

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)
Director's Approval and Denying the Appeal)
of Planning Docket FT-01-16; Approval) Board Order 16-475
of a Forest Template Dwelling for Tax Lot 2405-)
1000; Applicant: William A. Blair)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on December 1, 2016, Commissioners Mary Starrett, Stan Primozych, and Allen Springer being present.

IT APPEARING TO THE BOARD as follows:

A. By application dated April 12, 2016, William A. Blair applied to the county for permission to site a forest template dwelling on Tax Lot 2405-1000, located at 28989 NW Williams Canyon Road, near Gaston, Oregon, in the F-80 Forestry Zoning District;

B. On September 23, 2016, the Planning Director approved the application, with conditions, and on October 10, 2016, the approval was appealed by Charlie Cubel, 28561 NW Williams Canyon Road; and

C. On November 10, 2016, the appeal was heard by the Board of Commissioners. Following the hearing, which included discussions between the parties and the Board regarding the application, the Board voted 3-0 to uphold the Planning Director's decision, and to deny the appeal, with staff directed to prepare written findings for final adoption on December 1, 2016; NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Director's decision to approve Docket FT-01-16 is hereby upheld, and the appeal filed by Mr. Cubel is denied.

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

DONE this 1st day of December, 2016 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN

County Clerk

By: Keri Hinton

Deputy Lucy Flores Mendez

KERI HINTON

FORM APPROVED BY:

T. Sadlo

Timothy S. Sadlo

Senior Assistant County Counsel

Chair

MARY STARRETT

Commissioner

STAN PRIMOZICH

Commissioner

ALLEN SPRINGER

Accepted by Yamhill County
Board of Commissioners on

12-1-16 by Board Order

16-475

**Exhibit A – Board Order 16-475
Findings in Support of Decision to
Uphold the Planning Director’s
Approval of Docket No. FT-01-16
and Conditions of Approval**

DOCKET NO.: FT-01-16

REQUEST: Forest Template Dwelling

APPLICANT: William A. Blair

TAX LOTS: 2405-1000

LOCATION: 28989 NW Williams Canyon Road, Gaston

ZONE: F-80, Forestry District

CRITERIA: These standards apply: Yamhill County Zoning Ordinance (“YCZO”) Sections 401.03(C), 401.08, and 401.09.

A. Background Facts

1. *Lot Size:* Approximately 5.1 acres.
2. *Access:* NW Williams Canyon Road.
3. *On-site land use:* The aerial photos submitted into the record indicate that the majority of the parcel is in forest use.
4. *Surrounding Land Use:* The area consists predominantly of forested parcels and rural residences.
5. *Surrounding Zoning:* The majority of the surrounding parcels are zoned F-80. The area to the southeast of the subject parcel is zoned AF-20, Agriculture/Forestry.
6. *Water:* The applicant notes that water will be provided via an existing well.
7. *Sewage Disposal:* An on-site septic system will be required.
8. *Fire Protection:* Gaston Rural Fire District.
9. *Soils:* The Yamhill County Soil Survey indicates that the majority of the property has a timber yield of 145 cubic feet/acre/year.

10. *Overlay zones:* The parcel is not identified as being within any overlay zone.
11. *Previous Actions:* Lot line adjustment, Docket L-09-16.

B. Ordinance Provisions and Analysis

1. Section 401.03 of the YCZO lists dwellings permitted in the Forestry District, subject to the standards and limitations set forth in Section 401.03, 401.08, and 401.09 and specified approval criteria.
2. Section 401.03 of the YCZO allows a principal forest template dwelling on a lot or parcel predominantly devoted to forest use on January 1, 1993, except as provided in subsection C of this Section, subject to the following standards and criteria:
 1. *There are no other dwellings on the subject tract; and*
 2. *When the lot or parcel on which the dwelling will be sited is part of a tract, the remainder of the subject tract shall be consolidated into a single lot or parcel when the dwelling is allowed, which shall not be eligible for an additional dwelling; and*
 3. *The lot or parcel is predominantly composed of soils that are capable of producing 0 to 49 cubic feet per acre of wood fiber; and*
 - (a) *All or part of at least three other lots or parcels that existed on January 1, 1993, are within a circle with a 1489.46-foot radius or a 160-acre square centered on the center of the subject tract; and*
 - (b) *At least three dwellings not inside an Urban Growth Boundary existed on January 1, 1993 and continue to exist on the other lots or parcels; or*
 4. *The lot or parcel is predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre of wood fiber; and*
 - (a) *All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a circle with a 1489.46-foot radius or a 160-acre square centered on the center of the subject tract; and*
 - (b) *At least three dwellings not inside an Urban Growth Boundary existed on January 1, 1993 and continue to exist on the other lots or parcels; or*
 5. *The lot or parcel is predominantly composed of soils that are capable of producing more than 85 cubic feet per acre of wood fiber; and*

