BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 19-03-12-06 In the Matter of Adopting the Hearings Official Decision Modifying and Affirming on LUBA Remand the County's Decision to Approve an Accessory Structure in the Impacted Forest Lands Zone (F-2) on Tax Lot 200, Assessor's Map 18-01-30 (File No. 509-PA17-05644).

WHEREAS, the Lane County Hearings Official made a decision to affirm a Planning Director's approval with modification of conditions of approval No. 1 and 9 of an Accessory Structure in the Impacted Forest Lands Zone (F-2) on Tax Lot 200, Assessor's Map 18-01-30;

WHEREAS, that decision was subsequently appealed to the Board and on April 17, 2018, the Board of County Commissioners passed Order 18-04-17-04 and elected not to hear the appeal of the Hearings Official decision approving the accessory structure and deeming the Hearings Official decision as the final County decision; and

WHEREAS, LandWatch Lane County appealed the Hearings Official decision to the Land Use Board of Appeals. The Land Use Board of Appeals issued a Final Order and Opinion No. 2018-046 on October 4, 2018, in which the fourth assignment of error was sustained and the County's decision was remanded; and

WHEREAS, on November 13, 2018, the applicant submitted a request for County action on the Land Use Board of Appeals Final Order, and on December 13, 2018, the Lane County Hearings Official conducted a public hearing on the remand matter; and

WHEREAS, on January 8, 2019, the Hearings Official affirmed and modified the County's decision approving the request for an accessory structure on Tax lot 200, Assessor's Map 18-01-30, subject to the applicant's modified development area provided in the applicant's December 12, 2018 submission to the record; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board.

NOW, THEREFORE, the Board of County Commissioners of Lane County ORDERS as follows:

1. That the Lane County Hearings Official decision dated January 8, 2019, attached as Exhibit "A", which affirmed on remand with modifications the County's decision is adopted, ratified, and affirmed by the Board of County Commissioners as the County's final decision. Furthermore, to the extent that the Hearings Official interpreted Lane Code 16.090 and Lane Code 16.211(2)(o)(iii) and (8), that the Board expressly agrees with and adopts those interpretations.

ADOPTED this 12th day of March, 2019

Peter Sorenson, Chair
Lane County Board of Commissioners

Approved as to Form

Date:

LANE COUNTY OFFICE OF LEGAL COUNSEL
LANE COUNTY HEARINGS OFFICIAL
REMAND OF THE APPROVAL OF A SPECIAL USE PERMIT FOR AN
ACCESSORY STRUCTURE WITHIN THE IMPACTED FOREST LANDS
DISTRICT

Application Summary

On July 26, 2017, an application for a special use permit for an accessory structure (art studio/guest house) in the Impacted Forest Lands zone was submitted to the Lane County Land Management Division. On August 23, 2017, staff deemed the application complete and on December 5, 2017 the Director issued a determination that the application complied with the applicable standards and criteria pursuant to LC 16.211(2)(o)(iii) and (8). Notice of the determination was mailed to surrounding property owners. On December 20, 2017, a timely appeal was submitted by LandWatch Lane County.

On February 28, 2018 the Appellant filed an appeal of the Hearing Official’s decision, requesting that the Board of County Commissioners not conduct a hearing on the appeal and deem the Hearing Official’s decision as the final decision of the County. On April 17, 2018, the Board of Commissioner’s passed Order 18-04-17-04 and elected not to hear the appeal of the Hearing Official’s decision.

The Appellant appealed the Hearings Official’s decision to the Oregon Land Use Board of Appeals (LUBA). In the appeal, the Appellant raised four assignments of error, three of which were denied by LUBA. The fourth assignment of error was sustained and the County’s decision was remanded on October 4, 2018.

Parties of Record

Dave Ziegler
Lauri Segel
Kim O’Dea
Andrew Mulkey
LandWatch Lane County
Michael Farthing

Remand History

Hearing Date: December 13, 2018
(Record Held Open Until January 3, 2019)

Decision Date: January 8, 2019

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.
Statement of Criteria

Lane Code 16.090
Lane Code 16.211(2)(o)(iii) and (8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the “subject property,” is located on tax lot 200, assessor’s map 18-01-30. The subject property has a site address of 37973 Jasper Lowell Road. The parcel is approximately 31 acres in size and is zoned F-2 Impacted Forest Lands.

2. The Applicant requests approval for an accessory structure located outside of the ‘same site’ development area as defined by Lane Code 16.211(2)(o)(iii). As proposed, the structure will not contain a kitchen sink, sleeping or cooking facilities, or a 220 volt electrical connection. It is intended to be an art studio.

