

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 a Comprehensive Plan Amendment From Very)
Low Density Residential to Commercial; a Zoning Map)
Amendment from VLDR-1, Very Low Density Residential to) Ordinance 902
HC, Highway Commercial; and Imposition of a Limited Use)
Overlay, for a .88-acre Parcel of Land, Tax Lot 3219CB-1400,)
24075 Highway 99W, Newberg, Applicant Nash Investments)
LLC, Planning Docket PAZ-01-16, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on May 4, 2017, Commissioners Stan Primozych, Mary Starrett and Richard L. "Rick" Olson being present.

IT APPEARING TO THE BOARD that Nash Investments LLC has requested a plan amendment and zone change for an approximately .88-acre parcel, Tax Lot 3219CB-1400 (24075 Highway 99W, Newberg); and

IT APPEARING TO THE BOARD that this matter came before the Planning Commission for public hearing on March 2, 2017, there was no testimony in opposition, and the Planning Commission voted 6-0 to recommend approval of the application by the Board of Commissioners; and

IT APPEARING TO THE BOARD that this matter came before the Board on April 6, 2017 for public hearing and that, following the hearing (with no testimony in opposition) and deliberation, the Board voted 3-0 to approve the application pending the adoption of a final written decision and findings on May 4, 2017; NOW, THEREFORE

THE BOARD ORDAINS AS FOLLOWS:

Section 1. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

Section 2. The Comprehensive Plan and Zoning Maps of Yamhill County are hereby amended as specified in the attached Exhibit "B," incorporated herein by this reference, to reflect a plan designation of "Commercial," and a zoning designation of "HC-Highway Commercial for Tax Lot 3315-3800 identified on the attached Exhibit "B" map.

Section 3. A Limited Use Overlay is hereby imposed on Tax Lot 3219CB-1400, limiting the commercial uses allowed on the property as specified at the close of the findings attached as Exhibit A and incorporated herein by reference.

Section 4. This Ordinance being necessary for the health, safety and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective immediately.

DONE this 4th day of May, 2017, at McMinnville, Oregon.

ATTEST: YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk



Chair

STAN PRIMOZICH

By: Crystal Cox
Deputy/ Crystal Cox

Vice Chair

MARY STARRETT

FORM APPROVED BY:

Timothy S. Sadlo
Senior Assistant County Counsel

Commissioner

RICHARD L. "RICK" OLSON

**EXHIBIT A – ORDINANCE 902
(BOARD ORDER 17-153)
FINDINGS FOR APPROVAL AND CONDITIONS
IMPOSED UNDER A LIMITED USE OVERLAY**

DOCKET NO.: PAZ-01-16

REQUEST: Approval of a Comprehensive Plan amendment from Very Low Density Residential to Commercial and a zone change from VLDR-1, Very Low Density Residential to HC, Highway Commercial.

APPLICANT: Nash Investments LLC

OWNER: Nash Investments LLC

TAX LOT: 3219CB-1400

LOCATION: 24075 Highway 99W, Newberg

REVIEW CRITERIA: Sections 502, 603, and 1208.02 of the Yamhill County Zoning Ordinance. Section 904, Limited Use Overlay; Comprehensive Plan policies as addressed herein; OAR 660-12-0060 (Transportation Planning Rule); the Unincorporated Communities Rule in OAR 660-022-0030; and Statewide Planning Goal 14.

FINDINGS:

A. Background Facts

1. *Lot Size:* Approximately 0.88 acres.
2. *Access:* NE Home Acres Road. The application notes that there may be access at the southwest corner of the property, over County road/ODOT rights-of-way; however, there is no direct access onto Highway 99W.
3. *On-Site Land Use and Request:* The parcel currently has a non-conforming tavern. The property is located less than a quarter mile southwest of the Newberg city limits. The applicant is requesting the plan amendment and zone change to Highway Commercial with a limited use overlay that would limit the permitted uses on the parcel to:
 - A. Drinking place, of no more than 1,980 square feet
 - B. Restaurant, with a maximum floor area of no more than 2,630 square feet
 - C. Convenience store, with a maximum floor area of 1,200 square feet and limited to 15 to 16 hours of operation per day.
4. *Surrounding Land Use and Zoning:* The parcels to the north and northwest are zoned VLDR-1, Very Low Density Residential and consists of rural residences on ½-acre lots. The parcel to the southwest is zoned LI and is used for custom metal and welding services. Highway 99W borders the parcel to the south. Property south and east, across Highway 99W, is zoned VLDR-2.5 and is primarily developed with rural residences.

