

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of an Application by Marilyn)
Shober for the Renewal of a Temporary Health) FINAL ORDER NO. 37-2015
Hardship Mobile Home Dwelling in the Rural) [Application No. TR 15-34]
Residential (RR-5) Zone)

WHEREAS, on February 2, 2015, Columbia County mailed notice to Marilyn Shober and neighboring property owners of the upcoming expiration of Marilyn Shober's Temporary Use Permit for a medical hardship dwelling located at 53129 Flint Drive, Scappoose, Oregon (Tax Map ID 3202-000-04600); and

WHEREAS, on February 9, 2015, neighboring property owners David and Linnette Hellberg timely filed a request for a hearing on the Temporary Use Permit renewal; and

WHEREAS, on February 19, 2015, Marilyn Shober filed an application to renew her Temporary Use Permit; and

WHEREAS, following proper notice, the Planning Commission held a hearing on the application on April 6, 2015 and received testimony and evidence. The Planning Commission then closed the hearing and approved the Temporary Use Permit in a final order dated April 8, 2015, and mailed on April 13, 2015; and

WHEREAS, David and Linnette Hellberg timely filed an appeal of the Planning Commission final order on April 16, 2015; and

WHEREAS, on July 1, 2015, following proper notice, the Board of County Commissioners held a public hearing on the appeal at its regularly scheduled meeting. The Board received evidence and testimony, then deliberated and voted unanimously to tentatively approve the application for a Temporary Use Permit; and

NOW, THEREFORE, based on the evidence submitted and received into the record on this matter, the Board of County Commissioners makes the following findings:

1. The Board adopts the findings and conclusions in the Staff Report, which is attached hereto as Attachment 1 and incorporated herein by this reference.
2. The Board adopts the recitals, above, as additional findings in support of its decision.

3. For the reasons that follow, the Board finds that the hardship dwelling complies with Columbia County Zoning Ordinance (“CCZO”) Section 1505.7(B), which requires that the “use will not be detrimental to the area or to adjacent properties.” Appellants David and Linnette Hellberg contend that the temporary medical hardship dwelling is detrimental to their property and thus fails to meet CCZO Section 1505.7. The appellants cite harassment from the inhabitants of the hardship dwelling (Robert and Lori Shober, also referred to as the “Shobers”), the dwelling’s appearance, and the dwelling’s location as the detrimental factors.

With regard to the claim of harassment, the Board finds this to be a private dispute between the appellants and the Shobers. The animus between the appellants and the Shobers is not a sufficient reason to deny the renewal. The County cannot deny a permit on the basis that the permittee is disliked.

The appellants also claim that the hardship dwelling is an eyesore. The Staff Report notes that the dwelling has been on the property since 1974 and is showing its age. The subject property is in a single family residential zone, and the presence of a second home in poor condition and out of character with the area can constitute a detriment to adjoining properties and the area in general.

However, the Board finds that not to be the case here because there is no evidence in the record that the hardship dwelling is an uninhabitable or dangerous structure. Moreover, the dwelling is not out of character with the surrounding area. The subject property is in a fairly secluded, rural area. It is at the end of Flint Drive, a gravel road that serves six properties. Marilyn Shober owns two of the properties (tax lots 4600 and 4700), which combined total more than 10 acres. Both the primary dwelling and the temporary dwelling sit on tax lot 4600, near the boundary of tax lot 4700, which contains no dwellings. Based on the current state of development, the presence of the temporary dwelling does not increase the overall allowable density of the area. Finally, as the Staff Report notes, there are other mobile homes on Flint Drive that are in similar condition to the Shobers’ mobile home. The Board therefore finds that the mobile home is not out of character with the area and is not a detriment on that basis.

