

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 FD-01-21;)
Approval of a Farm Help Dwelling for) Board Order 21-240
a Family Member on Tax Lot 3304-400)
(17571 NE Calkins Lane, Newberg);)
Applicant: Kipp Myers)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on June 17, 2021, Commissioners Mary Starrett, Lindsay Berschauer and Casey Kulla being present.

IT APPEARING TO THE BOARD as follows:

A. By application dated January 6, 2021, Kipp Myers requested permission to construct a dwelling for his mother on the same parcel as his principle residence, to assist with farm operations related to an existing vineyard, a planned orchard and animal husbandry;

B. Following notice and opportunity to comment, on March 29, 2021, the Planning Director approved the application, with conditions. An appeal was subsequently filed (on April 19, 2021) by a neighbor concerned with whether a standard regarding farm income had been met; and

C. Following a hearing held before the Board on May 27, 2021, the Board deliberated and voted 3-0 to deny the appeal and approve the application, with conditions recommended by the Planning Director; NOW, THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Director's decision to approve Planning Docket FD-01-21 is hereby upheld, the appeal 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 this order.

DONE this 17th day of June, 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: 
Deputy Carolina Rook

A handwritten signature in black 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

A handwritten signature in black ink, appearing to read "Timothy S. Sadlo".

Timothy S. Sadlo
Office of County Counsel

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**Exhibit A – Board Order 21-240
Findings in Support of Decision to
Uphold the Planning Director’s
Approval of Planning Docket FD-01-21
and Conditions of Approval**

DOCKET NO.: FD-01-21

REQUEST: For a secondary dwelling in conjunction with farm use for a relative of the farm operator

APPLICANT: Kipp Myers

OWNER: Belle Colline Vineyard

TAX LOT: 3304-400

LOCATION: 17571 NE Calkins Lane, Newberg

ZONE: EF-40, Exclusive Farm use district

CRITERIA: Sections 402.03(E), 402.08, 402.09 and 402.10(C) of the *Yamhill County Zoning Ordinance*

FINDINGS:

A. Background Facts

1. *Tract Size:* The tract is composed Tax Lot 3304-400 (19.1 acres) and Tax Lot 3304-500, (5.4 acres), totaling 24.5 acres.
2. *Access:* The property is accessed by NE Calkins Lane and NE Dopp Rd.
3. *On-site Land Use:* The property has a principal dwelling, a pole barn and approximately 9.85 acres of the property is planted in vineyard. The applicant also has an application recently approved (final, unappealed county decision) for a winery and tasting room through Docket C-03-21/SDR-03-21.
4. *Surrounding Land Use and Zoning:* All surrounding properties are zoned EF-40, Exclusive Farm Use. The surrounding parcels contain farm uses such as vineyards, orchards, and pasture. Many of the surrounding parcels have dwellings. The area also has many other wineries and tasting rooms.

5. *Water:* On-site well.
6. *Sewage Disposal:* An on-site septic system is required as a condition of approval.
7. *Fire Protection:* Tualatin Valley Fire and Rescue.
8. *Soils:* The tract is predominantly composed of Class IV and VI, non-high value farmland.
9. *Previous Actions:* A partition was approved in 1969, Docket P-22-69. The primary dwelling was approved in 1994 through Docket FD-38-94.
10. *Overlay Districts:* The parcel is not located in a sensitive wildlife habitat, nor is it in the Willamette River Greenway, or airport overlay district. The property is located in the Chehalem Mountain restricted ground water district. The National Wetlands Inventory Map indicates there are no wetlands present on the property. The south western portion of this parcel is located in the 100-year floodplain (not the site of the proposed dwelling).

B. Secondary Farm Dwelling for a Relative Ordinance Provisions and Analysis

1. Section 402.03(E) of the Yamhill County Zoning Ordinance requires that prior to placement of a secondary dwelling in conjunction with farm use the applicant must demonstrate the request satisfies the following criteria:

E. A secondary dwelling for a relative of the farm operator under the following circumstances (Type A notice): The tract is currently employed for farm use, as defined in Subsection 402.10(C), at a commercial scale.

