

**MINUTES**  
**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, October 28, 2021, 6:30pm**  
**Umatilla County Courthouse, 216 SE 4<sup>th</sup> Street, Pendleton, Oregon**  
**VIRTUAL MEETING VIA ZOOM**

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**COMMISSIONERS**

**PRESENT:** Suni Danforth, Chair, Don Wysocki, Vice Chair, Tammie Williams, Tami Green, Hoot Royer, Sam Tucker & Cindy Timmons

**ABSENT:** Lyle Smith & Jon Salter

**STAFF:** Bob Waldher, Planning Director, Carol Johnson, Senior Planner, Tierney Cimmiyotti, Administrative Assistant & Gina Miller, Code Enforcement Program Coordinator

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*NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. RECORDING IS AVAILABLE AT THE PLANNING OFFICE.*

**CALL TO ORDER**

Chair Danforth called the meeting to order at 6:30pm and read the Opening Statement.

**CONTINUED HEARING**

**CONDITIONAL USE REQUEST #C-1342-21; KEVIN & HEATHER JAMES, APPLICANTS/ OWNERS.** The applicants request approval for the use of a Recreational Vehicle (RV) as a Temporary Hardship Dwelling on property located at 53613 Rosebud Lane, Milton Freewater, Oregon 97862. The subject parcel is northeast of the City of Milton Freewater and identified as Tax Lot 103 on Umatilla County Assessor’s Map 6N3525D. The applicable Land Use standards for a Temporary Hardship Dwelling on Exclusive Farm Use (EFU) Zoned land are in Section 152.617(I)(V), 152.013, 152.060 & 152.615 of the Umatilla County Development Code (UCDC).

**STAFF REPORT**

Carol Johnson, Senior Planner, presented the staff report. Mrs. Johnson stated that this request by applicant Kevin James is for the use of an RV as a Temporary Hardship Dwelling for his parents, Kenny and Lenora James. She added that UCDC Sections 152.617(I)(V), 152.060 & 152.615 apply to the James request, as presented in the staff report.

Mrs. Johnson explained that at the August 26th Planning Commission hearing the Commissioners continued the James Conditional Use Permit request to the October 28, 2021 hearing date. The hearing continuance provided time for Mr. James’s parents to meet with their doctors and obtain medical documentation to present as evidence. Also at the August hearing, a question was raised as to whether the parents met the Temporary Hardship Dwelling purpose in which a person must require direct personal care in order to qualify. Staff met with County

Counsel and confirmed that medical evidence is necessary for review when the decision is based on medical need.

The applicant provided two letters from Dr. Robert Morasch for the record; one on behalf of his father, Kenny James, and another on behalf of his mother, Lenora James, included on pages 32 - 33 of the Commissioner's packets. Mr. James was advised by staff that testimony at the continued hearing from his parents, expressing the care they need and things they cannot do for themselves, would be helpful and was encouraged. Mrs. Johnson added that new information was submitted to staff by the James's neighbor, Melanie Hein, and is included in the Commissioner's packets on pages 28 - 31.

Mrs. Johnson explained that the Planning Commission may approve the applicants' request based on belief of the facts and presented evidence, or may deny the request based on a lack of evidence and doubt about the facts as presented. Approval of the request is based on meeting all of the criteria. Denial of the request would require a modification of the Findings on page 11, under section (2)(b) of the Commissioner's packets.

Chair Danforth asked if there has been a resolution to the concern regarding business related activities occurring on the James property. Mrs. Johnson explained that the issue of business activities on the property is not related to the request for a Temporary Hardship Dwelling. She recognized that the neighbor has concerns related to business activity and stated that Code Enforcement will reach out to Mr. James to resolve that issue. However, she clarified that those concerns are outside the purview of the request being considered today.

**Applicant Testimony:** Kevin James (with parents, Kenny & Lenora James) 53613 Rosebud Lane, Milton Freewater, Oregon, 97862. Mr. James stated that his mother has problems with her back and leg going out and she sometimes falls down. His father suffers from dizzy spells and is unable to lift heavy objects. He stated that his parents are in a position where they would not physically be able to lift each other after a fall. He pointed out that he provided letters from Dr. Morasch and stated that he is available to answer any questions the Planning Commissioner's may have.

Commissioner Tucker asked Mrs. James (Lenora) if her son described her current physical condition accurately. Mrs. James confirmed that his description was accurate.

Commissioner Timmons was not in attendance at the first hearing related to this matter and asked for clarification about the number of structures on the property at this time. According to the minutes from the first hearing, she understood there to be one stick-built dwelling, one manufactured dwelling and two recreational vehicles on the property. She asked if that understanding was correct. Mr. James stated that they have two RV's being stored on the property (owned by him and his parents) which are not being lived in. He added that, if this request is approved, they would move one additional RV onto the property for his parents to live in. Commissioner Timmons asked about the RV which was identified as having wooden steps.

