

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 Approval and Denying )  
the Appeal of Planning Docket RDI-23-21 (Replacement ) Board Order 21-502  
Dwelling located at 11940 SE Boyer Road, McMinnville) )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on December 23<sup>rd</sup>, 2021, Commissioners Mary Starrett, Lindsay Berschauer and Casey Kulla being present.

IT APPEARING TO THE BOARD as follows:

A. On August 31, 2021, the Planning Director issued his Notice of Approval approving Applicant's replacement dwelling.

B. The Planning Director's decision was appealed to the Board, which held a public hearing regarding the application on October 28, 2021. The Board left the record open for additional written evidence, and a second public hearing was held on November 22, 2021. The Board deliberated and voted unanimously to uphold the Planning Director's decision, to deny the appeal, and to approve the application for a replacement dwelling.

NOW THEREFORE, IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Director's decision to approve Planning Docket RDI-23-21 is hereby upheld, the appeal filed in this matter is denied, and the application is approved.

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

DONE this 23<sup>rd</sup> day of December, 2021, at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN  
County Clerk

Handwritten signature of Mary Starrett in black ink.

\_\_\_\_\_  
MARY STARRETT

By: Carolina Rook  
Deputy Carolina Rook

Handwritten signature of Lindsay Berschauer in black ink.

\_\_\_\_\_  
Commissioner

LINDSAY BERSCHAUER

Handwritten signature of Casey Kulla in black ink.

\_\_\_\_\_  
Commissioner

CASEY KULLA

FORM APPROVED BY  
Christian Boenisch  
Christian Boenisch  
County Counsel

**EXHIBIT A**  
**FINDINGS IN SUPPORT OF BOARD'S APPROVAL**  
**OF DOCKET RDI-23-21**

**I. FINDINGS**

**A. Background Facts**

1. *Lot Size:* 0.87 acres
2. *Access:* Boyer Road
3. *On-site Land Use:* The parcel is a rural residential lot with a manufactured dwelling and a couple of outbuildings.
4. *Surrounding Zoning and Land Use:* The surrounding properties to the north, south, east, and west are zoned EF-80, Exclusive Farm Use. The properties to the west, across Highway 99W, are zoned RC Recreation Commercial and LDR-12,000 Low Density Residential. This area contains the Bayou Drive subdivision and golf course. The surrounding area is predominantly dedicated to farm uses, which includes nursery stock, orchards, grass seed and hay production.
5. *Water:* Provided by an on-site well.
6. *Sewage Disposal:* Provided by an on-site septic system.
7. *Fire Protection:* McMinnville Rural Fire Department.
8. *Soils:* The Yamhill County Soil Survey shows the most prevalent soil type on the property (approximately 70 %) is Woodburn Silt Loam, at 0 to 7 percent slopes, a Class II high-value soil. The remainder of the parcel contains Terrace Escarpments a Class VI non-high value soil. The parcel is predominantly composed of high value soils.
9. *Natural Hazards:* Based on a review of Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), the subject property is not located within an identified 100-year floodplain. There are no identified historic sites, Willamette River Greenway or airport overlay district.
10. *Replacement Dwelling Inspection:* A replacement dwelling inspection was performed on the dwelling at 11940 SE Boyer Road and an approval letter and neighboring property owners notice was mailed out on August 31, 2021. An appeal was filed on September 15, 2021, stating the subject dwelling was a hardship dwelling from 1983.
11. *Previous Actions:* There were no previous actions in Tax Lot file 4432CD-00301. However, there was a previous action on the parent parcel, Tax Lot 4432CD-00300. This

tax lot had a hardship dwelling approved on June 21, 1983, through Docket No. C-508-83/TS-168-83.

12. *House Bill 3024 (2019)*: This house bill provided alternate criteria for the evaluation of a replacement dwelling. Unless acted upon by the legislature, these statutes are scheduled to sunset January 2, 2024.

