

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Rejecting the Appeal of Planning)
Docket NFD-01-17, and Affirming the Planning)
Director's Approval of a Dwelling Not in) Board Order 18-269
Conjunction With Farm Use on Tax Lot 3322-811,)
a 1.5-acre parcel on Buena Vista Drive, Rural)
Dundee, Oregon, Applicant: Linda Lindsay)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on July 19, 2018, Commissioners Mary Starrett, Richard L. "Rick" Olson and Stan Primozich being present.

IT APPEARING TO THE BOARD as follows:

A. By application dated November 13, 2017, Linda Lindsay applied to the county for a permit to construct a dwelling not in conjunction with farm use on a 1.5-acre parcel zoned EF-20 on Buena Vista Drive, Tax Lot 3322-811;

B. The Planning Director approved the application on May 3, 2018, and his decision was appealed in a timely manner by James Reitz. Following a duly noticed hearing on the appeal by the Board on June 28, 2018, the Board voted 3-0 to deny the appeal, uphold the Planning Director's decision, and approve the application; NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The appeal by James Reitz is hereby denied, the Planning Director's decision to approve Docket NFD-01-17 is hereby affirmed, and the application is approved.

Section 2. The findings attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of this order.

DONE this 19th day of July, 2018 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

Chair


MARY STARRETT

By: Carolina Rook
Deputy Carolina Rook



Richard Olson
Commissioner RICHARD L. "RICK" OLSON

FORM APPROVED BY:

Timothy S. Sadlo for

Timothy S. Sadlo
Senior Assistant County Counsel

Commissioner STAN PRIMOZICH

A handwritten signature in black ink, appearing to read "Stan Primozich", is written over a horizontal line.

**Exhibit A – Board Order 18-269
Findings in Support of Decision to
Deny the Appeal, and Uphold the Planning
Director’s Approval of Docket No. NFD-01-17
and Conditions of Approval**

DOCKET NO.: NFD-01-17

REQUEST: For approval of a dwelling not in conjunction with farm use (non-farm dwelling).

APPLICANT: Linda Lindsay

TAX LOT: 3322-811

LOCATION: Approximately 700 feet west of the intersection of NE Sylvan View Drive and NE Buena Vista Drive on the south side of Buena Vista Drive, Dundee

ZONE: EF-20 Exclusive Farm Use

REVIEW CRITERIA: Sections 402.03(I) and 402.08 of the Yamhill County Zoning Ordinance

FINDINGS:

(much of the information for the findings are taken directly from the report and supplemental information submitted by the applicant)

A. Background Facts

1. Lot Size: The subject parcel is 1.5 acres. The parcel was created by deed prior to October 3, 1975.
2. Access: Buena Vista Drive.
3. On-Site Land Use: The property is forested and sloping slightly to the east and is currently undeveloped.
4. Surrounding Land Use and Zoning: All surrounding parcels are zoned EF-20 and are predominantly five acre parcels with rural residences and a mixture of forested areas with some small farm uses including vineyards and orchards.
5. Water: Proposed well.
6. Sewage Disposal: The applicant is proposing to install a septic system.

7. Fire Protection: Dundee Rural Fire District.
8. Soils: The applicant submitted a soil report prepared by Gary A. Kitzrow, a DLCD approved Soil Classifier, detailing that the soils are predominantly Bellpine, non-high value, Class VI soils (approximately 86%).
9. Previous Land Use Actions: None.
10. Taxes: The property is not receiving deferral.
11. Overlay Zones: None.

B. Ordinance Criteria and Analysis

1. The requirements for a dwelling not in conjunction with farm use in the EF district are found in Section 402.03(I) of the YCZO, as follows:

- 1. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.*

Regarding criterion (1), the subject parcel is bordered on the east, south and west by parcels that are 7.5 acres in size or less, each containing a dwelling. The "area" in consideration is the notice area. One parcel immediately to the south has a vineyard of approximately two acres. Across Buena Vista Drive is a forested parcel of 87.5 acres with a dwelling. Based on the uses of the nearby properties (lack of nearby farm uses), the proposed dwelling and activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.

- 2. The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils.*

Regarding criterion (2), as indicated in Finding A.8 the parcel is primarily composed of Class IV soils. The request complies with this standard.