The appellants’ final contention is that the hardship dwelling is detrimental because of its location near the appellants’ property and because of the orientation of the front entrance, which faces appellants’ house. Appellants’ testified that such proximity and orientation increases their exposure to the Shobers. The hardship dwelling is, however, separated from the appellants’ house by a public street and several hundred feet. Although moving the hardship dwelling may make the *dwelling* less visible to the appellants, it will not prevent the appellants from being exposed to the Shobers. The Shobers are free to roam the entire property, including the areas of the property and the street that are within sight of the appellants. Accordingly, the Board finds that the record lacks evidence to

support the claim that the location of the dwelling is a detriment.

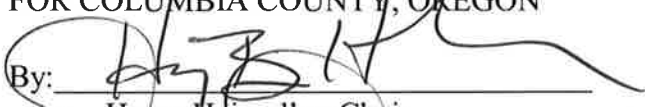
NOW, THEREFORE, based on the evidence in the record and the findings and conclusions herein, the Board of County Commissioners hereby **APPROVES** this application for a Temporary Use Permit (TR 15-34),.

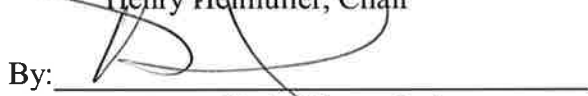
Dated this 8th day of July, 2015.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: 
Office of County Counsel

By: 
Henry Heimuller, Chair

By: 
Anthony Hyde, Commissioner

By: 
Earl Fisher, Commissioner

COLUMBIA COUNTY BOARD OF COMMISSIONERS

STAFF REPORT

June 24, 2015

Temporary Permit Renewal—Care of a Relative

Appeal by Neighbor

FILE NUMBER: TR 15-34

HEARING DATE: July 1, 2015

APPLICANT/OWNER: Marilyn Shober
53129 Flint Drive
Scappoose, OR 97056

SITE LOCATION: The site is located north and northwest of the City of Scappoose, south of Apple Valley Road, on the west side of Flint Drive, addressed as 53129 and 53131 Flint Drive.

TAX ACCOUNT NO: 3202-000-04600

ZONING: Rural Residential - 5 (RR-5)

SITE SIZE: ± 4.83 Acres

REQUEST: Applicant: Temporary Permit be Renewed for another year to continue using a mobile/manufactured home as a temporary second dwelling on the subject property for the purpose of caring for a relative.

Appellant: Requests the Temporary Permit be Denied because it is Detrimental to Adjacent Property

REVIEW CRITERIA:

<u>Columbia County Zoning Ordinance</u>		<u>Page</u>
Section 600	Rural Residential - 5 (RR-5)	5
Section 1505.3	Temporary Permits	6
Section 1505.7	Renewal of Temporary Permit	7

DATE OF REFERRAL: to Planning Commission 2/9/15

DATE OF APPEAL: to Board of Commissioners 4/16/15

BACKGROUND:

The applicant proposes to annually renew a temporary use of a previously sited manufactured home on a ± 4.83 acre parcel located on the west side of Flint Drive, just north and northwest of the City of Scappoose. The applicant and property owner, Marilyn Shober, has shown a need of medical attention, and would like her son, Robert Shober, to continue living near her to provide medical support and care.

A notified neighboring property owner, David Hellberg, objected to this temporary renewal in writing and submitted an Appeal/Referral form on February 9, 2015, that refers the decision to the Planning Commission. Mr. Hellberg states that he and his family are consistently harassed, the temporary trailer they live in is an eye sore, reducing their property value and is detrimental to the area. The Planning Commission heard the case (TP 15-34) on April 4, 2015 and approved the Renewal of the temporary permit. David and Linnette Hellberg filed an Appeal of the Planning Commission decision to the Board of Commissioners on April 16 2015.