## **B. Legal Provisions and Analysis**

State law provides for the “alteration, restoration, or replacement of a lawfully established dwelling” as a permitted use in “any area zoned for exclusive farm use” under ORS 215.283(1)(p). Uses that are authorized by state law under this provision are “uses as of right” and thus are not subject to additional local criteria.

Replacement dwellings must meet the list of requirements under ORS 215.291. Specifically, ORS 215.291(1) lists the following criteria for a replacement dwelling permit:

*(a) The dwelling to be altered, restored or replaced has, or formerly had:*

- (A) Intact exterior walls and roof structure;*
- (B) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
- (C) Interior wiring for interior lights; and*
- (D) A heating system; and*

*(b)*

- (A) ...*
- (B) ...*
- (C) A dwelling not described in subparagraph (A) or (B) of this paragraph was assessed as a dwelling for purposes of ad valorem taxation:*

*(i) For the previous five property tax years ....*

On July 24, 2021, the county inspected the subject dwelling and found that the dwelling met each of the criteria for replacement; namely, the dwelling had intact exterior walls and roof structure, indoor plumbing, interior wiring for interior lights, and a heating system. Therefore, Applicant has demonstrated compliance with subsection (a) above, i.e., 215.291(1)(a).

Similarly, the county’s tax records indicate that the dwelling has been taxed as a dwelling for each of the previous five years and has not been removed from the tax rolls due to destruction or demolition. For this reason, Applicant has satisfied the requirements under ORS 215.291(1)(b) as well. As such, Applicant qualifies for a replacement dwelling permit because he has satisfied the requirements under ORS 215.291(1).

Dwellings that qualify for replacement must also be replaced in a manner that complies with the requirements under ORS 215.291(2). Specifically, the provision lists three requirements:

(2) *For replacement of a lawfully established dwelling under this section:*

a. *The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:*

(A) *Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or*

(B) *If the dwelling to be replaced is, in the discretion of the county, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the county that is not less than 90 days after the replacement permit is issued.*

b. *The replacement dwelling:*

(A) *May be sited on any part of the same lot or parcel.*

(B) *Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.*

c. *As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel.... (emphasis added)*

In the present case, the background facts demonstrate that Applicant will be able to comply with subsection (c) under ORS 215.291(2) because the replacement dwelling will be on a parcel that is zoned for exclusive farm use. Therefore, Applicant will not need to satisfy the condition of approval mentioned therein.

That said, Applicant will need to meet two other conditions of approval that are based on subsections (a) and (b) of ORS 215.291(2). First, Applicant will need to place the replacement dwelling on the “same lot or parcel” as the existing dwelling and “comply with applicable siting standards,” namely the setback and height limits provided under Section 402 of the Yamhill County Zoning Ordinance (YCZO). Second, Applicant will need to ensure that the existing dwelling is “removed, demolished or converted to an allowable nonresidential use” within a year of certifying the replacement dwelling for occupancy; this deadline might become 90 days if the county finds the existing dwelling is an attractive nuisance or unsafe for occupants.

## **II. DECISION**

1. The request is to allow the replacement of a dwelling located at 11940 SE Boyer Road, McMinnville.
2. The replacement dwelling approval is possible due to the passage of House Bill 2746 (2013), as amended by House Bill 3024 (2019), which authorizes

replacement dwellings under ORS 215.283(1)(p) and specifies the criteria for replacement dwellings under ORS 215.291.

3. With conditions, the Applicant's request satisfies the requirements under ORS 215.291.

### **III. CONDITIONS OF APPROVAL**

1. All permits and inspections required by Yamhill County for building construction, septic, and electrical installation shall be obtained for the new dwelling.
2. The new dwelling shall be located on Tax Lot 4432CD-00301 in compliance with the setback and height limitations of YCZO Section 402.
3. The existing dwelling may be replaced within four years from the final date of approval. Please note that this deadline can be extended as long as a request for extension is submitted prior to the expiration date.
4. The existing dwelling must be removed, demolished, or converted to an allowable nonresidential use within one year after the date the new dwelling is certified for occupancy; provided, the existing dwelling must be removed within 90 days if the county deems it a structure that is an attractive nuisance or unsafe for occupants.