

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.22-016

APPLICATION: Application of Duane and Kathleen Kaufman for a conditional use permit to convert an existing accessory structure to a dwelling for medical hardship purposes on an approximately 30-acre property in an EFU (Exclusive Farm Use) zone located at 3463 Hibbard Road NE, Silverton. (T7S, R1W, Section 8, tax lot 1500).

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 **May 13, 2024**. 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 Primary Care Provider 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.

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposal. To ensure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division at (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 all required permits from the Marion County Building Inspection Division.
2. The applicant shall submit a Manufactured Home/RV Removal or Disconnect Agreement to the Planning Division. This agreement specifies that use of the existing dwelling is temporary and will be removed or disconnected and no longer used for residential purposes after the hardship ceases.
3. The hardship shall use the existing septic system if feasible.
4. The hardship shall be located as shown on the applicant's site plan.
5. 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, for shared septic systems, every five years the Marion County Building Inspection Division requires a septic evaluation prior to renewal of hardship conditional uses.

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 restrictions or conditions. It is recommended agencies mentioned in Finding number 7 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. The applicants should contact the Silverton 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) 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 13, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 14, 2022**, 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 Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations. A temporary dwelling under hardship conditions may be approved as a conditional use provided the need is justified and the residence will not have a detrimental impact upon the existing or potential farming and timber activity in the area.
2. The property is located on Hibbard Road NE, approximately 2500 feet north of the intersection between Hibbard Road NE and Kaufman Road NE in Silverton. The property contains a primary farm dwelling and various farm buildings, which includes the 36' by 90' gambrel-roofed barn being proposed as a hardship dwelling. Regarding the legality of the parcel, there have been three land use cases associated with this property. The last approved land use case was completed on August 27, 2002, which was Conditional Use Case 02-51. As a result of this land use case being approved, this established the parcel as legal as referenced by the deed found in Reel 1986 and Page 0362. Therefore, this parcel is legal regarding land use action.
3. All adjacent properties are zoned EFU. Additionally, the surrounding land uses consist of residential and farming related activities.
4. The property has been designated as prime farmland and farmland of statewide importance.
5. Two signed Primary Care Provider Certificates has been submitted for Duane Kaufman and Kathleen Kaufman indicating they have medical conditions that preclude them from maintaining a complete separate and detached dwelling apart from their family.
6. Marion County Building Inspection commented that there are no Building Inspection concerns with hardship proposal. Permits would be required for the conversion of the portion of the shop building to living space.

Marion County Septic Inspection commented that the property owner must apply for a septic authorization to connect the hardship dwelling to the existing system under OAR 340-071-0205(7).

All other commenting agencies stated no objection to the proposal.

7. In order to approve a manufactured home/RV under hardship the applicant must demonstrate compliance with the specific criteria listed in MCC 17.120.040. These include:

- A. *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.*
 - i. *Those providing the care must show that they will be available and have the skills to provide the care require, as described by the licensed medical professional.*
 - ii. *Caregivers may reside within a hardship permit dwelling during periods of absence and medically necessary absence.*
 - iii. *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 not addressed this in the Applicant Statement; however, the applicant shall adhere to the criteria stated in this section as a condition of approval. The criterion is met.

- B. *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.*
 - i. *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.*
 - ii. *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.*

The applicant shall adhere to the criteria stated in this section as a condition of approval. The criterion is met.

- C. *Notice of a medically necessary absence must:*
 - i. *Be submitted in writing;*
 - ii. *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;*
 - iii. *Provide an estimate as to when the aged or infirm person(s) will return to the property;*
 - iv. *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.*
 - a. *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.*
 - b. *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).*

The applicant shall adhere to the criteria stated in this section as a condition of approval. The criterion is met.

- D. *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).*

The applicant shall adhere to the criteria stated in this section as a condition of approval. The criterion is met.

