

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 C-22-20/SDR-26-20; Approval)
of Conditional Use and Site Design for a Winery) Board Order 21-114
to be Located at 10275 NE Worden Hill Road,)
Tax Lot 3321-913)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on April 1, 2021, Commissioners Mary Starrett, Lindsay Berschauer and Casey Kulla being present.

IT APPEARING TO THE BOARD as follows:

A. On January 7, 2021, the, Planning Commission held a public hearing on an application by Jared Etzel, to operate a winery, including a by-appointment tasting room, on property located AT 10275 NE Worden Hill Road, Dundee (Tax Lot 3321-913). Following an open record period, on February 4, 2021, the Planning Commission voted 6-0 to approve the application with conditions.

B. The Planning Commission's decision was appealed to the Board, which held a public hearing regarding the application on March 11, 2021. On March 18, 2021, the Board deliberated and voted unanimously to uphold the Planning Commission's decision, 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 Commission's decision to approve Planning Docket C-22-20/SDR-26-20 is hereby upheld, the appeal filed in this matter is denied, and the application is approved.

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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, and as part of, this order.

DONE this 1st day of April, 2021, at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

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

Chair

MARY STARRETT

By: Carolina Rook
Deputy Carolina Rook

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

Commissioner

LINDSAY BERSCHAUER

FORM APPROVED BY:

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

Commissioner

CASEY KULLA

T. Sadlo
Timothy S. Sadlo
Senior Assistant County Counsel

EXHIBIT A

Board Order 21-114

Findings in Support of Approval of Planning Docket No. C-22-20/SDR-26-20 and Conditions of Approval

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

APPLICANT: Jared Etzel

TAX LOT: 3321-913

LOCATION: 10275 NE Worden Hill Road, Dundee

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* (YCZO). Comprehensive Plan policies as specified in these findings.

FINDINGS:

A. Background Facts

1. *Parcel size:* Approximately 9.4 acres.
2. *Access:* The property has direct access to NE Worden Hill Rd.
3. *On Site Land Use:* The property is currently planted with approximately 7 acres of vineyard and does not currently have any structures.
4. *Surrounding Zoning and Land Use:* Properties to the north and east are zoned Exclusive Farm Use, EF-20 and EF-40. These parcels are a mix of agricultural and rural residential uses. The agricultural uses are dominated by vineyard but also include grass and hay production, Christmas trees, and livestock pasturage. There are also a number of wineries and tasting rooms throughout the surrounding area. To the west and south the surrounding properties are zoned Forestry Large Holding, F-80. The uses in this zone are commercial and passive forest uses.
5. *Soils:* The *Natural Resources Conservation Service* map shows that the property is composed of Jory-Gelderman silty clay loams with 2 to 12 percent slopes and Jory silty clay loams with 12 to 20 percent slopes. Both are classified as high value soils.
6. *Water:* The application indicates that there is an existing onsite, permitted well that serves the property.
7. *Sewage Disposal:* A proposed septic system would serve the use.

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 indicated there are no wetlands present on the property. No portion of the parcel is in the 100-year floodplain. The property is not located in an identified Groundwater Limited Area.
9. *Previous Actions:* The property underwent a lot line adjustment in March of 2007 through docket L-19-07 giving this lot its current configuration. The previously-existing dwelling on the property has been removed, and a replacement dwelling inspection was completed on August 16, 2017 through Docket RDI-32-17. The approval for the replacement dwelling is valid through August 15, 2021.
10. *Request:* The applicant is requesting conditional use and site design review to construct and operate a wine production (winery) facility and by-appointment tasting room open to the public.