Regarding criterion (1) above, the property has 9.5 acres of vineyard and the application includes invoices for the sale of grapes which shows gross income above \$10,000 for 2019 and 2020. The farm income, and the condition of the property (well-tended, fully established vineyard), along with other testimony and evidence provided by the applicant, establish that the property is currently employed for farm use at a commercial scale. The appellant, a neighboring property owner, expressed concern that the application does not include copies of receipts or income tax statements to evidence the income was actually derived from the sale of those crops. The county regularly allows invoices as an acceptable form of evidence of farm income. Receipts from the sale of farm crops and income tax statements (Schedule F) are also accepted forms of showing farm income but not the sole requirement. Based on the testimony and evidence received, the Board concludes that the standard, which does not specify a required income level, has been met.

2. *2. The dwelling shall be located on the same lot or parcel as the dwelling of the farm operator.*

Regarding criterion (2) above, the site map included with the application shows the proposed secondary farm help dwelling will be located on the same parcel as the dwelling of the farm operator (Tax Lot 3304-400).

3. 3. *The dwelling shall be occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, child, brother, sister, sibling, step-sibling, step-sibling-niece, nephew, or first cousin of either if the farm operator does, or will require the assistance of the relative in the management and farm use of the existing commercial farm use.*

Regarding criterion (3) above, the application states that the secondary farm help dwelling will be occupied by the farm operator's mother who will initially be assisting with tracking vineyard growth, providing direction as needed to hired help with crop pruning, spraying, and harvesting. The applicant also notes they have future plans to plant an apple orchard and have animals. A couple of neighbors wrote in with concerns regarding the use of the farm help dwelling as a vacation rental. The property owners stated they have no intention of the using the home as a vacation rental. A condition of approval states that the farm help dwelling shall not be used as a vacation rental or occupied by someone other than a relative of the farm operator, as defined above.

4. 4. *The farm operator shall continue to play the predominant role in the management of the farm. The farm operator is a person who operates a farm, doing the work and making day-to-day decisions about such things as planting, harvesting, feeding, and marketing.*

Regarding criterion (4), the applicant has established that he and his wife live on the farm, manage the farm, and will continue to play the predominant role in the day-to-day operation of the farm, which includes assistance with hiring and overseeing contract labor for vineyard, marketing and sales of crop, along with business operations on a day-to-day basis.

C. Other Ordinance Provisions

1. YCZO Section 402.08 contains provisions regarding the expiration of land use approvals in two years unless the development is initiated, and requirements for recording a deed affidavit to protect farming operations is signed and recorded. These are conditions of approval.
2. Section 402.09 contains various standards that must be met for development in the Exclusive Farm Use (EF) district. These standards can feasibly be met and will be verified at the time of application for building and septic permits.

CONCLUSIONS:

1. The request is for a secondary farm help dwelling for a relative of the farm operator in conjunction with farm use in the EF-40 District.
2. The request complies with Section 402.03(E) of the YCZO because the farm operation has produced more than \$10,000 in gross income for 2019 and 2020, and other testimony and evidence supports a conclusion that the farm is operated at a “commercial scale.” The farm operator that produced the income will occupy the principal dwelling located on the same parcel as the proposed secondary farm help dwelling, and the secondary dwelling will be used to house a relative of the farm operator.
3. With the below conditions, the request can comply with Sections 402.08 and 402.09 of the *Yamhill County Zoning Ordinance*.

DECISION:

Based upon the above findings and conclusions, the request by Kipp Myers for a secondary farm help dwelling for a relative on Tax Lot 3304-400, is hereby approved, with the following conditions:

1. All building, plumbing, electrical and sanitation permits are required and shall be obtained from the Yamhill County Building and Sanitation Office.
2. The secondary dwelling shall be located on Tax Lot 3304-400, which is the same parcel that contains the principal farm operator’s dwelling and shall be occupied by a relative of the farm operator who is assisting with the farm operation. At no time shall the secondary dwelling be used as a vacation rental or occupied by persons who are not employed in the farming operation. At no time shall the secondary dwelling be separated from the primary residence without further land use approval.
3. Prior to issuance of building or septic permits, the access shall be inspected and approved by Tualatin Valley Fire and Rescue.
4. 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.
5. This approval is valid for a period of two years from the final decision date and will expire if the residential development is not initiated within that time. An extension may be requested provided the request and the required fee is submitted prior to the expiration of the original approval and the applicable criteria for the decision have not changed.

END