

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 Docket)
C-38-18/SDR-44-18; Approval of Conditional)
Use and Site Design for a Winery, Tasting Room) Board Order 19-119
and Accessory Uses as Commercial Activities)
in Conjunction With Farm Use, 9500 SE Eola Hills)
Road, Tax Lot 5426-601)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on April 18, 2019, Commissioners Richard L. "Rick" Olson, Mary Starrett and Casey Kulla being present.

IT APPEARING TO THE BOARD as follows:

A. On February 8, 2019, the Planning Director approved, with conditions, an application by Cyler Varnum for conditional use and site design approval to allow use of an existing building as a winery and tasting room on a 4.85-acre parcel in the EF-20 (Exclusive Farm Use) district.

B. The Planning Director's decision was appealed to the Board, which held a public hearing regarding the application on March 28, 2019. Following the close of the hearing, the Board deliberated and voted unanimously (3-0) to uphold the Planning Director's decision, deny the appeal, and 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 C-38-18/SDR-44-18 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.

DONE this 18th day of April, 2019 at McMinnville, Oregon.

ATTEST:  YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

Chair



RICHARD L. "RICK" OLSON

By: 
Deputy Carolina Rook

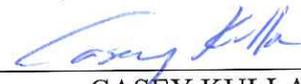
Commissioner



MARY STARRETT

FORM APPROVED BY:

Commissioner



CASEY KULLA

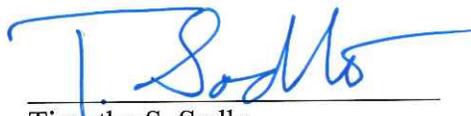

Timothy S. Sadlo
Senior Assistant County Counsel

Exhibit A
Board Order 19-119

Findings in Support of Approval of Planning
Docket No. C-38-18/SDR-44-18 and Conditions of Approval

REQUEST: Conditional use and site design review for a winery, tasting room, and accessory uses.

APPLICANT: Cyler Varnum

TAX LOT: 5426-601

LOCATION: 9500 SE Eola Hills Rd, Amity

ZONE: EF-20, Exclusive Farm Use District

REVIEW CRITERIA: Sections 402.04(G), 402.07(A), 1101.02, and 1202.02 of the *Yamhill County Zoning Ordinance*.

FINDINGS:

A. Background Facts

1. *Parcel size:* Approximately 4.85 acres.
2. *Access:* SE Eola Hills Road
3. *On Site Land Use:* The property is developed with an existing manufactured home on a daylight basement foundation which is proposed to be converted for the winery and tasting room use. There is also a new manufactured home being installed on the property as a replacement for the existing home. There is a small existing vineyard on the back half of the property as well as a small area of vines planted along Eola Hills Road in the northwest corner of the property. Surrounding the old dwelling/proposed winery building and driveway there are a number of mature evergreen trees.
4. *Surrounding Zoning and Land Use:* All surrounding properties are zoned EF-20 or EF-40, Exclusive Farm Use. All of the adjacent properties are developed with single family dwellings. In the surrounding area, including parcels adjacent to the subject parcel and the parcels surrounding them, the predominant land use pattern is small rectangular lots of approximately the same size as the subject parcel developed with single-family dwellings. There are two other wineries located within 900 feet of the subject parcel (Brooks Winery and Grochau Cellars) on similar-sized parcels and of similar size or larger than the proposed winery. There do not appear to be any existing farm uses on adjacent properties, but there are some small vineyards and orchards within about one-quarter of a mile of the subject parcel.
5. *Soils:* The *Natural Resources Conservation Service* map shows that the entire property is composed of high value or prime soils – Nekia (NcB and NcD) and Jory (JrB).

B.O. 19-119
Exhibit "A"

6. *Water:* The application indicates that the property is served by an on-site well.
7. *Sewage Disposal:* The current dwelling is served by a septic system. A new septic system may be required by the County Sanitarian if the current system cannot handle the additional load from the tasting room and future winery.
8. *Overlay zones:* The parcel is not located in a sensitive wildlife habitat, nor is it in the Willamette River Greenway, or airport overlay district. The National Wetlands Inventory Map does not identify the presence of any wetlands on the property. No portion of the parcel is in the 100-year floodplain. The property is located in the Eola Hills Groundwater Limited Area.
9. *Previous Actions:* A replacement dwelling was approved through Docket RDI-25-18 on June 8, 2018.
10. *Request:* The applicant is proposing to convert the daylight basement area of the existing dwelling into a wine production and cellar area and convert the main floor into a wine tasting room. There is an existing concrete patio adjacent to the outer doors of the daylight basement which the applicant will use for a crush pad. In the future, the applicant also proposes to have an outdoor seating/tasting area in the middle of the vineyard in an area that currently does not have any vines, along with some space for lawn games.