The site is developed with one single-family residence, a detached garage and a temporary medical hardship mobile home. The temporary mobile home has been on the property and in use for the past 37 years, since 1974, for the care of three separate family members. Temporary Medical Hardship Permits are only applicable to the applicant for whom the permit is (was) granted and are not transferable to other properties or people without approval of a new temporary permit. History of the temporary mobile home is as follows:

- The temporary mobile home was originally sited as a medical hardship dwelling for Marilyn Shober's (the current applicant's) mother, Grace Fuller. The temporary hardship permit was approved by the Planning Commission Board of Adjustment on October 7, 1974 and was continuously renewed until care for Mrs. Fuller was no longer necessary sometime around 1998.
- On September 15, 1998, William Shober, the applicant's husband, applied for a new temporary medical hardship permit. This application requested that Robert Shober, William and Marilyn Shober's son, be allowed to move into the manufactured home to help care for his father. This request for a temporary permit (TP 99-8) was approved by Land Development Services Staff on October 5, 1998. TP 99-8 was renewed annually until assistance was no longer necessary for Mr. Shober, sometime around October of 2011.
- Once accommodations were no longer necessary for her husband's care (passed), Marilyn Shober applied for a new temporary permit (TP 12-04) to allow her son to continue living in the mobile home to provide care for her. The appropriate verification of medical necessity from a licensed primary care physician was submitted along with a temporary permit application. The Temporary permit TP 12-04 (subject of this renewal) was approved by Land Development Services staff on February 14, 2012.

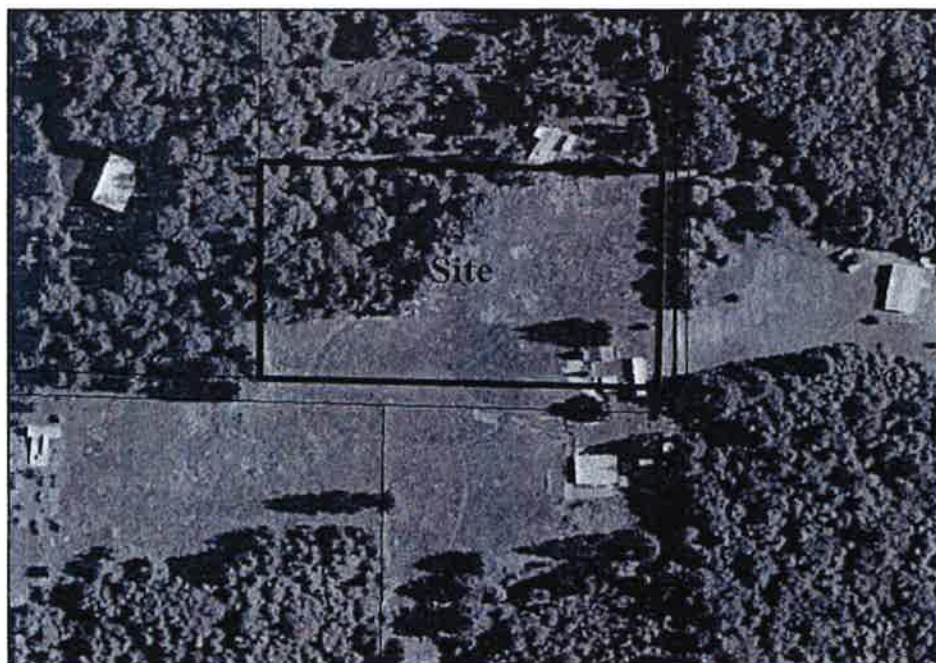
The subject property has approximately 340' of frontage on Flint Drive and is accessed from said

roadway. As constructed, Flint Drive is a private, gravel roadway that extends south from Apple Valley Road (a paved public right-of-way) approximately 750' to its terminus at the Shober residence site. The Columbia County Road Department was notified of this request and had no comments. The Scappoose Rural Fire Protection District (RFPD) provides fire services to the area and was also notified of the request, having no comments to the proposal as submitted.

