

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 of a Request for a Principal Forest)	
Template Dwelling on Tax Lot 5435-600;)	Board Order 21-265
Applicant Loyola Heights LLC; Planning Docket)	
FT-13-20)	

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on June 24, 2020, Commissioners Mary Starrett, Lindsay Berschauer and Casey Kulla being present.

IT APPEARING TO THE BOARD as follows:

A. On August 28, 2020, following notice and opportunity to comment, Planning Director Ken Friday granted approval of Planning Docket FT-13-20, allowing the applicant, Loyola Heights LLC, to site a forest template dwelling on Tax Lot 5435-600. A timely appeal was filed and withdrawn, but a third party then appealed to LUBA seeking to force the county to complete the hearing process. The county agreed to a voluntary remand, to complete the hearing process.

B. On June 10, 2021, following a duly noticed public hearing, the Board deliberated and voted 3-0 to uphold the Planning Director's decision, to deny the appeal, and to approve the application. NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Director's decision to approve Planning Docket FT-13-20 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 24th day of June, 2021 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

By: Carolina Root
Deputy Carolina Root



Chair

Mary Starrett

MARY STARRETT

Lindsay Berschauer

Commissioner

LINDSAY BERSCHAUER

FORM APPROVED BY:

Timothy S. Sadlo

Timothy S. Sadlo
Senior Assistant County Counsel

Commissioner

Casey Kulla

CASEY KULLA

**Exhibit A – Board Order 21-265
Findings in Support of Decision to
Uphold the Planning Director’s
Approval of Docket No. FT-13-20
and Conditions of Approval**

DOCKET NO.: FT-13-20

REQUEST: Principal forest template dwelling

APPLICANT: Catherine Wright representing Loyola Heights LLC

TAX LOT: 5435-600

LOCATION: Approximately 975 feet southwest of the intersection of Walnut Drive and Cherry Drive, Amity

ZONE: AF-40, Agriculture/Forestry Large Holding District

CRITERIA: Section 403.03(P), 403.09, 403.10 and 403.11 of the Yamhill County Zoning Ordinance

A. Background Facts

1. Lot Size: Approximately 5 acres.
2. Access: Under a condition of approval, access will be by easement from Mayette Drive.
3. On-site Land Use: The lot was originally platted as part of the Eola Walnut Groves subdivision, which was platted on May 4, 1908. Current aerial imagery shows the parcel is partially treed with some open space.
4. Surrounding Land Use: The area contains a mixture of farm and forestry uses on parcels of approximately 5 to 150 acres. Farm uses conducted in the area include pasturage, grass seed and hay production, hazelnut orchards, and vineyard land. There are also several parcels dedicated to forest and rural residential uses.
5. Surrounding Zoning: The properties to the south, east and west of the applicant’s parcel are zoned AF-40, Agriculture/Forestry Large Holding District, and the properties to the north of the applicant’s land are zoned EF-40, Exclusive Farm use.
6. Water: The applicant has indicated that a well is proposed.
7. Sewage Disposal: The applicant has indicated that there is no septic system installed on the lot, at present.

8. Fire Protection: Amity Rural Fire Protection District.
9. Soils: Nekia Clay Loam (NcD) class III high-value soil and Jory Clay Loam (JrC) class II high-value soil. All soils are capable of producing more than 130 cubic feet of wood fiber per acre.
10. Previous Actions: In 2018 an application for a zone change for the subject parcel and Tax Lots 5435-1200, 5436-600, 5435-602, 5435-603, 5435-604 and 5436-700 from EF-40, Exclusive Farm use to AF-40, Agriculture Forestry was approved through Board Order 18-291 (Ord. 907).
11. Overlay Districts: The applicant's parcel is located in the Amity Hills/Walnut Hill Restricted Ground Water area.
12. Explanation of the request: The applicant is requesting approval for the siting of a principal forest template dwelling.

B. Ordinance Provisions and Analysis

1. Section 403.03(P) of the Yamhill County Zoning Ordinance (YCZO) lists residential uses allowed in the Agricultural/Forestry District, subject to the standards and limitations set forth in Sections 403.09, 403.10, and 403.11 and specified approval criteria.