B. Conditional Use Provisions and Analysis

1. (A) *The use is listed as a conditional use in the underlying zoning district;*

The applicant is requesting a winery and tasting room. Yamhill County Zoning Ordinance 402.04(G) lists commercial activities that are in conjunction with farm use, which include wineries by definition, as a conditional use subject to site design review standards. The request is consistent with criterion (A).

2. (B) *The use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed use;*

Regarding criterion (B), Yamhill County goals and policies do not provide specific standards or review criteria for review of wineries. The subject parcel is not located in an area which is designated as sensitive wildlife habitat, nor is it in the Willamette River Greenway or airport overlay district, and new development will not be occurring in the floodplain. The County Comprehensive Plan states that agriculture and forestry play a dominant role in the County's economy, and calls for preserving that role while increasing economic diversification and employment. The applicant's proposal appears to comply with that goal in that it will support the local agricultural economy through the purchase of local grapes for wine production and the employment of personnel in the winery and tasting room.

3. (C) *The parcel is suitable for the proposed use considering its size, shape, location,*

topography, existence of improvements, and natural features.

Regarding criterion (C), the applicant has demonstrated that the parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements, and natural features. The property consists of just 4.85 acres, but it is already almost fully developed with a dwelling, the building to be used for the winery, and grapevines. All of the construction activities will take place within an existing structure or along the existing driveway. There are no natural features to speak of as the property has been used as a residence with vineyard for several decades. The site plan demonstrates that all the proposed improvements, including for parking, fit neatly around the existing structure that is proposed to house the winery and tasting room. Trees will need trimming, but none will need to be removed. This area is relatively flat and level and should not pose a challenge for development activities. The property slopes downward toward the vineyard, but most of the development is occurring above this area and no vines are proposed to be removed. In fact, the applicant plans to plant more vines along the road. The property is situated in the middle of the Eola-Amity Hills American Viticultural Area and there are two other wineries with tasting rooms (Brooks Winery and Grochau Cellars) within 900 feet of the applicant's property on similarly small parcels. Within about 1.5 miles of the applicant's property there are at least five other wineries operating. Based on the evidence, the parcel is suitable for the proposed use and consistent with criterion (C).

4. (D) *The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district.*

- (F) *The use is or can be made compatible with existing uses and other allowable uses in the area.*

Regarding criteria (D) and (F), the area is predominantly in residential use, with some agricultural use (predominantly hazelnuts and vineyard) and a couple of wineries. The proposed use will be confined primarily inside of existing structures, is not expected to produce noise above what normally occurs in the zone, and artificial sound amplification will be prohibited through a condition of approval. There may be odors associated with wine production briefly in the fall, but farm-related odors are common in the Exclusive Farm Use zone. The applicant will be required to establish and maintain parking on-site, as well as an orderly traffic flow, and parking on the public road or right-of-way will be prohibited. The property is screened on both the north and south sides by tall, dense lines of mature evergreen trees which adequately screen the property from neighbors. As mentioned earlier, there are also significant trees screening the proposed winery building and parking areas from the road. The proposed winery building is more than 100 feet from any property line and more than 200 feet from any off-site dwelling. No further screening will be required as a condition. Given the scale of the proposed winery at its largest possible extent, it will not substantially limit, impair, or prevent use of surrounding properties. Furthermore, there are other small wineries in the near vicinity. The scale of this proposed winery is in line with, and not out of character, with those uses which have already operated in the near area for a number of years. Criteria (D) and (F) are met.

5. (E) *The proposed use is appropriate, considering the adequacy of the public facilities and services existing or planned for the area affected; and*

Regarding criterion (E), the area is currently served by the Amity Rural Fire District. The applicant is proposing to use the current main access via SE Eola Hills Road. Prior to issuance of building permits the applicant must comply with all road/driveway improvements required by the Amity Rural Fire District. The existing dwelling is served by a septic system. Prior to issuance of building permits, the County Sanitarian will inspect the current septic system to determine its adequacy to serve the new use.

C. EF-20 Conditional Use Standards

Section 402.07(A) requires that prior to establishment of a conditional use, the applicant shall demonstrate compliance with the following criteria:

1. *The use will not force significant change in accepted farming or forest practices on surrounding lands devoted to farm or forest use.*
2. *The use will not significantly increase the cost of accepted farming or forest practices on surrounding lands devoted to farm or forest use.*

The “surrounding lands” include all of the land in the notice area. No impacts are anticipated beyond that area. The applicant’s materials included a survey of aerial imagery of the surrounding area, and a site visit by staff indicated that none of the adjacent properties appear to be in farm or forest uses. As mentioned above, there are vineyards of a commercial scale in the near area (approximately 1,000 feet away from the subject property to the east), but there is a winery and tasting room on-site at that vineyard. The proposed winery and tasting room are not uses that would be considered incompatible with vineyards and in fact they very frequently occur together. Down the road to the southwest there is a hazelnut orchard, but it is also not expected to be impacted by the proposed use due to the fact that it is separated by an intervening parcel and more than 200 yards from the subject parcel. The screening inherent to the subject parcel (mentioned above) which helps to constrain the use to the interior of the property will also prevent the use from impacting nearby farm or forest uses.