B. Conditional Use Provisions and Analysis (YCZO 1202.02)

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

The applicant is requesting a winery and tasting room. In the EF20 zone, YCZO 402.04(G) authorizes commercial activities that are in conjunction with farm use as a conditional use subject to site design review standards. Under YCZO 402.10(I)(4), a facility for the production and sale of wine (i.e., a winery) that does not meet permitted use criteria may be deemed a commercial activity in conjunction with farm use. This proposal does not meet the permitted use criteria for a winery in YCZO 402.10(I)(1-3), so processing this application as a conditional use is consistent with YCZO 402.04(G) and criterion (A).

The County rejects allegations by opponents that the proposed site plan is not feasible. The applicant presented ample evidence supporting the feasibility of the site plan, and the site plan meets all applicable County standards. Opponents submitted no evidence that the site plan was infeasible, only conjecture and argument. Condition of approval no. 1 requires development consistent with the approved site plan.

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

Yamhill County Comprehensive Plan 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; therefore none of the Plan goals and policies applicable to such features are applicable.

The applicant's proposal is for an agricultural use in an agricultural zone. As such, the Comprehensive Plan policies identified by opponents related to residential development and its relationship to urban uses are not applicable to this proposal. The appropriate

Comprehensive Plan policies to consider are those applicable to agriculture in the County (see Yamhill County Comprehensive Plan, Section II(A) and goals and policies thereunder), and those policies call for protecting high value farmland and preserving the dominant role that agriculture plays in the County's economy while increasing economic diversification and employment. This proposal furthers those policies by expanding agricultural use of high value farmland while boosting the County's farm economy through purchase of local grapes and employment of local personnel in the winery and tasting room. Criterion (B) is met.

3. (C) *The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements, and natural features.*

The parcel is suitable for the proposed use considering its size. The parcel consists of approximately 9.4 acres, large enough to allow construction of the proposed improvements with no significant impacts to the existing 7-acre vineyard. The approved site plan requires removal of no more than 0.4 acres of planted grapes, and any impact of removal on the net acres of planted vineyard is offset by the fact that planted headlands were not included in the calculation of the planted acreage.

Opponents' claims that the parcel is too small to support the agreed limit of 5,000 cases per year are not supported by the evidence. The 7 acres onsite can produce grapes sufficient to produce about 1,200 cases. Grape deliveries from offsite to produce an additional 3,600 cases will require, at most, four truck deliveries per year. Four annual deliveries do not rise to a level of significance rendering the parcel unsuitable for the proposed use. The ratio of onsite acreage of vineyards to the annual case limit for this property is also in proportion with: (1) the production from other wineries in the area utilizing grapes grown onsite, and (2) the ratio of production from grapes grown onsite vs. offsite for a permitted use winery under YCZO 402.10(I)(1-3).

The parcel also is suitable for the proposed use considering its shape, topography, improvements and natural features. The area proposed for development is relatively flat and level. The proposed development will be sited along the western boundary of the parcel. The site plan shows that both proposed structures will comply with the 30-foot setback area for rear and side boundaries. The shape of the property allows for a 20-foot wide one-way road to run alongside the western perimeter of the property from the existing access at the northern edge of the property to a new egress along the southern property line. The shape of the parcel and the siting of improvements on the west side allows for screening of the proposed development by the existing vineyard between it and the residential uses to the east along Worden Hill and Fairview Roads.

The parcel also is suitable for the proposed use considering its location for the following reasons:

- The property is situated in an area where wine tasting rooms are common, and activities related to wineries are expected. Nearby vineyards, wineries and tasting rooms include Cameron, Bergstrom, Domaine Roy, Furiously, Cramoise, Twoomy, Murto Vineyard, Arterberry Maresh, Holloran Vineyard Wines, Alexana, Potcake Cellars, Abbey Ridge Vineyard, Black Walnut Vineyard, Bella Vida, and Knudsen

Vineyards. The location of this winery and tasting room is very much in keeping with the existing uses in the area.