3. Lane Code 16.090 defines “guest house” as “An accessory building without kitchen or cooking facilities and occupied solely by nonpaying guests or by servants employed on the premises.”

Lane Code 16.211(2)(o) allows “uses and development accessory to existing uses and development” on land zoned F-2. Subsection 2)(o)(iii) provides that if the proposed accessory development is located outside of the “same site” development area it is subject to the various discretionary standards of Lane Code 16.211(8).

The “same site” standard is defined by Lane Code 16.211(2)(o)(i) as a square with the dimensions of 200 square feet centered on the footprint of the primary structure. The center of the proposed accessory structure’s development area is located about 335 feet east of the center of the existing primary structure (residence) on the subject property.

4. The subject property is served by an existing driveway that was evaluated under verification of conditions for PA 95-03379. The Applicant has a tentative letter of approval from the Lowell Rural Fire Protection District. The extension of the existing driveway to the site of the proposed accessory structure is about 200 feet. None of the grades of the driveway exceed 20 percent.

5. The Applicant hired an engineering firm to conduct an on-site slope survey. The survey determined that the “downslope” between the development site and the property boundary is 7 percent. The survey also identified steeper slopes to the
southwest. The Applicant has scaled the development area back by 12 feet to address this issue. The development area’s dimensions are now 100’ x 88’.

THE PLANNING DIRECTOR’S DECISION APPROVING THE REQUEST (PA 17–05644) BY DAVE ZEIGLER FOR AN ACCESSORY STRUCTURE ON TAX LOT 200, ASSESSOR’S MAP 18–01–30 IS AFFIRMED ON REMAND, SUBJECT TO THE APPLICANT’S MODIFIED DEVELOPMENT AREA PER HIS DECEMBER 12, 2018 SUBMISSION.

Justification for the Decision (Conclusion)

In its October 4, 2018 decision, LUBA sustained the petitioner’s fourth assignment of error and remanded the decision to Lane County. This assignment of error involved whether the Applicant had provided sufficient evidence that it complied with the primary and secondary fuel-break requirements of Lane Code 16.211(8), which implements OAR 660–006–0035(3). At issue was whether the slope between the development area and the southern property line exceeded 10 percent and required additional width of the primary fuel break. This issue was important because the development area was fairly close to the southern property line and, depending upon the severity of the slope, there might not be sufficient distance between the development area and the property line to accommodate a necessary increase in primary fuel-break width.

The Applicant’s professional land surveyor conducted a site-specific slope survey of the development area and portions of the subject property that bordered this area. It was determined by the survey that the slope between the development area and the southern property boundary is seven percent. Therefore, there is sufficient distance from the development area to the southern property boundary to accommodate the required 30-foot wide primary fuel-break. This finding supports the Hearings Official’s determination and adequately addresses this assignment of error.

The survey also documented that there were steeper slopes on the southwest and the development area was decreased by 12 feet. This adjustment was made to ensure that a 30-foot primary fuel break would be adequate in this location as that modification pulled the development area away from the steeper slopes.

The Appellant has made two points in its December 20, 2018 letter. First, it points out that the Applicant’s attorney has referred to the development area as the “dwelling site” in her December 12, 2018 submission. Based upon previous statements and arguments, I believe that this was an accidental error, since she often represents clients with forest template dwelling application appeals before this Hearings Official. I will reiterate, however, that this decision is for an accessory dwelling. A discussion of what an accessory dwelling is and is not is addressed in the initial Hearings Official decision and still controls.
The Appellant’s second point was to request that the Hearings Official amend Condition of Approval #2 to require that the Applicant adhere to the amended site plan. I must agree that Condition of Approval #8 makes it clear that the accessory structure must conform to the Applicant’s site plan and this decision formally adopts the modifications proposed by the Applicant to that site plan. I also agree with the Applicant’s attorney that the language proposed by the Appellant’s attorney is too broad. The Appellant’s proposal is that Condition of Approval #2 be amended to require that the fuel-breaks be physically established surrounding the approved site plan. However, the development area represents a space that in all respects can meet the required setbacks and thus the accessory structure may be placed anywhere within that space. Therefore, the final location of the primary and secondary fuel-breaks will depend upon the actual location of the accessory structure, not the boundaries of the development area. I believe that the Appellant’s concerns about conformance with the setback requirements of the code and OAR have been met.

Summary

The initial determination made by this Hearings Official was based upon an admittedly vague topographic map of the development area and warrants made by the Applicant. The site-specific survey adequately addresses the evidentiary deficiency of the initial decision. It is hoped that in the future, applicants will provide slope information based upon site-specific surveys prior to applying for any permit that requires conformance with fuel-break standards.

Respectfully Submitted,

Gary Darnielle
Lane County Hearings Official