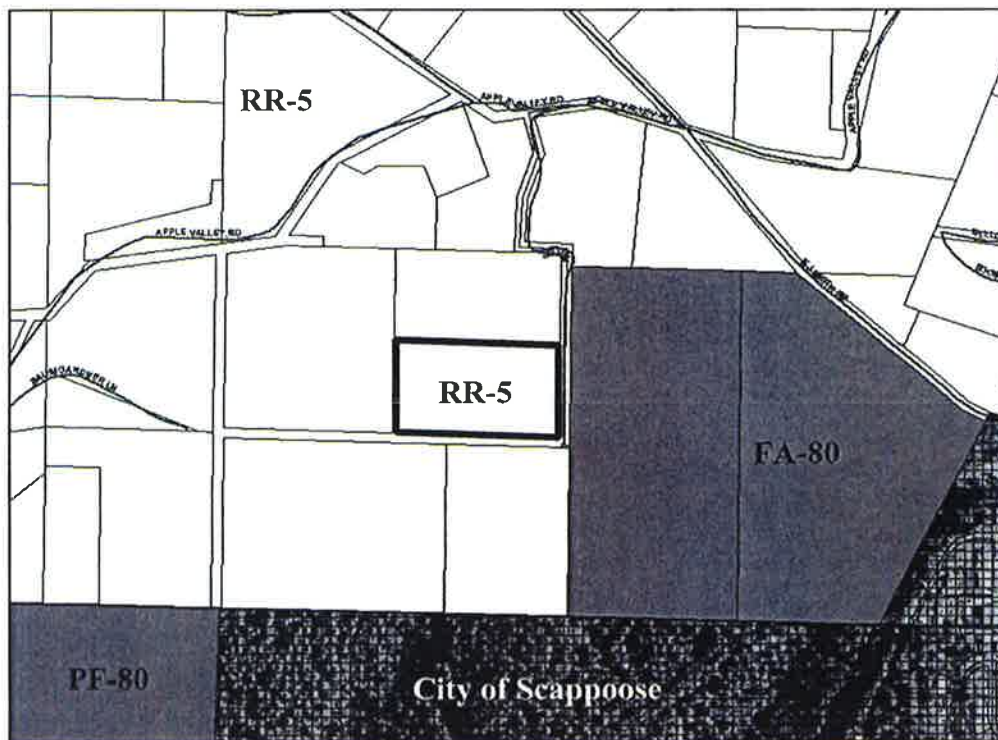
Potable water is provided to the site by an existing well and sewage is disposed of through an existing septic system. Temporary hardship dwellings shall share a single septic system with the primary residence. Shared use of the system must be approved by the County's Sanitarian to ensure that the existing septic tank and drainfield are sufficient to handle increased flows. As such, an onsite septic authorization has been approved by the County Sanitarian.

Contiguous properties north, west and south of the site are zoned Rural Residential - 5 (RR-5) and properties east of the site (across Flint Drive) are zoned Forest Agriculture (FA-80). Development in the area consists primarily of single-family residential uses and small forest and farm operations. The natural characteristics of the site are suitable to accommodate a second hardship dwelling. The developed portion of the site is relatively flat and contains no floodplain or wetlands. The hardship dwelling was originally sited on the property in 1975. No new development is proposed as part of this request.

Aerial Photograph - PC Maps (2009)