- E. *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. 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 applicant has not addressed this in the Applicant Statement; however, the applicant shall adhere to the criteria stated in this section as a condition of approval. 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).

- i. 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.*
- ii. 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 applicant shall adhere to the criteria stated in this section as a condition of approval. 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:

- i. Be located as near as possible to other residences on the property;*
- ii. 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 not feasible to locate it near an existing residence;*
- iii. Not require new driveway access to the street;*
- iv. Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.*

According to the applicant's statement, the hardship dwelling will consist of a renovated barn which already exists on site; no placement of a recreational vehicle for the purpose of this hardship is being proposed. Therefore, this criterion does not apply.

H. For an existing building to be used as a hardship dwelling it must:

- i. Be suitable for human habitation;*
- ii. Comply with all building and specialty codes (for example, but not limited to, electrical, plumbing, and sanitation) applicable to dwellings;*
- iii. Not require new driveway access to the street; and*
- iv. Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.*

The applicant has stated that they intend to renovate the barn that already exists on site. Specifically, the second floor of the 36' X 90' gambrel roof barn will be renovated for the applicants. According to building plans submitted to the Marion County Building Inspection Division on April 7, 2022, the second level living area will consist of a bathroom, bedroom, kitchen, various storage rooms, and an elevator. Based on the submitted building plans, the renovated building appears to be suitable for human habitation.

Regarding the other criteria in this section, the applicant has not indicated as to whether or not the renovated barn will need a new driveway, will be connected to the existing wastewater disposal system, or will comply with all building and specialty codes. However, these will all be conditions of approval. Therefore, the criterion is met.

- 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.*
- i. *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.*
 - ii. *In the case of an existing building, the renovations or modifications made to an existing building to be used for habitation must be removed.*
 - a. *The existing building shall be returned to similar conditions as its previous use;*
 - 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.*
 - iii. *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 applicant shall adhere to the criteria stated in this section as a condition of approval. 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.*
- i. *Applications for a hardship dwelling must include a description of how the applicant will ensure this condition is met.*

The applicant shall adhere to the criteria stated in this section as a condition of approval. This 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:*
- i. *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*
 - ii. *In the event of a temporary absence, a statement from the owner or aged or infirm person setting forth the date on which the aged or infirm person will return to the property.*
 - a. *If the aged or infirm 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.*

The applicant shall adhere to the criteria stated in this section as a condition of approval. This 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.*

The applicant shall adhere to the criteria stated in this section as a condition of approval. This criterion is met.

8. Based on the available evidence, Duane, and Kathleen Kaufman'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 family. The evidence also indicates the proposed dwelling unit would be relatively temporary in nature. The requirement that a Manufactured Home/RV Removal or Disconnect Agreement be filed by the applicant ensures that the home will be removed from the property or disconnected and no longer used for

residential purposes when the hardship ceases. Those providing the care do not have medical conditions that will preclude them from being able to give care. Once the hardship ceases to exist, the renovated second floor unit will be disconnected and cease to be used as living quarters. All applicable criteria stated in number seven of this section are met.

9. Since the property is located in an EFU zone, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:
- (a) *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.*
 - (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
 - (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air, and water quality.*
 - (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
 - (e) *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. This use is not expected to change any farm practices in the area. Fire protection is supplied by Silverton Fire District. This use will not affect groundwater, fish, or wildlife. Noise associated with the use is not expected to create adverse effects on adjacent parcels as only a small amount of residential noise is expected. The use meets the requirements in #9. MCC 17.120.040 requires that a declaratory statement meeting the requirements of MCC 17.120.040 be filed and this serves to notify the applicant and subsequent owners that there are farm or timber operations in the area.
11. Based on the above findings it has been determined that the request meets all applicable criteria for placing a temporary manufactured home/RV for medical hardship purposes and is, therefore, **APPROVED**, subject to conditions.

Bandon Reich
Planning Director/Zoning Administrator

Date: April 28, 2022

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.