Section 403.03(P) 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 Q of that Section, subject to the following standards and criteria:

2.
 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*

The 1992 and 2000 aerial photo shows a mixture of treed areas and open areas. "Predominant use" was decided by the Land Use Board of Appeals (LUBA) in 2000 through the decision Gambee v. Yamhill County (LUBA No. 99-058). As to the question of predominant use, LUBA wrote:

"The inquiry under ORS 215.705(4) is whether farm or forest use predominates on the property on January 1, 1993. Portions of the property that are unused or used for nonfarm or nonforest uses have no relevance to that inquiry. If only a small portion of the property can reasonably be considered to be in farm or forest use, the county need only consider that portion in its determination of predominant use. The remainder of the property is not part of the analysis."

Yamhill County Zoning Ordinance §403(12)E defines "farm use" as "the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops

* * *.” The opponents suggested that the property was being actively farmed in 1993, specifically with the harvesting of a fruit crop from orchard trees on the property. However, neighbor Dennis Brutke submitted written testimony indicating that the orchard had been abandoned, was not productive, and was not being harvested or maintained as of January 1, 1993. The evidence indicates that the property was not “currently employed” for farm use at that time.

The application includes a letter from Dan Upton Consulting, dated October 20, 2019, and Mr. Upton testified at the hearing. Mr. Upton’s opinion letter states that the parcel was more than 51% timbered in 1993. This opinion is based on “the concept of generational succession of conifer and hardwood regeneration and the subsequent establishment of forests.” It appears, and the Board concludes, that the predominate use of the parcel in 1993 was forest use.

The lot is owned by Loyola Heights LLC and no other contiguous lot is under the same ownership. Therefore, the lot is not part of a tract and consolidation will not be required.

3. 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. 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. 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.

The parcel is made up of soil types capable of producing more than 85 cubic feet per acre of wood fiber per year, so the requirements of criterion (5) apply, while (3) and (4) do not. The circle with a 1489.46-foot radius template as described in criterion (5)(a) was used. Placing the circle on the center of the subject parcel, the applicant shows all or portions of at least 11 other lots existed on January 1, 1993 and at least three parcels within the template had dwellings that existed on January 1, 1993 and continue to exist. The dates that the dwellings were established were obtained from Tax Assessor and Planning Department records. The applicant demonstrated that the template test would also be met if a square template had been used in that more than 11 parcels would be included within the template, and including those identified below, as containing dwellings. The lots and dwellings are as follows:

Lot Count	MapTaxlot	Year Built (if applicable)
1	5435-200	
2	5435-201	
3	5435-202	
4	5435-400	1888
5	5435-500	1985
6	5435-600	
7	5435-601	
8	5435-602	
9	5435-603	
10	5435-604	
11	5435-700	
12	5435-800	
13	5435-801	
14	5435-1000	1977

Opponents suggested that the lots identified as tax lots may not be legal lots. ORS 92.017 provides: "A lot or parcel lawfully created shall remain a discreet lot or parcel unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. Yamhill County Zoning Ordinance §202 defines a "parcel" as "a unit of land created by an authorized subdivision or partitioning of land or that was created by deed or land sale contract on or prior to October 3, 1975." Eola Walnut Groves was a subdivision platted in 1908. The platted parcels were each approximately five acres. Each platted lot in Eola Walnut Groves subdivision is a legal lot consistent with ORS 92.017 and Yamhill County Zoning Ordinance §202. Applicant submitted evidence that many of the tax lots identified above contained multiple legal lots and thus there were more than 11 legal lots within the template.

4. *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.*

Regarding criterion (6), the parcel satisfies the template test so the test under criterion (6) was not necessary.

5. *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.*

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.

C. Dwelling Siting Standards

1. Yamhill County Zoning Ordinance Section 403.09 requires that all new dwellings be found to comply 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.*

Regarding standard (A), the applicant has submitted a site plan indicating that the proposed building site is located in the northeastern area of the property, marked as an "H" on the site plan. The applicant states that the access drive follows an area of less dense forestation and follows an area of an existing old logging road. The proposed location allows the dwelling to comply with the fire setback requirements of the Yamhill County Zoning Ordinance. A condition of approval requires that the applicant establish and maintain all of the primary and secondary fire breaks required by Section 403.10(F) and 403.10(G) of the Yamhill County Zoning Ordinance.