5. *Water:* The application indicates the parcel is served by city water.
6. *Sewage Disposal:* The parcel currently has a septic system.
7. *Soils:* The Yamhill County Soil Survey shows the entire parcel is composed of Woodburn (WuB), Class II, prime farmland. (Note: While the property contains soils that are rated as “high-value” agricultural soils, in 1980 the property was excepted from the farm and forest preservation goals.)
8. *Exception:* The property was found to be a committed exception in Code Area 1.8, adopted by Exception’s Statement II, April 23, 1980 and was plan designated VLDR, Very Low Density Residential. The exception area is not within an ‘unincorporated community’ as that term is defined by OAR 660-022-0010(10).
9. *Fish and Wildlife:* The property is not identified as being on any county adopted fish and wildlife habitat plan.
10. *Overlay Districts:* Prior to this ordinance, none.

B. Zone Change and Plan Amendment Provisions and Analysis

1. The types of permitted uses in the Highway Commercial Zone are listed in YCZO Section 603 as follows:
 - A. *Automobile service station;*
 - B. *Drive-in restaurant, restaurant, or refreshment stand;*
 - C. *Food store, maximum floor area of two thousand (2,000) square feet;*
 - D. *Fruit or vegetable stand, commercial;*
 - E. *Gift, souvenir or antique shop;*
 - F. *Motel;*
 - G. *Dwelling in conjunction with a permitted use. If a dwelling is a mobile home, it shall, in addition to the requirements of this Section, also be subject to the mobile home standards set forth in Section 1002;*
 - H. *Accessory uses;*
 - I. *Temporary structures as may be required during construction of an authorized permanent structure. Such temporary structure shall be removed upon final inspection of the permanent structure by the Building Inspector;*
 - J. *Community or municipal water supply system;*
 - K. *Community or municipal sewer system; and*
 - L. *Signs, pursuant to the sign provisions set forth in Section 1006.*

The applicant's request for a "restaurant" is listed as a permitted use, however, a "drinking place" and "convenience store" are not specifically listed. Section 603.04 of the YCZO states:

Any use not specifically listed as a permitted or conditional use in this District that is similar in character, scale and performance to the permitted uses specified in subsection 603.02 may be allowed as a similar use, subject to the provisions of Section 1206, and pursuant to the Type A application procedure set forth in Section 1301.

The purpose of Section 1206 of the YCZO is to provide for those uses not specifically listed in a particular zoning district but that are similar in character, scale and performance to the permitted uses specified in zoning districts in which a similar use may be authorized. Although all of the uses proposed appear to be allowed outright or as similar uses, the applicant did not apply for, nor address, similar use requirements of the county's ordinance. If necessary, the applicant must address such requirements at that time of Site Design Review.

2. The Plan Amendment portion of the request must comply with the Yamhill County Comprehensive Plan, the Oregon Revised Statutes and the Oregon Administrative Rules, which are addressed throughout these findings.
3. The zone change portion of the request must comply with the standards and criteria in YCZO Section 1208.02. These standards are:
 - (A) *The proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*

Regarding criterion (A), since an exception to Statewide Planning Goals 3 and 4 has already been taken for the subject parcel, Comprehensive Plan goals and policies related to agricultural and forest lands are not applicable. Other Plan goals and policies that may be pertinent are addressed on pages 7-10 of the application narrative and are incorporated herein by reference.

- (B) *There is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.*

Regarding the need for the proposed use, criterion (B), the applicant has submitted sufficient evidence and testimony to demonstrate the need for the uses allowed by the requested zone. The applicant states there will be a continued and anticipated increase in traffic on Highway 99W that creates a need for additional highway supporting services such as restaurants, drinking establishments and food stores.

The application provides information stating that the owner receives phone calls on a weekly basis asking to rent the space. The applicant has provided testimony and evidence demonstrating that there is a lack of available HC zoned property in Yamhill County, and that there is an existing need for the types of uses allowed in the HC zone.

