

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 Upholding the Planning )  
Commission's Approval and Denying the Appeal )  
of Planning Docket LOR-03-21; (Approval ) Board Order 21-408  
of Principal Lot of Record Dwelling) to be located on )  
Tax Lot 3403-2800 )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on September 23, 2021, Commissioners Mary Starrett, Lindsay Berschauer and Casey Kulla being present.

IT APPEARING TO THE BOARD as follows:

A. On July 30, 2021, the Planning Director issued his Notice of Approval approving Applicant's application for a Principal Lot of Record Dwelling, with conditions.

B. The Planning Director's decision was appealed to the Board, which held a public hearing regarding the application on September 23, 2021. On September 23, 2021, the Board deliberated and voted unanimously to uphold the Planning Director's decision, and to deny the appeal and to approve the application with conditions;

NOW THEREFORE, IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Director's decision to approve Planning Docket LOR-03-21 is hereby upheld, the appeal filed in this matter is denied, and the application is approved.

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

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DONE this 7th day of October, 2021, at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN  
County Clerk

Chair

A handwritten signature in black ink, appearing to read "Mary Starrett".

MARY STARRETT

By: Carolina Rook  
Deputy Carolina Rook

Commissioner

A handwritten signature in black ink, appearing to read "Lindsay Berschauer".

LINDSAY BERSCHAUER

Commissioner

A handwritten signature in black ink, appearing to read "Casey Kulla".

CASEY KULLA

FORM APPROVED BY:

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Christian Boernisch  
County Counsel

## EXHIBIT A

### FINDINGS IN SUPPORT OF BOARD'S APPROVAL OF DOCKET LOR-03-21

#### I. FINDINGS:

##### A. Background Facts

1. *Parcel Size:* Approximately 15 acres.
2. *Access:* The property has direct access to NE Yamhill Road, a publicly maintained road, and also from NE Cooper Lane, which is a privately maintained road.
3. *On-site land use:* Aerial imagery shows that the entire parcel is devoted to hay and grass seed farming and otherwise undeveloped.
4. *Surrounding Zoning and Land Use:* The surrounding parcels to the west, north, and east are also located within the EF-20, Exclusive Farm Use District. To the south, parcels are zoned Agriculture/ Forestry Small Holding AF-10. The area is predominantly dedicated to rural residential uses but small -scale farm uses, in the form of fruit or nut tree orchards, grass seed and hay production and livestock pasturage exists throughout.
5. *Water:* Proposed well.
6. *Sewage Disposal:* An on-site septic system will be required.
7. *Fire Protection:* Yamhill Fire Department.
8. *Soils:* The Yamhill County Soil Survey indicates that the property is composed of Willakenzie soils at 12-20 percent slopes. The remaining property is composed of Willakenzie Silty Clay Loam soils with 3.7 acres at 2-12 percent slopes, 2 acres at 12-20 percent slopes, and 1.9 acres at 30-45 percent slopes.

##### B. Ordinance Provisions and Analysis

1. Section 402.03 of the Yamhill County Zoning Ordinance (YCZO) lists residential uses allowed in the Exclusive Farm Use District, subject to the standards and limitations set forth in Sections 402.08, 402.09, and 402.10 and specified approval criteria. Section 402.03(K) of the YCZO allows a principal lot of record dwelling, not in conjunction with farm use on Class III and IV high-value farmland, subject to certain standards and criteria. Section 402.03(K)(1) requires the following:

*1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:*

*(a) and has been owned continuously by such owner since prior to January 1, 1985; or*

*(b) by devise or intestate succession from a person who acquired the lot or parcel and had owned it continuously since prior to January 1, 1985.*

The lot on which the dwelling is to be sited was acquired by Donn and Anne Williams on August 22, 1978 and continues, after the death of Anne Williams to be under the ownership of Donn Williams. The record reflects Tax Lot 3403-2800 was transferred and thus created as a separate parcel by deed as early as November 1, 1949. This criterion is met.