- (a) *All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a circle with a 1489.46-foot radius or a 160-acre square centered on the center of the subject tract; and*
 - (b) *At least three dwellings not inside an Urban Growth Boundary existed on January 1, 1993 and continue to exist on the other lots or parcels.*
6. *If the tract on which the dwelling will be sited abuts a public road that existed on January 1, 1993, the measurement under subsections 4.a, 5.a, or 6.a may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is, to the maximum extent possible, aligned with the road.*
 7. *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.*
3. Regarding criteria (1) and (2): the record indicates, and the Tax Assessor records confirm, that there is no dwelling on the subject parcel. The parcel is not part of a tract; therefore, consolidation will not be required.
 4. The entire parcel is made up of soils capable of producing more than 145 cubic feet of wood fiber per acre per year, so the requirements of criterion (5) apply, while (3) and (4) do not. The applicant has opted to apply the 160-acre rectangular template as described in criterion (6). Placing a 160-acre rectangular template on the center of the subject parcel, the applicant's submittal shows that portions of at least eleven other lots that existed prior to January 1, 1993 are within the rectangle. Further, the applicant has demonstrated that at least three existing dwellings within the rectangle were established prior to January 1, 1993, and none of them are within an Urban Growth Boundary. The dates that the dwellings were established were obtained from Tax Assessor and Planning Department records. The lots and dwellings identified are as follows:

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|-----|-----------|------------------------------|
| 1. | 2405-1600 | |
| 2. | 2405-1400 | Dwelling constructed in 1945 |
| 3. | 2405-1300 | |
| 4. | 2405-1200 | |
| 5. | 2405-1100 | |
| 6. | 2404-1200 | |
| 7. | 2404-1500 | Dwelling constructed in 1975 |
| 8. | 2404-1600 | Dwelling constructed in 1960 |
| 9. | 2409-900 | Dwelling constructed in 1986 |
| 10. | 2408-100 | |
| 11. | 2405-800 | |
| 12. | 2404-1300 | |

13. 2404-1400

(Note: The parcel was adjusted through a lot-line adjustment (Docket L-09-16), however, prior to the adjustment the parcel met the template criteria.)

5. Regarding criterion (7), there are no Comprehensive Plan policies that would prohibit establishment of a dwelling on this parcel. The parcel is not within the 100-year floodplain, Willamette River Greenway or an airport overlay District. There are no streams on the parcel that are identified as fish habitat. It is feasible (likely) that the standards in Section 401.10 such as access, setbacks and height limitations can be met, and compliance will be verified at the time of application for building permits.

C. Dwelling Siting Standards

YCZO Section 401.08 requires that an applicant for a new dwelling establish compliance with the following criteria:

- (A) *Relevant physical and locational factors including, but not limited to, topography, prevailing winds, access, surrounding land use and source of domestic water shall be used to identify a site which:*
- (1) *Has the least impact on nearby or adjacent lands zoned for forest or agricultural use;*
 - (2) *Ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*
 - (3) *Minimizes the amount of forest lands used for the building sites, road access and service corridors; and*
 - (4) *Minimizes the risk associated with wildfire.*
- (B) *The applicant shall provide evidence that the domestic water supply, if any, is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule (OAR 629-24-101(3)). If the water supply is from a well, a copy of the well constructor's report shall be submitted to the county upon completion of the well. If the water supply is unavailable from public sources or sources located entirely on the subject property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.*
- (C) *As a condition of approval for a dwelling under subsections 401.03, if the tract is more than 5 acres in size the property owner shall submit a stocking survey report to the County Assessor and the Assessor shall verify that the*

minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.

Regarding (A), the applicant's site maps show the building site to be located near the center of the five-acre parcel, at least 130 feet from the nearest property line. The applicant has indicated that the proposed building site is accessed from an existing logging road. In order to prevent impacts to other forest and agricultural lands on surrounding properties, the dwelling will need to be far enough from the property lines to allow as much of the full primary and secondary fire breaks as possible as required by *Section 401.09 (F & G) of the Yamhill County Zoning Ordinance* specifying fire siting standards. It is feasible for the applicant to develop the proposed home site to include the full fire breaks to all property lines. With these setbacks, the proposed dwelling will have the least impact on nearby lands zoned for forest and agriculture uses. Additionally, compliance with the requirements of criteria (B) and (C) above will be required as conditions of approval.

D. Fire Siting Standards

1. Section 401.09 requires the following fire siting standards for all new dwellings or permanent structures:

- (A) *The dwelling shall have a fire-retardant roof;*
- (B) *The dwelling shall not be sited on a slope of greater than 40 percent;*
- (C) *The dwelling is located upon a parcel within a fire protection district that fights residential fires, or shall be provided with residential fire protection by contract. A dwelling may be allowed on a parcel that does not comply with these provisions provided that:*
 - 1. *The applicant provides evidence that the applicant has asked to be included in the nearest fire protection district, but that district is unable to provide residential fire protection by contract; and*
 - 2. *The dwelling shall be provided with a fire sprinkling system; and*
 - 3. *The parcel is provided with a water supply consisting of a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons, or a stream that has a minimum year-round flow of at least one cubic foot per second. Road access shall be provided to within 15 feet of the water's edge for fire-fighting pumping units, and the road access shall accommodate a turnaround for fire-fighting equipment.*
- (D) *Road access to the structure shall meet the road design standards described in Section 401.10(D).*

