



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005

Phone: (541) 388-6575 Fax: (541) 385-1764

<http://www.deschutes.org/cd>

MEMORANDUM

To: Planning Commission

From: Peter Russell, Senior Transportation Planner ^{PLR}

Date: October 13, 2016

Re: Public hearing on a text amendment to allow an existing building in the Exclusive Farm Use (EFU) Zone to be used as a temporary dwelling in the case of a medical hardship

Background

The Planning Commission held a work session on September 8, 2016, on the proposal to allow an existing building to be used as a temporary dwelling in the EFU zone in the case of a medical hardship. The major discussion topics were how the medical hardship would be enforced, would other land use zones be affected, and what is meant by "existing." The County does code enforcement on a complaint-driven approach and seeks voluntary compliance wherever possible. The current proposal is for EFU only, but as a deliberative body the Planning Commission (PC) can modify the proposal. Similarly, the PC can define the term existing to mean 1) the building has already been built on the property; 2) narrow to a more specific time, such as existing as of January 1, 1974, which is when the County's building permit process was fully up and running; or 3) effective date of Ordinance 2016-024, which would implement File 247-16-000511-TA, assuming Board approval.

Previously, on May 12 and May 26, 2016, the Planning Commission accepted public testimony during the hearings on the FY 2016-17 Planning Division work plan. A citizen proposed amending Deschutes County Code to allow existing buildings on EFU lands of more than 80 acres to be used as temporary residences in cases of medical hardship.

The citizen pointed out that state law already allows this to occur and discussed how requiring the placement of a manufactured home on the property represented a financial burden on those already experiencing hardship. Additionally, whether the temporary dwelling is a manufactured home, an RV, or stick-built home, both state law and County code require the dwelling to be either demolished, removed, vacated, or be returned to a non-residential use once the hardship has ended.

The Planning Commission accepted the proposal and recommended to the Board of County Commissioners that a text amendment be added to the Planning Division work plan to accomplish the task. The Board at its June 22, 2016, public hearing on the work program

approved adding the task to the Planning Division's FY 2016-17 tasks. The Board did not specify any acreage size, but rather referred to just the EFU zone.

Proposal

Staff initiated the text amendment on August 26, 2016, under File 247-16-000511-TA. The application would amend Deschutes County Code (DCC) 18.116.090 to allow an existing building in the EFU zone to be used as a temporary residence in a case of medical hardship. This is already allowed under both state statute and administrative rule. Deschutes County chose to be more restrictive and will continue to do so in the non-EFU zones.

The proposed specific language is shown with new language in underline:

DCC 18.116.090(A) would be revised as follows:

"A temporary use permit for one manufactured home of any class or one recreational vehicle on a lot or parcel in addition to an existing dwelling may be granted when a medical condition exists. In the Exclusive Farm Use zone only, an existing building may be used as a temporary dwelling."

DCC 18.116.090(F) would be revised as follows:

"The manufactured home shall be removed or the recreational vehicle shall be vacated, and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than 90 days following the date the medical condition requiring the temporary use permit ceases to exist. In the Exclusive Farm Use zone the existing building will be returned to a permitted non-residential use within 90 days following the date the medical condition requiring the temporary use permit ceases to exist."

Next Steps

The Planning Commission will open the public hearing at 5:30 p.m., October 13, 2016, regarding File 247-16-000511-TA. After receiving public testimony, the Planning Commission has several options:

- Close the both oral and written records and begin deliberations, then make a recommendation to the Board. The recommendation could be approve text amendment as proposed, approve as modified by the PC, or deny the proposal.
- Close the oral record, but leave the written record open to a date certain and deliberate on that date, then make a recommendation to the Board.
- Leave the public hearing open and continue it to a date certain

Once the PC makes its recommendation, the Board will hold a public hearing at a date not yet set.



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FILE NUMBER: 247-16-000511-TA

APPLICANT: Peter Russell
Deschutes County Community Development Department
P.O. Box 6005
117 NW Lafayette
Bend, OR 97708-6005

PROPERTY OWNERS: N/A

REQUEST: Amend Deschutes County Code (DCC) Chapter 18.116.090 to allow an existing building to be used as a medical hardship temporary dwelling in the Exclusive Farm Use (EFU) zone.