D. Site Design Review Criteria

1. Section 1101 for Site Design Review requires consideration of the following factors in the review of site development plans:

(a) *Characteristics of adjoining and surrounding uses;*

Regarding factor (a) above, this is addressed more thoroughly in A.4 of this report.

2. (b) *Economic factors related to the proposed use;*

Regarding factor (b) above, there have been no economic factors identified that would prevent the use of the parcel for a winery and tasting room. The applicant is proposing a phased development which would enable them to temporarily hold by-appointment tastings in their new home on the property. The plan is to begin work upon approval of this application and by fall of 2019 complete the renovations of the proposed winery and tasting room structure for regular use. Addition of the outdoor lawn games/tasting area would occur in spring of 2020. The applicant states that they plan to hire perhaps one other person to assist in the operation but are seeking to keep a small and sustainable business model moving forward.

3. *(c) Traffic safety, internal circulation and parking;*

Regarding factor (c), the applicant proposes to use the existing driveway onto SE Eola Hills Road. This driveway is a loop that comes in at about the midpoint of the property line along SE Eola Hills, goes around the proposed winery structure, and comes out again onto SE Eola Hills at the southwest corner of the property. The applicant has proposed making this a one-way driveway for traffic safety and maneuvering through signage. The driveway must meet fire department standards. These will both be included as conditions of approval. Regarding parking, Section 1007.02 (C) of the YCZO requires one space per 100 square feet of tasting room area plus one space for each employee on maximum working shift (for both the winery and tasting room). The site plan indicates there is sufficient space to put in the required number of parking spaces and maintain space for maneuvering. Compliance with Section 1007 will be made a condition of approval. With conditions, the applicant's proposed use complies with criterion (c).

4. *(d) Provision for adequate noise and/or visual buffering from incompatible uses;*

Regarding factor (d), the tasting room activities will take place primarily indoors and will not produce noise above what normally occurs in this area. Outdoor amplification of sound will not be allowed. As described earlier, the tasting room area is heavily screened from surrounding properties. No further landscaping will be required. Any lights must be angled or shielded so as not to shine or produce glare on the road or other nearby properties.

5. *(e) Retention of existing natural features on site; and*

Regarding factor (e) above, there are no existing natural features on site. The property has been developed with a residence and vineyard for several decades and no natural features remain. There is a grove of evergreen trees that surrounds the proposed winery structure and parking areas, but while they are planned for trimming, none of them are slated to be removed.

6. *(f) Problems that may arise due to development within potential hazard areas.*

Regarding factor (f) above, there are no identified potential hazard areas on the property.

7. (g) *Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*

Regarding factor (g), notice of the proposed use was sent to the surrounding property owners and published in a newspaper of general circulation. No comments were received from any direct neighbors, however a property owner up the street (Marion Roybal) wrote in opposition due to traffic and general opposition to having “another winery in this area” (emphasis in original) because it is a farm zone and “not business.” However, wineries are explicitly allowed as either a permitted or conditional use in the Exclusive Farm Use zone. As far as traffic is concerned, the application materials were referred to several outside agencies including County Public Works. No concerns came back from Public Works. As discussed in section D.3 (above), traffic safety and parking impacts can be mitigated through conditions. Given the small scale of the operation and the numbers provided by the applicant regarding expected daily visitors, it does not appear that traffic will rise to a level of significant concern.

A number of people who live further away or in other parts of the county commented on the water usage for this proposed new use. It is true that the property is located within a groundwater limited area designated by the State of Oregon. That being said, the county does not have jurisdiction over water issues and there are no review criteria that address water availability or usage. Under ORS 537.545(1)(f) “(a)ny single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day” of groundwater is exempt from the requirements to obtain a permit or water right under state water law. It is unlikely that the small operation proposed by the applicant would exceed this threshold.

Many of the commenters expressed concern over the perceived scale of events to be conducted on the property, especially in relation to the size of the parcel. There are some concerns that large events will be frequent and that the parcel will not accommodate the number of people who come out. The applicant’s comments clarify that the 75-100 people who might be expected during the few large events per year (mainly on a couple of holiday weekends) would likely be spread out over many hours of the day and not all at once. As discussed in section D.3 above, traffic safety and parking have already been analyzed and found, with conditions, to comply with the ordinance. The size of the parcel and the size of the winery operation (namely a husband-wife team with no more than one employee) effectively self-limits the scale of the use. Additional conditions agreed to by the applicant limit the scale of the proposed use.