- (E) *If the dwelling has a chimney or chimneys, each chimney shall be provided with a spark arrester.*
 - (F) *A primary fire break shall be constructed, no less than 30 feet wide. The fire break is only required to be constructed on land surrounding the dwelling that is owned or controlled by the owner. The primary firebreak could include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed.*
 - (G) *A secondary firebreak of not less than 100 feet outside the primary firebreak shall also be constructed. The fire break is only required to be constructed on land surrounding the dwelling that is owned or controlled by the owner. Vegetation within the secondary firebreak should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent spread of fire into the crowns of the larger trees. Dead fuels shall be removed. The secondary fire break shall be increased to 150 feet if the dwelling or structure is located on a slope of greater than 25% or other fire hazards exist.*
 - (H) *No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.*
 - (I) *The applicant shall obtain an address from the County, and shall display that number in a location on the property that is clearly visible from the road used as the basis for numbering. The numbers shall not be less than three inches in height, shall be painted in contrasting or visible color and shall comply with all other applicable standards for signs.*
2. The requirement for a fire-retardant roof—standard (A), spark arresters on chimneys - standard (E), and addressing requirements—standard (I), will be verified at the time of application for building permits, and will be imposed as conditions of approval.
 3. A condition will be imposed requiring that the proposed dwelling be located on a slope of less than 40%. Therefore, the proposal will comply with standard (B).
 4. Regarding standard (C): the property is located within the Gaston Rural Fire Protection District so the request satisfies (C), above.
 5. Regarding standard (D): the driveway to the dwelling site must meet the access standards in Section 401.10(D) and be approved by the fire chief of the Gaston RFPD as being suitable for handling fire protection equipment before building or septic permits will be issued.
 6. Regarding standards (F), (G) and (H): a condition of approval will require that all required fire breaks be located entirely on the subject property. The fire breaks must be shown on

the site plan submitted at the time of application for building permits, and implemented upon construction of the dwelling.

CONCLUSIONS:

Having accepted and weighed all of the evidence submitted into the record, the Board concludes:

1. The request is for approval of a forest template dwelling on a property in the F-80 zoning district.
2. The proposal complies with the requirements of Section 401.03(C) of the YCZO for a "template test" dwelling because the parcel is not part of a tract, there are portions of at least eleven other lots within a 160-acre square template centered on the subject parcel, and at least three of the lots had residences prior to 1993.
3. Conditions of approval are necessary to assure full compliance with siting and fire safety standards of Sections 401.08, 401.09 and 401.10 of the YCZO.

DECISION AND CONDITIONS OF APPROVAL:

Based on the above findings and conclusions, the request by William A. Blair for a forest template dwelling on **Tax Lot 2405-1000** is hereby approved with the following conditions:

1. The dwelling shall be located within the building site identified on the site map submitted with the application. A different building site may be approved if an application is made and evidence is provided to indicate how an alternative location will comply with the standards in Section 401.08(A) of the Yamhill County Zoning Ordinance.
2. The applicant shall obtain an address from the county, and shall display that number in a location on the property that is clearly visible from the road used as the basis for numbering as well as locations along the private drive to distinguish the appropriate driveway from other driveways in the area, if necessary. The numbers shall not be less than three inches in height, shall be painted in a contrasting or visible color and shall comply with all other applicable standards for signs.
3. The dwelling shall have a fire-retardant roof. If the dwelling has a chimney or chimneys, each chimney shall be equipped with a spark arrester.
4. The dwelling shall not be sited on a slope of greater than 40%.
5. The following requirements shall be shown on the site plan submitted at the time of application for building permits, and implemented upon construction or placement of the dwelling:
 - a. A primary fire break shall be constructed, no less than 30 feet wide. The primary firebreak could include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each

other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed.

- b. As much as practical of the secondary firebreak, of 100 feet outside the primary firebreak, shall also be constructed on the applicant's property. Dead fuels shall be removed. The secondary fire break shall be increased if the dwelling or structure is located on a slope or other fire hazards exist.
 - c. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
6. The access road and driveway to the dwelling shall be constructed to meet the road design standards contained in Section 401.10(D) of the Yamhill County Zoning Ordinance. Building and septic permits shall not be issued until the road is completed and the applicant has provided a private engineer's statement that the road meets these standards. In addition, the applicant shall submit a statement from the chief of the Gaston Rural Fire District that the proposed residence has suitable access for fire protection equipment, or otherwise meets fire protection standards.
 7. The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule (OAR 629-24-101(3)). If the water supply is unavailable from public sources or sources located entirely on the subject property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.
 8. 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.
 9. Prior to issuance of building or septic permits, the landowner shall submit a stocking survey report to the County Assessor who needs to confirm that the parcel meets the minimum stocking requirement.
 10. This approval is valid for four years from the date of the final decision and will expire unless substantial construction has occurred prior to that date. An extension may be requested provided the request and the required fee are submitted prior to the expiration of the original.

END