STAFF CONTACT: Peter Russell, Senior Transportation Planner

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

Title 23, Deschutes County Comprehensive Plan

Statewide Planning Goals

Oregon Administrative Rules
OAR 660-033 (Agricultural Lands)

II. BASIC FINDINGS:

- A. **PROPOSAL:** The applicant proposes amending DCC 18.116.090 to allow an existing building to be used as a medical hardship dwelling in the EFU zone. Currently, Deschutes County is more restrictive than state law and only allows manufactured homes or RVs to be used as medical hardship dwellings in all zones. Oregon Revised Statute (ORS) 215.283(2)(L)(2) allows temporary residential use of an existing building as a hardship dwelling in the EFU zone.

New code language is shown as underlined and deleted language is shown as ~~strikethrough~~.

DCC 18.116.090(A) would be revised as follows:

"A temporary use permit for one manufactured home of any class or one recreational vehicle on a lot or parcel in addition to an existing dwelling may be granted when a medical condition exists. In the Exclusive Farm Use zone only, an existing building may be used as a temporary dwelling."

DCC 18.116.090(F) would be revised as follows:

"The manufactured home shall be removed or the recreational vehicle shall be vacated, and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than 90 days following the date the medical condition requiring the temporary use permit ceases to exist. In the Exclusive Farm Use zone the existing building will be returned to a permitted non-residential use within 90 days following the date the medical condition requiring the temporary use permit ceases to exist."

- B. BACKGROUND:** On May 12 and May 26, 2016, the Planning Commission accepted public testimony during the hearings on the FY 2016-17 Planning Division work plan. A citizen proposed amending Deschutes County Code to allow existing buildings on EFU lands of more than 80 acres to be used as temporary residences in cases of medical hardship.

The citizen pointed out that state law already allows this to occur and discussed how requiring the placement of a manufactured home on the property represented a financial burden on those already experiencing hardship. Additionally, whether the temporary dwelling is a manufactured home, an RV, or stick-built home, both state law and County code require the dwelling to be either demolished, removed, vacated, or be returned to a non-residential use once the hardship has ended.

The Planning Commission accepted the proposal and recommended to the Board of County Commissioners that a text amendment be added to the Planning Division work plan to accomplish the task. The Board at its June 22, 2016, public hearing on the work program approved adding the task to the Planning Division's FY 2016-17 tasks. The Board did not specify any acreage size, but rather referred to just the EFU zone. Staff initiated the text amendment on August 26, 2016.

III. CONCLUSIONARY FINDINGS:

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

Hearing Required

FINDING: A public hearing is scheduled before the Planning Commission on October 13, 2016, to be followed by a public hearing before the Deschutes County Board of Commissioners at a date to be determined.

2. Section 22.12.020, Notice

Notice

A. Published Notice

1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

FINDING: Notice of the hearing was published in the Bend Bulletin newspaper on September 18, 2016, and described the proposal. This criterion has been met.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: Notice was posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend, as well as having the materials placed on-line under the Planning Commission's calendar. This criterion has been met.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: Given the land use in question does not apply to any specific property, but rather is a legislative plan amendment, no individual notices were sent. This criterion has been met.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice was provided to the County public information official for wider media distribution. This criterion has been met.

3. Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division, which received a fee waiver, at the direction of the Board of County Commissioners. The proposed text amendment is an item from the approved Planning Division work plan. This criterion has been met.

4. Section 22.12.040, Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:

- 1. The Planning Commission.**
- 2. The Board of County Commissioners.**

FINDING: The Planning Commission will hold a public hearing on Oct. 13, 2016, and will make a recommendation to the Board. The Board will hold a subsequent public hearing. This criterion has been met.

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: The Planning Commission public hearing will precede the Board public hearing. This criterion has been met.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: If adopted, Ordinance 2016-024 will be the implementing ordinance to allow an existing building in the EFU zone to be used as a temporary dwelling for a medical hardship. This criterion has been met.