Mr. James stated that he has removed the wooden steps in question. Commissioner Timmons asked for history regarding the manufactured dwelling on the property. Mr. James stated that the manufactured dwelling was grandfathered-in. He added that it has an address and is served by its own septic system.

Commissioner Wysocki asked if there would be someone available onsite most of the time to provide assistance to Mr. James's parents. Mr. James replied yes, there would be someone onsite and available to provide assistance most of the time.

**Opponent Testimony:** Melanie Hein, 53608 Rosebud Lane, Milton Freewater, Oregon, 97862. Ms. Hein stated that she has been a nurse for fifty years and has experience working in home health. She believes the term "infirm" is defined as total dependence in 5-6 Activities of Daily Living (ADLs). She believes people requiring care in this way are not independent drivers and need assistance with transportation to medical appointments. Therefore, she questions the validity of the claims made by the James's.

Commissioner Wysocki asked Ms. Hein if she disagrees with the letters provided by Dr. Morasch. Ms. Hein agreed that the senior James's (Kenny & Lenora) might experience dizziness at times, but argued that approximately 90% of people over sixty deal with that issue. She acknowledged that people sometimes fall down, but added that she does not feel that is a reason to consider a person homebound or in need of live-in assistance. She explained that she has witnessed the senior James's driving vehicles and walking around the yard independently and by definition she does not believe these behaviors demonstrate that they are infirm.

Commissioner Tucker asked what MRADL means, as referred to in the doctor's note. Ms. Hein stated that she was unsure. Commissioner Williams stated she worked as a nurse at Kadlec for 33 years and explained that MRADL refers to Mobility Related Activities of Daily Living.

Commissioner Williams stated that she understands Ms. Hein does not believe the senior James's meet the criteria required to qualify for medical hardship, but asked if there were additional concerns related to her opposition of the request. Ms. Hein stated that the senior James's had already lived on the property a few years ago for approximately 6-8 months, and during that time there was an increase of activity on the road.

Commissioner Timmons asked Ms. Hein how long she has been neighbors with the James's. Ms. Hein stated that she purchased her property in 2011 and the James's moved next door approximately 5 years ago.

**Public Agencies:** Gina Miller, Code Enforcement Officer/ Program Coordinator, Umatilla County Code Enforcement, 216 SE 4<sup>th</sup> Street, Pendleton, Oregon, 97801. Officer Miller stated that she is available to answer any questions for the Planning Commission. She added that the initial conversations with Mr. James pertaining to the RV did not include discussion of a medical hardship. Her understanding of this request is that the senior James's plan to live in the RV for

only part of the year. She explained that this is unique and differs from typical Hardship Dwelling requests which are intended to provide fulltime support continuously throughout the year.

Commissioner Wysocki asked how the standards differ when a request is made to live in a Hardship Dwelling for only part of the year, versus living there all year. Ms. Miller stated that her experience with those who qualify for a Hardship Dwelling is that they generally require assistance with ADLs including dispensing medications, assistance with bathing, dressing, meals and transportation to medical appointments, etc.

Commissioner Tucker stated that his interpretation of the rule is that it does not require a person to live in the Hardship Dwelling all year. He gave the example of multiple family members sharing the responsibility of caring for an individual. A person may live in one place for part of the year, and then move to a second location for the remainder of the year. He asked if there is language in the standards of approval for this request requiring that a person must live in the Hardship Dwelling permanently. Mrs. Johnson stated that the hypothetical scenario Commissioner Tucker described would be acceptable and a Conditional Use Permit could apply to two locations. She pointed out that staff has not had a request like that to date and so it would be considered unique. She clarified that Code Enforcement's contact with Mr. James was the result of a violation on the property related to the RV. The application to use the RV as a Hardship Dwelling was submitted as a way to bring the property back into compliance. Ms. Miller stated that she agreed with Mrs. Johnson's summary.

**Applicant Rebuttal:** Kevin James (with parents, Kenny & Lenora James. Mr. James stated that he purchased his property in 2016. Regarding the issue of living onsite only part time, that is not the plan. He explained that his parents used to live in Hermiston with his sister for part of the year, but that is no longer the case. He clarified that, if approved, his parents will live in the RV fulltime.

Chair Danforth asked Kenny & Lenora James if they are able to travel to their appointments independently. They both stated that they are able to take themselves to appointments most of the time. Chair Danforth asked if they have fallen and required help getting up. Mr. & Mrs. James both replied, yes.