- (C) *The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.*

A portion of criterion (C) requires that the applicant demonstrate that the proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area. The surrounding area is composed of rural residences and industrial uses. The previous use of the parcel was as a tavern that operated on the property for many years without apparent conflicts. No testimony was received in opposition to the proposal. The applicant notes the proposed small-scale restaurant, drinking establishment and/or convenience store is more attractive than what currently exists and would have a low impact on the surrounding land uses. Due to its location, size and present development, the subject parcel is not ideally suited for residential use, as would be allowed under current zoning. The parcel abuts Highway 99W and would provide services for the traveling public and provide goods and services within walking distance of the small neighborhood adjacent to the site. The applicant intends to rely on the current level of services provided by the city (water, fire and police). Subsequent Site Design Review is required, in order to address the need for other services and facilities such as septic and site drainage.

- (D) *Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*

During the application and hearing proceedings, the applicant evaluated 13 tax lots currently zoned HC in the County and established that all of the HC tracts are developed and in use for similar or other purposes except for Tax Lot 3325-600, which is a 14.66 acre parcel located in the Newberg – Dundee corridor. The applicant states that that parcel is too large for the purposes intended by the applicant and its availability and viability are questionable due to the anticipated East Dundee interchange project, which, as proposed, will utilize much of the 14.66 acres.

The applicant also notes that the purpose of the County HC zoning is to provide support services for state highways “outside the urban area.” The purpose of the Highway Commercial District states:

The purpose of the HC District is to provide limited small-scale highway and tourist commercial services for the traveling public in specially designated highway-service centers where access, traffic-turning movements and off-street parking can be provided in a safe, convenient, economic and attractive manner. The establishment of an HC District shall be based on present foreseeable demand for limited services to the traveling public. In areas adjacent to Highways 99W and 18, the size, spacing, layout and design of such centers shall ensure that the view from the highway and the rural atmosphere of the county are not impaired; and that the scale and service requirements of the facilities do not have an adverse impact on, unduly compete with, or place any unusual service demands on nearby urban centers.

Section 1208.02 (D) requires evaluation of lands “in the county,” without qualification. In the course of the proceedings, the applicant submitted sufficient information to establish that this standard is met.

(E) *The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*

Exception requirements, criterion (E), are addressed in section C of this report.

C. Goal Exception Provisions and Analysis

One of the concerns addressed by Goal 14 is to limit the intensity of development to that which is rural in nature. The following are the relevant sections of the administrative rules related to Goal 14, Unincorporated Communities (OAR 660-022-0030(4) and (10)), and states:

(4) *County plans and land use regulations may authorize only the following new commercial uses in unincorporated communities:*

(a) *Uses authorized under Goals 3 and 4;*

(b) *Small-scale, low impact uses;*

(c) *Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.*

(10) *For purposes of subsection (b) of section (4) of this rule, a small-scale, low impact commercial use is one which takes place in an urban unincorporated community in a*

building or building not exceeding 8,000 square feet of floor space, or in any other type of unincorporated community in a building or buildings not exceeding 4, 000 square feet of floor space.

In *Friends of Yamhill County v. Yamhill County*, 49 Or LUBA 529 (2005) LUBA stated: “Goal 14 implicitly requires that the intensity of uses allowed on rural lands outside unincorporated communities be less than the maximum intensity allowed inside unincorporated communities.” The size of commercial uses allowed in unincorporated communities is 4,000 square feet. LCDC has determined that appropriate commercial uses in the rural area should be no more than 3,500 square feet. In order to avoid taking an exception to Goal 14, the building(s) area needs to be less than 3,500 square feet of floor area. As noted above under Section A.3 of these findings, the application indicates that building sizes will be limited to less than 3,000 square feet (2,630 square feet at most). Therefore, an exception to Goal 14 is not required. Additionally, the property was found to be a committed exception in Code Area 1.8, adopted by Exception’s Statement II, April 23, 1980 and was plan designated VLDR, Very Low Density Residential. For these reasons, an exception to Goals 3 and 4 is not required.

