

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. 19-016**

APPLICATION: Application of Francis John Harman Jr., Trustee of the Harman Family Trust, for a conditional use to place a temporary mobile home for medical hardship purposes on a 50.21 acre parcel in an EFU (Exclusive Farm Use) zone located 7578 Mt. Angel Hwy. NE, Silverton. (T6S; R1W; Section 21; tax lot 00200).

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 **June 10, 2021**. 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.

WARNING: A decision approving the proposed use is for land use purposes only. Due to septic, well, and drainfield 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. Prior to issuance of a building permit, the applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
4. The hardship dwelling shall be located outside the identified 100 year floodplain.

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

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, every five years the Marion County Building Inspection Division requires a septic evaluation for shared systems 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 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 any restrictions or conditions thereon. The applicant is advised of the following:

6. The applicants should contact 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. The Silverton Fire District contact person is Ron Parvin at (503) 873-5328.
7. The applicants should contact Marion County Land Development and Engineering (503)584-7714 for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

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 \$200.00) 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 **June 10, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 11, 2019** 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 manufactured home 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 the east side of Mt Angel Hw NE approximately 1150 feet south of its intersection with Nusom Rd NE. The 51.21 acre parcel identified as tax lot 200 contains an existing dwelling, farm structures, well and septic system. Portions of the property are in the 100 year floodplain of Abiqua Creek. The subject parcel was described by deed (Reel 190, page 1908,) recorded on September 5, 1953, and is considered a legally created parcel for land use purposes
3. Surrounding properties in all directions are zoned EFU and in various types of farm use.
4. Soil Survey of Marion County Oregon indicates 85% of the property is composed of high-value farm soils.
5. A Physician's Certificate has been submitted for both Francis Harman and James Harman indicating they have medical conditions that preclude them from maintaining a complete separate and detached dwelling apart from family.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following requirements be included:

“A - During an initial site inspection it was noted that vegetation on the north side of the driveway may be impeding intersection sight distance and will need to be trimmed as a matter of public safety in accordance with Marion County Code 11.10. At the time of application for building permits, an Access Review will be conducted. If the aforementioned vegetation work has not been done by then, prior to issuance of Building Permits, the Applicant will be given opportunity to accomplish that without obtaining an Access Permit. Otherwise, an Access Permit would be required if the vegetation work will be conducted after Building Permit issuance. Under an Access Permit, vegetation work would need to be completed prior to final building inspection.

B. No new separate access is allowed for temporary hardship dwellings.”

Marion County Building Inspection commented that permits are required for any new construction or placement of a manufactured home.

Marion County Building Inspection Onsite Wastewater Specialist commented that septic permits are required.

Marion County Assessor’s Office provided information regarding taxes on the subject properties.

All other commenting agencies stated no objection to the proposal.

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:

- (a) *For the purposes of this subsection "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.*
- (b) *A doctor of medicine or licensed psychologist shall sign a statement indicating the physical or mental condition that prevents the person(s) with the hardship from providing the basic self care needed to live on a separate lot. The statement shall also attest that the physician or licensed psychologist is convinced the person(s) with the hardship must be provided the care so frequently or in such a manner that the caretaker must reside on the same premises.*
- (c) *Those providing the needed assistance shall be related by blood, marriage or legal guardianship and reside in another residence on the property. If evidence is presented that there is no family member able to provide the needed care the caretaker may be someone else provided the property is located in a zone other than the EFU, SA, FT or TC zones. In the EFU, SA, FT and TC zones, occupancy of the hardship mobile home or recreational vehicle is limited to the term of the hardship suffered by the existing resident or a relative as defined in ORS 215.283.*
- (d) *Those providing the care must show that they will be available and have the skills to provide the primary care required by the doctor or psychologist.*
- (e) *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. In the case of a recreational vehicle it shall be rendered uninhabitable by disconnection from services. An agreement to comply with this requirement shall be signed by the property owner and the care providers. Oregon Department of Environmental Quality removal requirements also apply.*
- (f) *The mobile home or recreational vehicle 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.*
- (g) *The use 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.*

8. Based on the evidence provided by the applicants, including signed Physician’s Certificates, both Francis Harman and James Harman’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. Francis Harman and James Harman, father and son, will live in the dwelling and the care they need will be provided by Francis Harman’s daughter and son-in-law and James Harman’s sister and brother-in-law, Grace and Rich Fidler, who will live in the hardship dwelling. The evidence also indicates the proposed manufactured home would be relatively temporary in nature. The requirements that a Manufactured Dwelling Removal Agreement be filed by the applicant, ensures that the manufactured home will be removed from the property and no longer used for residential purposes when the hardship no longer exist. The proposal satisfies the criteria #6(a), (b), (c), (d) and (f), the criteria in #6(e) and (g) can be made a condition of any approval.

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. The proposal will allow the placement of a temporary mobile home or recreation vehicle on the property. There is no evidence to indicate that the temporary dwelling will have any adverse effects on surrounding properties in farm use. In addition, the County requires that a Declaratory Statement be recorded with the property deed because the subject property is in a resource zone. This serves to notify the applicants that farm or timber operations are located in the area. It will not significantly increase traffic on area roads, fire protection is provided by Aumsville Fire District and the Marion County Sheriff provides policing. Other rural services, such as well and septic, are available on the property. Due to the temporary and residential nature of the use, the placement of a manufactured home will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality, create a significant amount of noise, impact potential water impoundments or conflict with mineral and aggregate sites. The proposal satisfied the criteria in #9 above.
11. The hardship dwelling must be located outside the identified 100 year floodplain.
12. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for placing a temporary mobile home for medical hardship purposes and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: May 24, 2019

If you have any questions regarding this decision contact Patty Dorr (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.