### **DELIBERATION & DECISION**

Chair Danforth stated that she personally does not feel that the James's meet the criteria of approval for a Temporary Hardship Dwelling. She explained that she currently cares for her own mother who lives in her home and expressed concern about people with mobility issues living in an RV. Additionally, the note provided by the physician states that they require intermittent assistance and she does not believe that constitutes the need for a Hardship Dwelling.

Commissioner Williams stated that she has had two hospice patients in her home; her aunt and father-in-law. She also provided care for her mother-in-law after she developed senile dementia. She stated that her family was not in a position to pay for a nursing home and it was her mother-in-law's wish to die in her home surrounded by family. She explained that the first signs of these conditions include falling and confusion about medications. She believes that it is important for loved ones to provide assistance during the first stages and early signs of struggle performing ADLs. When those early signs are missed it can lead to bigger problems and contribute to a rapid regression of physical and mental capabilities. She does not feel it will hurt anyone to have an additional RV on the property to ensure that the James's are able to care for their aging parents.

Commissioner Williams acknowledged that Ms. Hein does not feel the medical condition meets the criteria for approval, but she disagreed. She explained that some days may be better than others, but added that it would take two people to lift them if either of them fell. She insisted that there will be days when they definitely will require more assistance. She believes the Planning Commission should extend the courtesy of allowing the James's to care for their parents on their property, especially because it will not impact anyone else.

Commissioner Royer stated that he appreciates Commissioner Williams's comments. He explained that he was involved with providing care for his grandfather toward the end of his life and witnessed now quickly a person's condition can deteriorate. He stated that he is in support of the James's request.

Commissioner Timmons asked for clarification of the term 'temporary' and how it relates to the Temporary Hardship Dwelling request. Chair Danforth stated that the initial approval is good for two years. After that, they would be subject to an annual review process. She pointed out UCDC 152.617(I)(V)(2)(b) on page 11 of the Commissioner's packets states that, "[a]pproval shall be for a period of two years, which may be renewed; additional doctor's certification may be required to confirm the continued existence of a medical hardship." She further explained that the manufactured dwelling must be removed within 90 days (after the original medical hardship need has ceased) so ultimately the approval is considered to be temporary.

Chair Danforth reiterated that she is concerned about the use of stairs required to enter and exit the RV. She added that fifth wheel trailer stairs are especially skinny making it easy to fall.

Commissioner Wysocki stated that his reservations during the first hearing in August were due to the lack of medical information provided by the applicant. He appreciates that Mr. James provided the letters from the doctor. He also thanked Commissioner Williams for her input and for sharing her medical and nursing experience.

Commissioner Tucker stated that he also felt there was too little evidence presented at the August meeting to support the medical need. He believes the decision for this matter is a close call and understands why opinions may differ. He explained that the criteria of approval for a medical hardship does not require a person be invalid to qualify. The criteria requires an 'undue

hardship’ which is defined in UCDC 152.576(I)(V)(1) as, “unique and temporary conditions that exist which justify the need for temporary housing...” and in order to qualify a person must require direct personal care. Commissioner Tucker stated that he feels the James’s barely meet the standard. He acknowledged Ms. Hein’s concerns but agreed that they do not have any bearing on this decision and should be dealt with another time. He concluded that he believes they do meet the criteria and he supports approval of their request.

Commissioner Williams made a motion to approve Conditional Use Request #C-1342-21, Kevin and Heather James, Applicants and Owners. Commissioner Royer seconded the motion. Motion passed with a vote of 6:1.

### **MINUTES**

Chair Danforth called for any corrections or additions to the minutes from the August 26, 2021 Planning Commission meeting. Chair Danforth pointed out an error on page 3, second to last paragraph, third sentence; the word “here” should be “there”. Ms. Cimmiyotti stated that she will make that correction. Commissioner Tucker moved to approve the minutes with the noted correction. Commissioner Wysocki seconded the motion. Motion carried by consensus.

Chair Danforth called for any corrections or additions to the minutes from the September 23, 2021 Planning Commission meeting. There were none. Commissioner Williams moved to approve the minutes as presented. Commissioner Royer seconded the motion. Motion carried by consensus.

### **OTHER BUSINESS**

Mr. Waldher thanked the Planning Commissioners for attending the virtual training, “Keeping Out of Hot Water: Land Use Decision-making for Planning Commissioners” September 29, 2021, as part of the Oregon Planners Network Fall 2021 meeting.

Mr. Waldher announced that we do not have agenda items for the Planning Commission next month, so there will not be a November meeting. The next Planning Commission hearing is scheduled for December 16, 2021 at 6:30pm.

### **ADJOURNMENT**

Chair Danforth adjourned the meeting at 7:22pm.

Respectfully submitted,

Tierney Cimmiyotti,  
Administrative Assistant

Minutes adopted by the Planning Commission on January 27, 2022