- The property located to the west (Tax Lot 3321-800) was approved for a forest template dwelling through Docket FT-02-20. The approved home (once constructed) will be the closest dwelling and structure to the proposed winery and tasting room. This dwelling is proposed to be sited two hundred feet from its eastern property line and the proposed winery will be a minimum of 30 feet from the western boundary of the subject parcel, for a total buffer of 230 feet. Also, established and mature forest on this boundary currently screens the building site on this neighboring parcel from the proposed location of the winery. All other residential uses surrounding this parcel are located more than 590 feet from the proposed development, screened and buffered by the existing planted vineyard.
- The site spans a gradual 100-foot elevation change reaching its highest elevation of 900 feet. The soil profile is representative of the Dundee Hills which are known to be desirable for viniferous grape production. The Pinot Noir and Chardonnay vines compose 7 acres of the subject property and are non-irrigated, fourth leaf vines. The remaining part of the parcel is composed of grassland and passive forest uses. All remaining mature trees with a trunk diameter of 10” or greater will be maintained.

Based on the evidence, the parcel is suitable for the proposed use and meets 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.*

The surrounding area is considered by the county to be the area within 1.5 miles of the site. It is already dominated by estate vineyards, many of which support onsite wineries. The most common use in the area is small-to-medium size wineries with tasting rooms. The property already supports about 7 acres of fourth leaf chardonnay and pinot noir varieties. All winemaking of grapes grown onsite will be conducted in the proposed winery. The addition of a small-scale winery and tasting room to the already numerous identical uses in the area 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.*”

While principal dwellings are not an outright permitted use in the EF-20 zone, there are several parcels with rural residential uses in the area. This proposal is not incompatible with those uses for several reasons. First, as noted above, this proposal seeks to add another small winery and tasting room to an area already replete with similar uses, so the incremental additional use will not have significantly noticeable impacts (including traffic or environmental impacts) to surrounding properties. Also, any impacts of the proposed development on residential uses are adequately mitigated by the site plan. Specifically,

all existing dwellings are more than 590 feet from the proposed development and screened by the existing vineyard, and the proposed future dwelling to the west would be 230 feet away. Also, the property to the south and west of the proposed development is screened by a significant stand of trees. These measures, combined with the existing primary wine-growing use of this agricultural region already, means that this proposal meets criteria (D) and (F).

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

The area is currently served by Dundee Rural Fire Protection District. The site plan proposes use of the existing access via Worden Hill Road for ingress and a proposed loop drive with a new point of egress at the southern boundary of the property back onto Worden Hill Road. Prior to issuance of building permits the applicant must ensure that the access drive complies with all road/driveway improvements required by the Dundee Rural Fire Protection District. The property's prior septic system has been removed; therefore, a condition of approval is appropriate requiring County Sanitarian approval of a new septic system to serve the new use, prior to issuance of building permits.

Opponents of the proposal raised concerns regarding groundwater use. The County finds that the property has an existing well that is permitted as an exempt well for up to 5,000 gallons per day for commercial use. Therefore, the applicant has demonstrated the availability of water for the proposed use. A condition of approval is appropriate requiring the applicant to comply with the limitations of its well permit. Other issues raised alleging groundwater scarcity in the region are outside the jurisdiction of the County and not relevant to the approval criteria.

Opponents also challenged the adequacy of the surrounding road network as a public facility or service. The County reincorporates here the findings below in response to YCZO 1102.01(c).

With the conditions of approval described above, criterion (E) is met.

C. EF-20 Conditional Use Standards and Analysis (YCZO 402.07(A))

A conditional use in the EF20 zone must meet 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 County reincorporates here the findings set forth above in response to YCZO 1202.02(D) and (F), and considers the same surrounding "area" or "lands." This property is located in an agricultural area where the predominant use is vineyards, wineries and

tasting rooms. The proposal seeks to add another small winery to an area where wineries are already common. Farm uses and practices taking place in the area are the same farm uses and practices taking place on the subject property. It is reasonable to assume that the costs associated with those practices are similar to the costs of operating a vineyard, winery and tasting room on the subject property.

