in the emergency vehicle turnout of Welch Rd.”

Ms. Dreske responded that, according to the Sheriff’s Office, the RV was not a risk or hazard and that she spoke with Tualatin Valley Fire and Rescue and they could find no hazards or compliance issues. Ms. Dreske has since removed the RV in an effort to find resolutions.

“Obstructions of Welch Road, full or partial, by vehicles parking near the manufactured home”

Ms. Dreske stated that vehicles belonging to the landowner are parked on the landowner’s property and not on the road.

“Increased traffic on Welch Road, which is a single-lane gravel road that is not adequately maintained”

Ms. Dreske notes that the volume of traffic has increased on Welch Road and those who use it are driving at excessive speeds and it is a safety concern.

“Litter and debris on an adjacent property”

Ms. Dreske notes that Mr. Roberts has construction material that he was using to potentially make some small property improvements and that the material was neither unsightly nor garbage. It was purposeful and has since been either utilized or removed.

**D. Conclusions for Approval**

1. The request is for a conditional use approval for a temporary health hardship dwelling for the care of Joe and Sue Roberts, by their friend, Gloria Dreske, during the term of their health hardship.
2. With conditions, the request complies with criteria listed in Sections 501.03(B) of the Yamhill County Zoning Ordinance.
3. With conditions, the request complies with the criteria listed in Section 1202.02 of the Yamhill County Zoning Ordinance.

**Conditions of Approval**

Based upon the above findings and conclusions, the request by Gloria Dreske for a conditional use approval for a temporary health hardship dwelling for the care of Joe and Sue Roberts during the term of their health hardship, on a parcel identified as Tax Lot 3206-3700 is approved with the following conditions:

1. The temporary dwelling is authorized as a hardship dwelling for the care of Joe Roberts and Sue Roberts as noted in the application. If the occupancy of the temporary or principal dwelling changes from that specified in the application, the temporary dwelling shall be removed from the property or the structure shall be converted to a non-residential use.
2. The applicant shall provide off-street parking for all vehicles (including recreational vehicles).
3. Any new structures or additions to existing structures shall meet all applicable building and zoning requirements.
4. The conditional use/temporary structure is authorized for a period of two years and expires on May 17, 2021. The temporary dwelling shall be removed from the property, or a renewal of the conditional use/temporary structure granted, prior to that date.

\*END\*