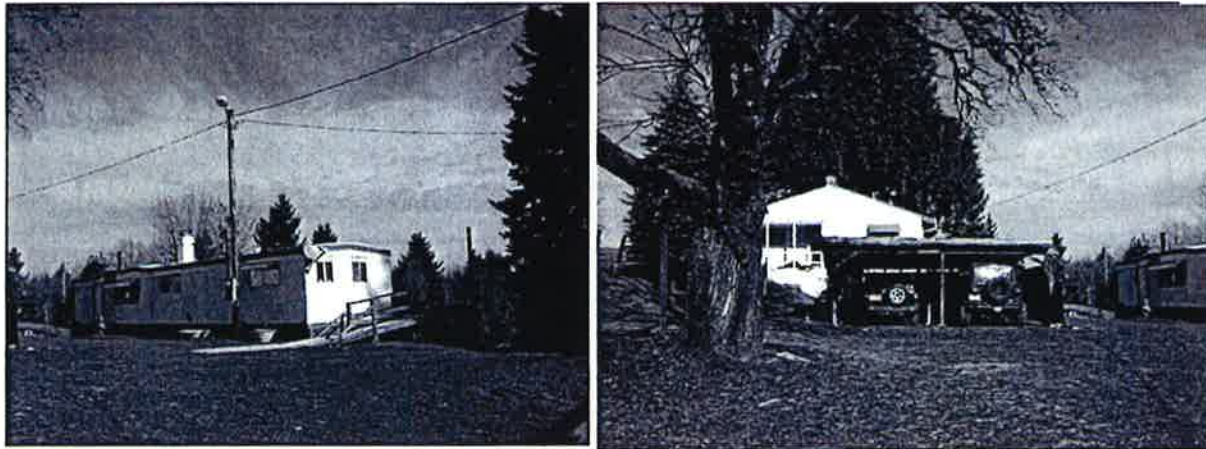


Zoning Map - PC Maps (2012)



Photos





REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

Section 600 Rural Residential - 5 (RR-5)

Section 600 Rural Residential - 5 RR-5

602 Permitted Uses:

- .1 Single family detached dwellings.

604 Standards:

- .2 Dwellings permitted in the RR-5 zone must meet all of the following standards:
 - A. Have access to a public or private domestic water source meeting state and county standards; and
 - B. Be approved for an individual subsurface sewage system or be served by a public or community sewer system; and
 - C. Be within and can be served by a rural fire district.

- .6 No residential structure shall be constructed closer than 30 feet to a property line. Where the property abuts resource zoning, the setback shall be increased to 50 feet.
- .7 Unless otherwise prohibited, the maximum building height for all non-farm, non-forest structures shall be 35 feet or 2 ½ stories, whichever is less.

Finding 1: Single-family detached dwellings are a permitted use in the Rural Residential - 5 (RR-5) Zone. Manufactured homes or trailer homes may be sited accessory to a primary residence for a temporary period of time for the care of a relative with a documented medical hardship. A temporary hardship dwelling was approved for the subject property approximately 40 years ago, and a siting permit (Permit No. 5805) was issued by Land Development Services in 1975. Development standards in place at the time (setbacks and height requirements) were met. The temporary dwelling receives water from an existing well. Sewage is disposed of through an existing septic system. Fire services are provided to the site by the Scappoose Rural Fire Protection District. Staff finds that this criterion is met.

Continuing with Columbia County Zoning Ordinance Section 1505 Temporary Permits

1505 Temporary Permits:

- .3 **Care of a Relative:** The Director may approve a temporary permit according to the procedure stated in subsection 1601, for a period not to exceed 1 year, for the use of a mobile home or trailer house as a residence for the care of a relative who requires special attention because of age or poor health, provided the applicant provides evidence of the following, unless otherwise provided for in this Ordinance:
 - A. There exists a need for special attention (a doctor's statement establishing this need is appropriate and suggested evidence); and

Finding 2: Land Development Services has followed the procedures in Section 1601 and notified surrounding property owners of the Temporary Permit Application(s). A Temporary Permit is valid for a one-year duration only. Time extensions are possible through an application for renewal of the Temporary Permit, as submitted for this renewal application.

The Temporary Use Permit Renewal application submitted included appropriate documentation to demonstrate the need for special attention based on a medical condition. A licensed physician with Legacy Good Samaritan endorses Marilyn Shoher's need to secure housing near a family member. The doctor's statement is in the file but considered confidential. Staff finds that the criterion is met.

- B. The temporary living unit can be connected to the existing subsurface sewage system serving the primary dwelling on the

property.

Finding 3: There is a septic system on the site, located east of the primary residence, serving the existing dwelling and temporary mobile home. The temporary dwelling must be connected to an existing subsurface waste disposal system and must further be approved for said connection through septic authorization granted by the County Sanitarian. The County Sanitarian has approved an Authorization to connect the mobile home to the existing septic system. Staff finds that the criterion is met.