Most of the testimony in opposition was based, not on impacts to farm practices, but to perceived impacts to dwellings. The county has not been able to identify any impacts the proposal could potentially have on farm uses or practices in the area. Perceived traffic impacts were addressed by the applicant and the county, and the conclusions of insignificant or no impacts to other uses apply equally to farm uses. No impacts were alleged due to the proximity of the proposed uses to farm uses, and none were identified. Under these circumstances, and given the absence of contrary evidence, this use cannot reasonably be expected to force significant changes or increased costs for other nearby properties engaged in the same uses.

D. Site Design Review Criteria and Analysis (YCZO 1101.02)

1. Site Design Review approval requires consideration of the following factors:

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

The County reincorporates the findings made in response to YCZO 1202.02(D) and (F). The proposed site plan provides adequate mitigation and is suitable given the characteristics of adjoining and surrounding uses. Criterion (a) is met.

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

The proposal is for a winery and tasting room in an established wine region already replete with wineries, vineyards and tasting rooms. The record shows that the Oregon and Washington wine industries continue to grow at a rapid clip. The proposed use will contribute to the further growth of this already significant and successful sector of the County's economy, thereby increasing the County's reputation as wine country. With that comes more tourist dollars that lead to economic development and prestige that continue to support the growers in the region. Factor (b) is met.

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

The property has current access to Worden Hill Road, and the applicant proposes to modify that access by establishing ingress at the existing access point and relocating egress to the southern property boundary. Worden Hill Road is a paved, county maintained public road with a paved travel width of 22 feet, in compliance with its corresponding road classification under the County Transportation System Plan.

Uncontroverted evidence in the record shows that both the existing access point and the proposed future egress point comply with applicable sight distance standards. The County

also finds that the proposed one-way loop road through the property will improve traffic circulation and safety both onsite and on this segment of Worden Hills Road. On site, the proposed site plan provides for adequate maneuvering room for vehicles including delivery trucks.

Regarding parking, YCZO 1007.02(C) 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 tasting room area is 1,000 square feet, requiring a minimum of 10 parking spaces. Consistent with past County practice and the plain language of YCZO 1007.02(C), the County considers the tasting room area to consist only of the square footage of space actually used as a tasting room, and not other facilities like offices or restrooms in the same building as the tasting room. Thus, the parking standard is met, as 10 visitor spaces are required and the site plan provides for 11 visitor spaces and additional parking for employees. A condition of approval is appropriate requiring compliance with the parking design standards of YCZO 1007, and with such condition, factor (c) is met.

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

Winery and tasting room activities will take place primarily indoors and are not expected to produce noise or visual impacts materially different from existing, similar activities in the area. Outdoor amplification of sound will not be allowed. As described earlier, the winery and tasting room are proposed to be located on the western boundary of the parcel, which provides an ample buffer from all surrounding uses, both auditory and visual. No further landscaping will be required. A condition of approval is appropriate prohibiting outdoor amplification of sound and requiring any lights to be angled or shielded so as not to shine or produce glare on the road or other nearby properties. With these conditions, factor (d) is met.

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

There are no notable natural features onsite or within the vicinity of the proposed development. The property is already planted with seven acres of vineyard and until recently supported a single family residence. There are no trees with a trunk diameter greater than 10 inches on site that need to be removed, nor are there any other natural features proposed to be removed as part of this development. Factor (e) is met.

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

There are no identified potential hazard areas on the property. Factor (f) is inapplicable.

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

The County makes the following findings in response to issues raised by nearby property owners and others with an interest in this matter.