It should also be noted that the minimum parcel size in the HC zone is 20,000 square feet (currently, the VLDR zone allows a one acre parcel size), however, the subject parcel appears to be currently comprised of four separate lots (Lots 23, 24, 26 and 27) created as part of the Home Acres Subdivision in 1912. These lots range in size from approximately 1,600 square feet to 15,500 square feet. It is unlikely each of these lots could be developed separately given site limitations such as septic requirements and setbacks. Furthermore, the applicant has proposed development of the site as one 0.88-acre parcel.

E. Limited Use Overlay Provisions

Section 904.03 of the YCZO allows the imposition of a limited use overlay, as follows:

- (A) *When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.*
- (B) *The Limited Use Overlay District may be used to require conditional use approval for uses normally permitted outright.*
- (C) *Reasonable conditions may be imposed in the Limited Use Overlay District as are necessary to assure compliance with the provisions of the Comprehensive Plan and this ordinance.*
- (D) *Until the overlay has been removed or amended, the only permitted uses in an LU district shall be those specifically referenced in the adopting ordinance.*

Since the HC, Highway Commercial zone allows other commercial uses that have not been evaluated to determine whether they are appropriate to the area, it is appropriate to apply a Limited Use Overlay to allow only the following permitted uses requested by the applicant, provided the total building area does not exceed 3,500 square feet:

- A. *Drinking place, of no more than 1,980 square feet*
- B. *Restaurant, with a maximum floor area of no more than 2,630 square feet*
- C. *Convenience store, with a maximum floor area of 1,200 square feet and limited to 15 to 16 hours of operation per day.*

In addition to limiting the uses to what was requested, the limited use overlay zone conditions state that, prior to use of the property for the above uses, the applicant must obtain Site Design Review approval subject to Section 1101 of the YCZO, to ensure that issues such as screening and parking are appropriately addressed.

F. Goal 12 (Transportation Rule) Provisions and Analysis

1. The Transportation Planning Rule, implementing Goal 12 OAR 660-12-060 states:

- (1) *Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:*
 - (a) *Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;*
 - (b) *Amending the TSP [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or,*
 - (c) *Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*
- (2) *A plan or land use regulation amendment significantly affects a transportation facility if it:*
 - (a) *Changes the functional classification of an existing or planned transportation facility;*
 - (b) *Changes standards implementing a functional classification system;*
 - (c) *Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or*
 - (d) *Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.*

2. Regarding (1) and (2), the request is to approve a plan amendment/zone change, so the above administrative rules apply. The traffic study submitted by the applicant established that the applicant's proposed limited use of the property will not increase peak travel over a Child Care Center, which is currently a permitted use in the VLDR zone. The County Engineer stated that it is the county's expectation that the existing intersection will accommodate the increase in traffic anticipated from the proposal.

Additionally, Ordinance 787, Public Safety Infrastructure Ordinance, requires that the Public Works Department review the expected traffic generation proposed by any development and it must be found that the nearby roads are adequate to handle any increase. If road improvements are required, then Ordinance 787 allows the Public Works Department to require any necessary road improvements. Evidence in the record establishes that there will not be a significant impact to the transportation facilities in the area if the use of the property is restricted to the facility as proposed. Therefore, with application of an appropriate limited use overlay zone, the request complies with the Transportation Planning Rule.

CONCLUSIONS:

1. The proposal meets county standards governing Comprehensive Plan amendments and zone changes.
2. The proposal is consistent with Comprehensive Plan goals and policies. With conditions imposed under a Limited Use Overlay, the proposed use will be compatible with surrounding uses.
3. With the application of a Limited Use Overlay, no Goal 14 exception is needed.
4. The applicant has demonstrated that the use complies with the Transportation Planning Rule in that it will not have a significant effect on transportation facilities in the area.

CONDITIONS IMPOSED UNDER A LIMITED USE OVERLAY:

The following conditions are imposed under the Limited Use Overlay imposed on Tax Lot 3219CB-1400 by Ordinance 902:

1. Uses shall be limited to:
 - A. Drinking place, of no more than 1,980 square feet;
 - B. Restaurant, with a maximum floor area of no more than 2,630 square feet;
 - C. Convenience store, with a maximum floor area of 1,200 square feet and limited to 15 to 16 hours of operation per day.

2. The maximum allowable total building(s) floor space for commercial uses shall not exceed 3,500 square feet.
3. An application for site design review, and similar use as necessary, shall be submitted by the applicant and approved by the County prior to any new development.