B. CHAPTER 23, DESCHUTES COUNTY COMPREHENSIVE PLAN

1. Chapter 1, Comprehensive Planning, Section 1.2 Community Involvement Policies

Goal 1, Maintain an active and open community involvement program that is accessible to all members of the community and engages the community during development and implementation of land use policies and codes.

FINDING: The task to amend DCC 18.116.090 to allow for the use of existing buildings in the EFU zone as temporary dwelling units in the case of medical hardship was a direct result of community involvement. A citizen suggested the text amendment to allow this during the public hearings for the Planning Division's FY 2016-17 work plan held before the Planning Commission and the Board. In turn, the text amendment itself will be the subject of public hearings before those two same bodies, ensuring further community involvement. The proposal is consistent with this section of the Comprehensive Plan.

2. Chapter 1, Comprehensive Planning, Section 1.3 Land Use Planning Policies

Goal 1, Maintain an open public land use process in which decisions are based on the objective valuations of facts.

FINDING: The proposed text amendment was an outgrowth of public hearings before the Planning Commission and the Board on the Planning Division's FY 2016-17 work program. The proposal is consistent with state law (ORS 215.283(2)(L) and administrative rule (OAR 660-006-0025(4)(t) and 660-033-0130(10)), which all allow an existing dwelling in EFU to be used as a temporary dwelling in a case of medical hardship. The presence/absence of an existing building would be a factual matter as would be the medical hardship itself. The text amendment

will be the subject of public hearings before the Planning Commission and the Board. The proposal is consistent with this section of the Comprehensive Plan.

3. Chapter 2, Resource Management, Section 2.12 Agricultural Lands Policies

Goal 1, Preserve and maintain agricultural lands and the agricultural industry.

FINDING: The proposed text amendment will help preserve agricultural lands by using existing buildings instead of requiring a manufactured home or RV be brought onto EFU zoned lands. Siting new structures or paved areas for an RV to park and/or maneuver can lead to a loss of agricultural lands. The proposal is consistent with this section of the Comprehensive Plan.

C. STATEWIDE PLANNING GOALS

1. Goal 1, Citizen Involvement

FINDING: The text amendment includes workshops before both Deschutes County Planning Commission (PC) and the Board. The text amendment also includes publically noticed public hearings before the PC and Board. This criterion has been met.

2. Goal 2, Land Use Planning

FINDING: Oregon Revised Statute (ORS) 197.610 allows local governments to initiate post acknowledgement plan amendments or changes to land use regulations. The County on September 2, 2016, provided the Department of Land Conservation and Development (DLCD) with the required notice 35 days prior to the first evidentiary hearing, which will be on October 13, 2016. The notice included the proposed changes with additions indicated by underlined text and text to be eliminated indicated by ~~strikethrough~~ text. The text amendment was processed via the County's development code procedures set forth in Title 22, Chapter 22.12 for legislative amendments. This criterion has been met.

3. Goal 3, Agricultural Lands

FINDING: The text amendment is not proposing any changes to land use designations. Additionally, ORS 215.283(2)(L) allows an existing building, in conjunction with an existing dwelling, as a temporary residential use for a hardship suffered by the existing resident or relative of the resident. The temporary use of an existing building for a residential use in case of hardship is also permissible under OAR 660-033-0130(10), which applies to EFU lands. This criterion has been met.

4. Goal 4, Forest Lands

FINDING: The text amendment is not proposing any changes to land use designations nor is it proposing to allow the temporary residential use of an existing building in the F-1 or F-2 zones. This criterion has been met.

5. Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

FINDING: The text amendment is neither proposing any changes to land use designations nor proposing any changes to previously designated Goal 5 resources. Therefore, this criterion has been met.

6. Goal 6, Air, Water and Land Resource Quality

FINDING: No development or land use changes are being proposed that impact air, water, or land resource qualities. Other areas of the County's code deal with protecting air, water, and land remain in full force and effect. This criterion has been met.