Increased traffic density on rural road

Opponents allege that this proposal will significantly increase traffic density on a rural road. Uncontroverted evidence in the record from County staff shows that traffic usage in the area is well below the existing capacity of the local road network. Also, the County finds that adding one more winery and tasting room in an area already replete with wineries and tasting rooms will not draw significant new traffic to the area. Rather, visitor traffic to the site will largely come from traffic already using the road network to visit existing wineries and tasting rooms. Accordingly, addition of the traffic generated by this project will not cause the road network to fall out of compliance with applicable traffic standards. The County also reincorporates here the findings in response to YCZO 1202.02(C) that the approved production limit of 5,000 case per year will limit truck traffic to the site to an insignificant four deliveries (at most) per year.

Maximum Capacity of Tasting Room

Opponents argue that the fact that the maximum capacity of the tasting room is 55 persons at one time means that traffic to the site will be significant and parking inadequate. However, maximum capacity, while relevant, is not the sole basis for judging potential parking impacts, because it is unreasonable to assume that the facility will be occupied to its maximum physical capacity at all times. To the contrary, the County finds that visitation to the tasting room will rarely if ever reach maximum capacity, instead occupancy will wax and wane, and that compliance with the applicable parking standards of YCZO 1007 will ensure that sufficient parking is available.

Groundwater

Opponents also raised issues with respect to the potential impact of this proposal on the availability of groundwater. The County reincorporates the findings set forth above in response to YCZO 1202.02(E) with respect to groundwater use.

Dangerous Intersection

Opponents also allege the existence of a dangerous intersection as a basis for denial. Opponents did not specify which intersection was of issue. However, County staff provided evidence that the site access points have sufficient site access distance to meet County standards, and that accident data in the area does not show any notable accident clusters. As such, this claim is unsupported by any evidence.

Future Dwelling On Property

Finally, opponents raised concerns about a potential future dwelling on the property. A replacement dwelling is already approved for this site by a separate land use proceeding, and is not the subject of this application. Consequently, consideration of issues related to that residence is beyond the scope of these proceedings.

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 1102.01, 1202.02, 402.04(G) and 402.07 of the Yamhill County Zoning Ordinance.
3. The request complies with the applicable goals and policies of the Yamhill County Comprehensive Plan.

CONDITIONS OF APPROVAL

Based upon the above findings and conclusions, the request for a conditional use and site design review for a winery and tasting room to be operated on a parcel identified as Tax Lot 3321-913 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. The winery shall produce no more than 5,000 cases of wine annually and shall allow only the sale of:
 - (a) Wines produced in conjunction with the on-site winery; and
 - (b) Items directly related to wine, the sales of which are incidental to the retail sale of wine on-site and do not exceed 25 percent of the total gross receipts of the retail facility. Such items include those served by a limited service restaurant, as defined in ORS 624.010. If requested by the Planning Director, the permit holder shall submit to the Director a report, prepared by a certified public accountant, demonstrating compliance with this condition.
 - (c) Permitted on-site marketing of wine includes up to three events of one to three days in duration during a calendar year intended to draw customers to the site for the tasting and purchase of wine. The regular operations of the tasting room shall be open from 10 AM to 5 PM.
 - (d) "Agri-tourism or other commercial events" 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.

3. Prior to initiating the use, the applicant shall obtain authorization from the County Sanitarian for the winery and tasting room to use the existing septic system or shall receive approval for a new septic system to serve the use. If modifications to the septic system are required, appropriate permitting and inspections shall apply.
4. 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.
5. Parking shall be established and permanently maintained as long as the tasting room is operating so that there is a minimum of one (1) parking space per 100 square feet of tasting room space plus one (1) parking space for each employee of the winery and tasting room on maximum working shift, in compliance with the parking design standards of Section 1007 of the YCZO. Parking shall not be permitted on the street or public right-of-way.
6. The use may have one on-premises 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. The winery and tasting room shall not include a commercial kitchen.
9. 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 (DOA).
10. 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."
11. Prior to issuance of building permits, the water supply and access driveway will be required to meet Dundee Rural Fire Protection District standards.
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. This approval shall expire two years from the date of this letter unless the use has been initiated.
15. 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.

END