- 3. The dwelling will be sited on a lot or parcel created before January 1, 1993.*

The parcel was created as part of Lots 11 and 12 of "Dundee Orchard Homes No. 2" subdivision by a plat recorded on October 25, 1892. The subject parcel as it exists today comprises those portions of Lots 11 and 12 lying south of Buena Vista Drive. This configuration was created by deed on May 19, 1975 when the part of Lots 11 and 12 lying north of Buena Vista Drive was separated from the part lying south of Buena Vista Drive. The parcel has not been reconfigured since. A neighboring property owner commented that the subject property was already permitted a dwelling and therefore a second dwelling should not be allowed. The confusion likely stems from the Tax Lot numbers at the time (early 1970's) and the ownership of the lots. The applicant's response, which staff has

verified, is as follows: *The Property is vacant and undeveloped, and there has never been a dwelling located on this Property. In 1992, an adjacent parcel (Lot 10) that is not Tax Lot 3322-816 was then referred to as Tax Lot 3322-811. Yamhill County Docket No. G-2-92 references development on "Tax Lot 3322-811," but using today's tax lot numbers that dwelling is located on the parcel that neighbors the Property. See Exhibit B (map). Similarly, a 1979 variance sought in Yamhill County Docket No. PV-473-79 concerned nearby Lot 9, which at that time was part of Tax Lot 3322-811 and under the same ownership as Lot 10. See Exhibit C at pg. 1-2. The subject Property was created from part of Lots 11 and 12, not Lots 9 or 10. The request complies with the requirements of criterion (3).*

4. *The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern of the area, the cumulative impact of possible new nonfarm dwellings on other lots or parcels in the area similarly situated shall be considered. To address this standard, the county shall:*
 - a. *Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;*
 - b. *Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.) And the dwelling development trends since 1993. Determine the potential number of nonfarm/lot of record dwellings that could be approved, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;*
 - c. *Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of the existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the*

number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

Regarding (4), the request must be shown not to alter the stability of the overall land use pattern in the area. There is a study that must be done to demonstrate compliance with this standard. The steps are long, complicated and very specific. The following analysis includes findings related to those standards.

YCZO 402.03(I)(4)(a) is identified in italics below. It states in part the applicant must:

Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries. . . The application contains information for a 2,000 acre study area that includes all or portions of Sections 15, 16, 17, 21, 22, 23, 27 and 28 of Township 3 South, Range 3 West. . . . the location of the subject parcel within this area,. . . The subject parcel is in the center of the study area . . . why the selected area is representative of the land use pattern surrounding the subject parcel. . . The selected area is representative of the land use pattern surrounding the subject parcel because it is the land use pattern surrounding the subject parcel. The pattern is a mixture of relatively small parcels, around five acres, with dwellings on the majority of them and larger, approximately 20 to 40 acre farm parcels with 14 parcels being over 40 acres....and is adequate to conduct the analysis required by this standard. The applicant has detailed a 2,000 acre study area which is representative of the land use pattern surrounding the subject parcel. This study area is adequate to conduct the analysis since 2,000 acres is the requirement set by the administrative rule. This standard is, at a minimum, very comprehensive. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area; the area contains properties zoned AF-10. None of these properties were included in the study.

YCZO 402.03(I)(4)(b) is identified in italics below. It states in part the applicant must:

Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands). . . The application identified the farm uses in the area as vineyards and the occasional orchard. . . .the number, location and type of existing dwellings (farm, non-farm, hardship, etc.). The applicant submitted a table and documents showing the development pattern in the 2,000 acre study area. The study submitted by the applicant found that there are a total of 158 lots in a resource zone including the subject property with 108 parcels that contain existing dwellings. And the dwelling development trends since 1993. . . The majority of the dwellings (71) were placed before January of 1993 and 37 dwellings were placed after January of 1993. The lot-of-record dwellings and dwellings developed under Measures 37 or 49 are considered nonfarm dwellings so 17 of these 37 dwellings are considered developed with nonfarm dwellings.

Determine the potential number of nonfarm/lot of record dwellings that could be approved, including identification of predominant soil classifications, the parcels created prior to

January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). Based on the analysis of the 2,000 acre study area submitted with the application and staff review of this information, it appears one other non-farm dwelling could potentially be approved on Tax Lot 3321-927 and no other lot of record dwellings. Additionally, three lots (Tax Lots 3316-302, 3322-701 and 3328-500) have been identified as larger than the minimum lot size, which could be divided. However, the lots that would be created from a division would be farm or forest parcels, not non-farm parcels. There are two reasons for this finding. The first is that a non-farm parcel must satisfy OAR 660-033-0100(11) and these parcels would not satisfy OAR 660-033-0100(11)(b)(B) because they are not composed of at least 95 percent Class VI through VIII soils with the soils capable of producing more than 50 cubic feet per acre per year of wood fiber. This option was not included in the county's EF and AF zones because the administrative rule standards are nearly impossible to satisfy within Yamhill County. Therefore, no lots can be divided to create new non-farm parcels. . . . *The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses. . . .* The existing land use pattern has been described above. . . . *and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;* Currently, approximately 68% of the farm/forest zoned lots within the 2,000 acre study area have dwellings. Including the subject parcel's non-farm dwelling, only one other parcel could potentially qualify as a non-farm dwelling. Two additional dwellings appears unlikely to result in a change in the land use pattern of the area.