2. (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.*

Regarding criterion (B) above, the applicant is proposing installation of a new on-site well to supply water to the proposed dwelling. The water source must comply with criterion (B) pursuant to a condition of approval and evidence of the well must be submitted to the Planning Department before building permits will be issued.

3. (C) *As a condition of approval for a dwelling under subsections 403.03(M) through (P), 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.*

The subject parcel is approximately 5 acres in size. The submission of a stocking survey will be a condition of approval and must be submitted to the Planning Department before building permits will be issued.

4. Section 403.08(D) and 403.08(E) require the filing of a document binding the landowner and landowner's successors in interest from pursuing a claim for standard farm or forestry practices. A condition of approval requires that such a document be recorded.

D. Fire Siting Standards

1. Section 403.10 requires the following fire siting standards for all new dwellings or permanent structures:

(A) The dwelling shall have a fire-retardant roof;

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 are required as conditions of approval.

2. *(B) The dwelling shall not be sited on a slope of greater than 40 percent;*

The applicant's proposed building site is on a relatively level area of the parcel. Nevertheless, this criterion is a condition of approval.

3. *(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.*

Regarding standard (C), the property is located within the Amity Rural Fire District, so the request satisfies standard (C) above.

4. *(D) Road access to the structure shall meet the road design standards described in Section 403.11(E).*

Regarding standard (D), the driveway to the dwelling site must meet the access standards in Section 403.11(E) and be approved by the fire chief of the Amity Rural Fire District as being suitable for handling fire protection equipment before building permits will be issued.

5. (E) *If the dwelling has a chimney or chimneys, each chimney shall be provided with a spark arrester.*

Regarding standard (E), a condition of approval requires that any and all chimneys be provided with a spark arrester as part of the design and construction of the dwelling.

6. (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.*

Regarding standard (F), a condition of approval requires the full primary fire breaks to all property lines. The preliminary site plan does not show the approximate location of the primary fire breaks. 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.

7. (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.*

Regarding standard (G), a condition of approval requires the full secondary fire breaks to all property lines. The preliminary site plan does not show the approximate location of the secondary fire breaks. 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.

8. (H) *No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.*

Regarding standard (H), a condition of approval requires that no portion of a tree or other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.

9. (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.

Regarding standard (I), a condition of approval requires that the applicant obtain an address from the county and 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 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.

CONCLUSIONS FOR APPROVAL:

1. The request is for approval of a forest template dwelling on a property in the AF-40 zoning district.
2. Evidence shows that the parcel was predominantly in forest use on January 1, 1993.
3. The proposal complies with the requirements of Section 403.03(P) of the YCZO for a "template test" dwelling because there are no other dwellings on the tract, there are at least 11 other lots within a circle with a 1489.46 foot radius template, and at least three of the lots had residences prior to 1993 within that template.
4. Conditions of approval will ensure full compliance with siting and fire safety standards of Sections 403.09, 403.10 and 403.11 of the YCZO.

DECISION:

Based on the above findings and conclusions, the request by Catherine Wright, representing Loyola Heights LLC, for a forest template dwelling on **Tax Lot 5435-600**, is hereby approved with the following conditions:

1. The dwelling shall be located within the building site identified in the application (See Exhibit F). Another 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 403.09(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 provided with a spark arrester.
4. The dwelling shall not be sited on a slope of greater than 40 percent.
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. A secondary firebreak of not less than 100 feet outside the primary fire break shall also be constructed. 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. The fire break is only required to be constructed on land surrounding the dwelling that is owned or controlled by the owner.
 - 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 via easement from Mayette Drive and shall be constructed to meet the road design standards contained in Section 403.11(E) of the Yamhill County Zoning Ordinance. Building permits shall not be issued until the road is completed and a statement is submitted from the chief of the Amity 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 (provided by the Planning Department) 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