2. Section 402.03(K)(2)-(3) list the following criteria:

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

*3. If the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract.*

The lot is not currently part of a tract, nor does it have a dwelling currently sited on it. These criteria are met.

3. Section 402.03(K)(4) lists the following requirement:

*4. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.*

The lot is not currently part of a tract, nor was it part of a tract on November 4, 1993. This criterion is met.

4. Section 402.03(K)(5) lists the following requirement:

*5. The dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions.*

Regarding criterion (5), the subject parcel is not located in identified floodplain, greenway, and airport overlay districts. The subject property is located within the County's EF-20 Zoning District, and has a Comprehensive Plan Designation of EF. The proposed development of a residence is a permitted use within the existing zone and harmonious with the County's *Zoning Map* and *Comprehensive Plan*, as well as existing development patterns in the vicinity of the subject property. The subject property is not located within an Urban Growth Boundary (UGB) or Urban Reserve Area (URA) of a neighboring City. There are no Comprehensive Plan policies that would prohibit establishment of a dwelling on this parcel.

5. Section 402.03(K)(6) lists the following requirement:

6. *The tract on which the dwelling is to be sited is:*

(a) *Composed predominantly of high-value farmland as defined in subsection 402.10(E)(2) or (3); and*

(b) *Twenty-one acres or less in size.*

Regarding criterion (6), the subject parcel is 15 acres in size. The property is predominantly composed of Class III and IV high-value farm land. Specifically, Willakenzie at 12-20 percent slopes and Willakenzie Silty Clay Loam at slopes ranging from 2 to 45 percent slopes.

6. Section 402.03(K)(7) lists the following requirement:

7. *The tract on which the dwelling is to be sited is:*

(b) *Not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. No more than two of the four dwellings may be within an Urban Growth Boundary, but only if the subject tract abuts an urban growth boundary;*

Regarding criterion (7), approximately 100 percent of the subject parcel's perimeter is bordered by tracts that are smaller than 21 acres. Of those parcels, the Yamhill County Assessors records reflect that three such tracts had dwellings on them on January 1, 1993. Specifically:

Tax Lot	Year Built
3402-2100	1954
3402-2200	1943
3411-1000	1973

7. Section 402.03(K)(8)-(9) list the following criteria:

8. *The county assessor shall be notified that the governing body intends to allow the dwelling.*

Regarding criterion (8), the County Assessor's office will be on the list for the notice of this decision.

9. *For purposes of this section 402.03(K), "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.*

Regarding criterion (9), the property has been owned by Donn Williams and his deceased wife Anne Williams since 1978 and continues to be under the ownership of Donn Williams. The Record reflects that the dwelling will be constructed by Applicant and his son and daughter-in-law.

8. In addition to the criteria under Section 402.03(K), Section 402.08(D) and (E) require the filing of a document binding the landowner and landowners' successors in interest from pursuing a claim for standard farm or forestry practices. Since the property is in an exclusive farm use zone, this will be made a condition of approval.

## **II. DECISION**

1. The request is for a lot-of-record dwelling on a property in the EF-20 District that is high-value farmland.
2. The present property owner purchased the existing lawfully created parcel in 1978 and has owned it continuously since then.
3. The request complies with the lot-of-record dwelling standards in Section 402.03(K) of the Yamhill County Zoning Ordinance.
4. With the conditions attached to the Planning Director's Notice of Decision dated July 30, 2021, the dwelling can comply with standards and limitations in Sections 402.08 and 402.09 of the YCZO.

## **III. CONDITIONS OF APPROVAL**

1. All necessary permits for building, electrical, and septic installation shall be obtained, and the required inspections performed for the residential development.
2. Prior to issuance of building or septic permits, the landowner shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from mineral extraction practices for which no action or claim is allowed under Section 402.08(E) of the Yamhill County Zoning Ordinance.
3. Prior to issuance of building or septic permits, the landowner shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.
4. This approval will expire four years from the date of final approval unless substantial construction has occurred prior to that date. An extension may be requested provided that the request and the required fee are submitted prior to the expiration of the original approval.