A concern voiced by another winemaker who lives a few miles away was how waste would be disposed of. The applicants have responded that the septic system has already been sized to handle the tasting room and that process water from the winery must meet Department of Environmental Quality (DEQ) rules. They plan to compost the pomace from the winemaking process for use on-site. A condition of approval requires that the applicant receive septic system authorization for the winery/tasting room use and that all other state permits be obtained prior to operation.

CONCLUSIONS:

1. The request is for a conditional use and site design review for a winery and wine tasting room.
2. With conditions, the request complies with criteria listed in Sections 1202.02, 402.04(G) and 402.07 of the Yamhill County Zoning Ordinance.
3. With conditions, the request complies with the criteria listed in Section 1101.02 of the Yamhill County Zoning Ordinance.
4. The request complies with the goals and policies of the Yamhill County Comprehensive Plan.

CONDITIONS OF APPROVAL

Based upon the above findings and conclusions, the request by Cyler Varnum for a conditional use and site design review for a winery and tasting room to be operated on a parcel identified as Tax Lot 5426-601 is approved with the following conditions:

1. The development shall substantially conform to the plans submitted with the application. All required building, plumbing, and electrical permits shall be obtained from the Yamhill County Building Department.
2. Prior to issuance of building permits, the applicant shall obtain authorization from the County Sanitarian for the tasting room to use the existing septic system or shall receive approval for a new septic system to serve the use.
3. Prior to issuance of building permits, the applicant shall provide evidence of a water right, permit, or long-term service agreement to bring in water from another site, or evidence shall be provided indicating the winery and tasting room will not exceed the allowable daily usage for a permit-exempt well under ORS 537.545.
4. Parking shall be established and permanently maintained as long as the tasting room is operating so that there is a minimum of one parking space per 100 square feet of tasting room space plus one parking space for each employee of the winery and tasting room on maximum working shift pursuant to Section 1007 of the YCZO. Parking shall not be permitted on the street or public right-of-way.
5. Prior to operation of the tasting room, the applicant shall make the northern driveway an "entrance only" and the southern driveway an "exit only" and shall install directional signage to establish the internal traffic pattern as described in the application.
6. The use may have one on-premise sign of not more than 24 square feet pursuant to

Section 1006 of the YCZO, subject to permit approval.

7. Any lighting for the facility shall be shielded, deflected, or directed onto the applicant's property, so it does not shine onto the county road or adjacent lots.
8. Prior to operation of the facility, the applicant shall obtain all permits required by the Oregon Liquor Control Commission (OLCC), Department of Environmental Quality (DEQ), and the Department of Agriculture.
9. Prior to initiation of the operation, 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."

10. Prior to issuance of building permits, the water supply and access driveway will be required to meet Amity Rural Fire District standards.
11. "Agri-tourism or other commercial events" per subsection (2)(d) of ORS 215.452 are not authorized without additional approval. "Agri-tourism or other commercial events" include outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.
12. The outdoor artificial amplification of voice or music is not allowed.
13. The gross income of the winery from any activity other than the production or sale of wine may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. An annual report shall be prepared by a certified public accountant and submitted to the Planning Director to ensure compliance with this condition.
14. The maximum on-site production of the winery shall not exceed 2,000 cases annually.
15. The tasting room may be open between the hours of 11 AM and 6 PM, Thursday through Monday and at other hours by appointment only.

16. The winery may hold up to seven larger open house events annually. Winery open houses shall be limited to pre-Memorial Day weekend, Memorial Day weekend, Labor Day weekend, pre-Thanksgiving weekend, Thanksgiving weekend, and two wine club pickup weekends. The maximum number of vehicles at any one time shall not exceed 29 vehicles and an area to provide 29 parking spaces shall be maintained during the events. No off-site parking is allowed.
17. The winery may host up to six winemaker dinners or luncheons annually with a maximum attendance of forty guests for the primary purpose of promoting wine produced in conjunction with the winery.
18. Any food service shall conform to ORS 624.010 for a "limited service restaurant" which means a restaurant serving only individually portioned prepackaged foods prepared from an approved source by a commercial processor and nonperishable beverage or shall be prepared off-site by a commercial caterer that is licensed and inspected by the Public Health Department.
19. This approval shall expire two years from the date of this approval unless the use has been initiated.
20. Modification of any of the above conditions requires approval under Section 1202.05 of the Yamhill County Zoning Ordinance. Violation of any of the above conditions may result in revocation of the conditional use permit with the process detailed in Section 1202.07 and 1202.08 of the Yamhill County Zoning Ordinance.