- c. *Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of the existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.*

As noted above, in the 2,000 acre study area there are 108 existing dwellings located within the farm/forest zones. Of those 108 dwellings, 37 were dwellings permitted as non-farm/lot-of-record/Measure 37/49 dwellings. The 2,000 acre study area produced 158 total parcels in the resource zone. This number is quite high; one reason is due to the large area around the subject parcel to the east, south and west, which is a pre-existing subdivision with platted lots of approximately five acres. Five acre parcels are typically not favorable for large-scale commercial farming operations. The potential two dwellings are not expected to destabilize the overall character of the study area. In addition, the subject parcel is only 1.5 acres and is predominantly surrounded by five acre parcels with dwellings that do not include large-scale farming operations. The location of the subject parcel would not diminish the ability of owners of any other farm parcels to expand due to its location and parcel size, which is not practical for another farm parcel to expand into. Two potential additional non-farm/lot-of-record dwellings and the existing non-farm dwellings within 2,000 acres are not expected to have the cumulative effect of materially altering the stability of the land use pattern or destabilize the farm use within this study area.

5. *The dwelling complies with other conditions the county considers necessary, including but not limited to provision for sewage disposal, emergency vehicle access, and public road approach.*

Regarding criterion 402.03(I)(5), a permit for a new road approach to the county road, Buena Vista Drive, will be required from Public Works. The County Public Works Department stated it has reviewed the application and commented that it has no conflicts. Buena Vista Drive from Sylvan Drive is a one lane, public road that is privately maintained. Prior to the issuance of building permits, the Dundee Fire Department will inspect the driveway for the proposed home site to ensure that there is suitable access for emergency vehicles. Additionally, the property is located in a farm zone, therefore, the landowner will be required to sign and record an affidavit stating the following:

"The subject property is located in an area designated by Yamhill County for agricultural uses. It is the county policy to protect agricultural operations from conflicting land uses in such designated areas. Accepted agricultural practices in this area may create inconveniences for the owners or occupants of this property. However, Yamhill County does not consider it the agricultural operator's responsibility to modify accepted practices to accommodate the owner or occupants of this property, with the exception of such operator's violation of State law."

6. *The tract on which the dwelling is to be sited does not include a dwelling.*

Regarding criterion 402.03(I)(6), the subject parcel is not part of a tract.

7. *Prior to issuance of a residential building permit, the applicant shall provide evidence that the county assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308.370 or 308.765 or ORS 321.352, 321.730, and 321.815. A parcel that has been disqualified under this subsection shall not re-qualify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.*
8. The Planning Department shall require with any approval that the property will no longer be allowed to be on farm or forest deferral in the future. The Department shall notify the Assessor of the decision, in accordance with criterion 402.03(I)(7).

CONCLUSION:

1. The request is for a dwelling not in conjunction with farm use (non-farm dwelling).
2. With conditions the request complies with the criteria in Sections 402.03(I) and 402.08 of the Yamhill County Zoning Ordinance, as outlined in the above findings.

DECISION:

Based on the above findings, analysis, and conclusions, the request by Linda Lindsay for a dwelling not in conjunction with farm use on Tax Lot 3322-811, is hereby approved with the following conditions:

1. All necessary permits for building, electrical, and septic installation shall be obtained and the required inspections performed for the residential development.
2. This approval will expire four years from the date of final approval unless substantial construction has occurred prior to that date. An extension of the expiration date may be applied for as long as the application is made prior to the expiration of the approval.
3. Prior to issuance of a residential development permit, the landowner shall sign an affidavit acknowledging the following declaratory statement and record it in the deed and mortgage records for Yamhill County:

“The subject property is located in an area designated by Yamhill County for agricultural uses. It is the county policy to protect agricultural operations from conflicting land uses in such designated areas. Accepted agricultural practices in this area may create inconveniences for the owners or occupants of this property. However, Yamhill County does not consider it the agricultural operator's responsibility to modify accepted practices to accommodate the owner or occupants of this property, with the exception of such operator's violation of State law.”

4. As required by Section 402.03(I)(7), the parcel shall be not be enrolled in special assessment in the future unless the County Assessor determines it is eligible when combined with another contiguous qualifying parcel.
5. The property owner shall comply with all regulations by the Oregon Water Resources Department governing the construction and use of any groundwater.
6. The Yamhill County Building Official, pursuant to Section 6 of Ordinance 514, shall not issue a building permit for construction of a residence until the applicant has submitted a statement from the chief of the Dundee Rural Fire Department that the proposed residence has suitable access for fire protection equipment, or otherwise meets fire protection standards.
7. The applicant shall initiate a conversation with the owners along Buena Vista Drive (west of Sylvan View Drive) for participation in a road maintenance agreement.
8. Signage shall be added at the intersection of Buena Vista Drive and Sylvan View Drive which states the road is a dead end with no turn around.