

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. 21-040**

APPLICATION: Application of Yuriy Likhovidov for a conditional use to place a manufactured home on site for medical hardship purposes on 14.53 acre property in an EFU (Exclusive Farm Use) zone located at 15978 South Abiqua Rd. NE, Silverton (T6S; R1E; Section 30; Tax Lot 300).

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 **October 2, 2023**. 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 continues to exist.

WARNING: A decision approving the proposed use is for land use purposes only. Due to septic, well, and drain field 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, including septic permits.
2. The applicant shall submit a Manufactured Dwelling/RV Removal or Disconnect Agreement 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. Per the requirement in 17.136.50(B), the applicant shall sign and submit a Farm/Forest Declaratory Statement 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. This statement can be obtained from Marion County Planning. This requirement is waived if the applicant provides proof to the Planning Division that they have previously signed and recorded a Farm/Forest declaratory statement with the Marion County Clerk's Office. For example, this might have been a requirement for approval of a prior building permit.

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

4. The proposed manufactured home shall use the existing septic system if it is feasible.
5. The manufactured home shall be located as shown on the site plan, as close to the primary dwelling as is feasible.

6. 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 Primary Care Provider 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. It is recommended that the agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits.

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 **October 4, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 3, 2021** 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 and Rural Residential in the Marion County Comprehensive Plan and zoned Exclusive Farm Use (EFU) and Acreage Residential (AR). The intent of the Primary Agriculture designation and the EFU zone is to promote and protect commercial agricultural operations. The purpose of the Rural Residential designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage home sites at a density that maintains the character and environmental quality of rural residential areas.
2. The property is located at 39718 South Abiqua Road NE approximately 0.35 miles east of the intersection of State Highway 213 (Cascade Highway NE). The property is developed with a residence and accessory structures. The property was approved for a replacement dwelling in 2012 through permit number 555-12-02921. Marion County Planning signed off on the building permit and the parcel is therefore considered legal for land-use purposes.
3. Surrounding properties to the north are zoned AR and are developed with small home sites. Properties in other directions are zoned EFU, are currently being farmed, and are developed with small home sites.
4. A signed Primary Care Provider Certificate has been submitted for Vera Likhovidov indicating she has medical conditions that preclude her from maintaining a complete separate and detached dwelling apart from her family.
5. Marion County Building Division commented that a building permit is required for new construction or placement of a manufactured home.

Marion County Septic Division commented if the applicant wishes to connect to the existing septic system, an authorization notice is required. If the applicant wishes to replace the septic system, a site evaluation and construction/installation permit is required.

All other contacted agencies either failed to comment or had no objection to the proposal.

6. In order to approve a manufactured home/RV under medical hardship the applicant must demonstrate compliance with the specific criteria listed in Section 17.120.040 of the Marion County Code (MCC). These 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.*

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 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).*
- 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.*

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.

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.

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.

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.

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.

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. 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

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.

7. Based on the available evidence, Vera Likhovidov'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 caregiver is proposed to be Vera Likhovidov's daughter-in-law, Nadezhda Mordvinova. The applicant narrative states that the occupants of the hardship dwelling need assistance with cleaning, dressing, and bathing; there is no evidence that suggest the daughter-in-law is not equipped to assist with these tasks. The applicant is notified of the allowances and requirements under 6(D) (1-3). There is no evidence that suggests the applicant cannot comply with these ongoing requirements and 6(D) (1-3) is satisfied.

The applicant is notified of the allowances and requirements under 6(E) (1-5) and 6(F) (1-2). There is no evidence that suggests the applicant cannot comply with these ongoing requirements; 6(E) (1-5) and 6(F) (1-2) are satisfied.

Marion County Planning typically requires hardship dwellings to be placed within 100 feet of the primary dwelling; due to the lot's irregular configuration, however, the manufactured home placement is proposed slightly farther. It will be made a condition of approval that the hardship dwelling is located as close to the primary dwelling as possible to minimize the impact on nearby farming operations and allow for easy access between the two dwellings, which is the intention of the hardship dwelling provision. The applicant will be required to apply for a placement permit, which will ensure compliance with building code. The criteria in 6(G) (1-4) and 6(H) (1-4) are satisfied.

The application will also be required to sign a Manufactured Dwelling/RV Removal or Disconnect Agreement, ensuring the structure is relatively temporary in nature and will be removed with the hardship ceases to exist. The manufactured dwelling will share site improvements on the property to the extent possible. No new access is required or being proposed. The requirements under 6(I) (1-3) are satisfied.

The applicant has submitted testimony stating that he understands the requirement in 6(J) and will comply when the hardship ceases to exist. As mentioned, signing and filing of a declaratory statement requiring removal will be made a condition of approval. The criterion under 6(J) (1) is met. The applicant is notified of the allowances and requirements under 6(K) (1-2) and 6(L). There is no evidence that suggests the applicant cannot comply with these ongoing requirements; 6(K) (1-2) and 6(L). are satisfied

8. 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.*

9. The proposed property is zoned EFU and AR. The use is low-density residential and is relatively temporary in nature. The proposed use is not expected to interfere with surrounding land-uses; therefore, it is expected to be in harmony with the purpose and intent of the zone. The criteria in 8(a) are satisfied.

The new resident is moving to the property due to a medical condition that requires support from family. It is unlikely that the addition of the property owner's mother and her daughter, Svetlana Likhovidova, will generate

enough additional trips to strain the capacity of the existing transportation system. Adequate fire protection is available through Silverton Fire District and police services are available through the Marion County Sheriff's Office. All other utility services currently available to the primary dwelling will also be available to the temporary dwelling. The criteria in 8(b) are met.

The parcel is relatively flat and is developed with residential and farm uses. The proposed placement location is currently undeveloped and not obviously used for farm production. The use proposed is low-density residential and temporary in nature. Therefore, there is no evidence that the placement will generate significant noise, or have a significant effect on soil or slope stability, groundwater, watersheds, fish or wildlife. There are no nearby water impoundments to adversely affect. The proposal meets criteria 8(c), (d), and (e).

10. "MCC 17.136.050(B) requires that a declaratory statement meeting the requirements of MCC 17.136.100(C) be filed, which serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. This is made a condition of approval above.
11. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for placing a temporary manufactured home/RV for medical hardship purposes and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director

Date: September 17, 2021

If you have any questions regarding this decision contact Ryan Dyar 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.