Continuing with Columbia County Zoning Ordinance Section 1505.7

- .7 Renewal of a Temporary Permit: The Director may renew a temporary permit, for a period not to exceed 1 year, except as provided in Section 1505.6, according to the procedure stated in section 1601, provided the applicant provides evidence substantiating the following, unless otherwise provided for in this ordinance:
- A. The circumstances under which the original permit was granted remain substantially similar;
 - B. The use will not be detrimental to the area or to adjacent properties; and
 - C. The use will comply with the Comprehensive Plan.

Finding 4: Land Development Services mailed notice of the pending Temporary Renewal to adjacent property owners per the procedure in Section 1601. Normally the Planning Director may approve an application for renewal of a temporary permit; however, in this case a neighboring property owner, David and Lynett Hellberg, referred this application to the Planning Commission for review and decision. The Planning Commission approved the Temporary Permit Renewal by signature of Final Order TR 15-34 on April 8, 2015.

A) The circumstances for the Temporary Permit (TP 12-04) appear to be the same as when initially approved on February 14, 2012. The property owner needing the care is the same, Marilyn Shober. The person providing the care is the same, her son Robert Shober, who lives in the temporary mobile home. Mrs. Shober has provided a signed letter from a Doctor of Osteopathic from Legacy Clinic Good Samaritan that she requires daily care and assistance from her son. A copy of the letter is not attached because it is confidential and exempt from public records. The Comprehensive Plan and Zoning Ordinance allows temporary hardship dwellings to keep persons with medical difficulties at home or near relatives to provide care and comfort; thereby, keeping them from an institutional care facility.

B) The Hellberg's have submitted a letter stating that the hardship mobile home is an eyesore and

the care giver's actions are detrimental to uses on their adjacent property. After meeting with both parties, staff concludes that this dispute between the Shober's and the appellants started with each party's dogs trespassing on the other's property, and the dispute has since escalated. In staff's opinion this dispute is only indirectly related to the temporary unit being on the property.

COMMENTS RECEIVED:

No other comments or letters have been received. Land Development Services did not mail referral notifications to agencies for this renewal application.

CONCLUSION AND RECOMMENDATION:

The applicant Marilyn Shober has met all of the requirements for renewing her Temporary Permit, except the neighbor does not think the Temporary Use is compatible with adjoining residential use. The Board of Commissioners must make a decision on whether or not the temporary use is detrimental to the area or to adjacent properties. The dictionary defines detrimental as damaging, injurious or harmful. The Ordinance does not give guidance about the magnitude of damages or how harmful/injurious a temporary care facility must exceed to warrant its removal.

Staff conducted a site visit on March 25, 2015 and spent about 45 minutes with each party to discuss the issues. It seems the disagreements started with dogs trespassing on both sides, some chickens were killed, the county dog control office involved, security cameras were installed, stalking orders pursued, disagreements on property lines. The dispute is the back drop for the subject appeal. Staff finds that there is a documented need for Marilyn Shorber to have assisted living whether through a home health care program or family members close by.

As far as the temporary mobile home being an eyesore: it was sited in the early 70s, and is showing its age, but still very much functional. There are mobile homes in worse condition on the same road and spotted throughout the rural areas of Scappoose. Even though this particular area on Flint Drive is in a very secluded spot, housing has developed in a pattern where neighbors have a clear view of the next neighbor property, particularly down hill. The terrain is high to the west and much lower to the east. A couple of neighboring property homes look down on Mrs. Shober's property, and the Shober property looks down, in clear view of the Hellberg home. Privacy, when one is outside working in the yard, is not the main attraction in this location.

Based on the facts, findings and comments herein, the Planning Staff concludes that all of the criteria applied to the temporary permit renewal for another year has been met, with the possible exception of whether or not the temporary use is detrimental to the area or adjacent property.

Attachments:

Application
Site Plan
Appeal/Referral Form
Maps: Address Map, Zoning Map, Vicinity Map