7. Goal 7, Natural Hazards

FINDING: The dominant natural hazards in the County are wildfire, winter storms, and flooding. The text amendment leaves County building codes and planning setbacks untouched, which are the planning mechanisms which the County uses to ameliorate natural hazards. This criterion has been met.

8. Goal 8, Recreational Needs

FINDING: The text amendment does not change the uses allowed in the EFU zone, some of which are recreational. This criterion has been met.

9. Goal 9, Economic Development

FINDING: The text amendment still allows properties to develop as allowed under their zoning. Any continuing residential use of a temporary dwelling after the medical hardship has ended can be resolved through the County's code enforcement process. This criterion has been met.

10. Goal 10, Housing

FINDING: This goal pertains to urban or urbanizable lands. The proposed text amendment will not result in any changes or elimination of residentially zoned lands in the County. Additionally, the proposed text amendment is for temporary residential use of existing building for a medical hardship, not permanent housing. This criterion has been met.

11. Goal 11, Public Facilities and Services

FINDING: This goal pertains more to water and sewer services. Under 660-033-0130(10), a temporary residential dwelling used in the case of medical hardship must connect to existing subsurface sewage disposal system, assuming said system has adequate capacity. DCC 18.116.090(H) requires the applicant to obtain all necessary permits from the County's Environmental Soils Division prior to initiating the temporary use. This criterion has been met.

12. Goal 12, Transportation

FINDING: The text amendment will not change the functional classification, performance standards, or access management of any highways or roads. The combination of few EFU parcels which utilize the medical hardship, the temporary nature of the residential use, and the low traffic volumes of rural roads ensures no adverse effects of the text amendment. This criterion has been met.

13. Goal 13, Energy Conservation

FINDING: This plan amendment does not affect the County's regulation of solar setbacks, siting of small-scale windmills, land use or density, etc. The text amendment will ensure compliance with any conditions of approval for site plans, building permits, or similar County approvals. The use of existing buildings means no RVs or tractor-trailers hauling manufactured homes, vehicles which have poor fuel mileage, will be needed at the site. This criterion has been met.

14. Goal 14, Urbanization

FINDING: No land use plan designations, zoning designations, or map changes will result from this plan amendment. The temporary residential use of an existing building is limited to the EFU zone only. By definition, an EFU property is not urban. This criterion has been met.

15. Goals 15-19

FINDING: These criteria do not apply as the County lacks these lands (Willamette Greenway, estuaries, coasts, beaches, etc.).

D. OREGON ADMINISTRATIVE RULE 660-033, AGRICULTURAL LAND

1. 660-033-0130, Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

The following requirements apply to uses specified, and as listed in the table adopted by OAR 660-033-0120. For each section of this rule, the corresponding section number is shown in the table. Where no numerical reference is indicated on the table, this rule does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the table, as authorized by law...

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle 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. A temporary residence approved under this section is not eligible for replacement under 215.213(1)(q) or 215.283(1)(p). Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons

FINDING: The proposed text amendment would make DCC 18.116.090 consistent with state law and administrative rule regarding temporary residential uses for existing buildings in cases of medical hardship. Currently, Deschutes County is more restrictive as the County only allows manufactured homes or RVs to be used as temporary residences. The use of an existing building as a temporary residence would only be allowed in the EFU zone; for all other zones the restriction that only manufactured homes and RVs could be used as temporary residences in cases of medical hardship would remain in effect. The proposal is consistent with this administrative rule.

CONCLUSION

Staff believes the proposed text amendment to amend DCC 18.116.090 to allow an existing building in the EFU zone to be used as a temporary residence in the case of medical hardship complies with applicable criteria and is consistent with state statute and administrative rule.



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MEMORANDUM

To: Planning Commission

From: Peter Russell, Senior Transportation Planner

Date: September 8, 2016

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Background

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Proposal

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Next Steps

The Planning Commission will hold a public hearing at 5:30 p.m., October 13, 2016, regarding File 247-16-000511-TA. After receiving public testimony and deliberations, the Planning Commission will make a recommendation to the Board of County Commissioners. The Board will then hold a public hearing at a date yet to be determined.