



MEMORANDUM

TO: Board of County Commissioners

FROM: Haleigh King, Associate Planner

DATE: July 5, 2023

RE: Consideration to Hear – Deschutes County Land Use File Nos. 247-23-000162-CU, 23-516-A: Secondary Accessory Farm Dwelling.

On July 12, 2023, the Board of County Commissioners (Board) will consider whether to hear an appeal of a Hearings Officer's decision (ref. File No. 247-23-000162-CU) denying an application to establish a secondary accessory farm dwelling.

I. BACKGROUND AND PROCEDURAL HISTORY

The subject 9.70-acre property is currently in farm use consisting primarily of lavender plant production and pasture grasses. The subject property is located approximately 1.4 miles north of Tumalo, between Cline Falls Road and Gerking Market Road. The property is addressed as 19825 Connarn Road, and is further identified on County Assessor's Map 16-12-19 as tax lot 501. The subject property is zoned Multiple Use Agricultural (MUA10) and is within the Airport Safety (AS) Combining Zone.

The Applicant, Tumalo Lavender Property, LLC, has requested a Conditional Use Permit to establish a secondary accessory farm dwelling using an existing manufactured home. The secondary accessory farm dwelling is proposed in an existing, Class A manufactured home located on the southeast side of the property. The manufactured home was previously permitted as a Temporary Medical Hardship Dwelling in 2010 and again in 2015. In the southern portion of the property, the property is developed with a stick-built single-family dwelling that is within the larger agricultural structure and was permitted in 2005 which allowed the central portion of an existing barn to be converted into the primary residence.

Staff referred the Conditional Use Permit application to a public hearing due to a number of interpretative questions. A public hearing before a Hearings Officer was held on May 16, 2023. The

Hearings Officer issued a denial on June 14, 2023. Ms. Olson (the Applicant) filed a timely appeal of the Hearings Officer's denial on June 26, 2023.

II. DECISION

The Deschutes County Hearings Officer rendered a decision denying the Applicant's request for a Conditional Use Permit for the secondary accessory farm dwelling on the grounds that:

- The Hearings Officer interpreted DCC 18.116.070 (A)(1) to require Class A manufactured homes (with exceptions for CH zoned property and also R-1 and SM zones which allow caretaker's residences) to be used as a "primary dwellings." The Hearings Officer concluded that Applicant's proposed use of a Class A manufactured home does not satisfy the requirements of DCC 18.116.070.
- The Hearings Officer found that all relevant approval criteria were met by the applicant in this case, except for DCC 18.116.070. On the basis that the application did not meet the requirements of DCC 18.116.070 the application was denied.

III. APPEAL

APPLICANT/PROPERTY OWNER

The Applicant (Tumalo Lavender Property, LLC) submitted a timely appeal of the Hearing's Officer Decision on June 26, 2023. The Applicant requests the Board initiate review and conduct a hearing to review and make a decision the following issues:

- Interpretation of DCC 18.116.070 (Hearing Officer's Decision pages 10-13)
- Application of that interpretation to DCC 18.32.030(G) (Hearing Officer's Decision pages 20-23)
- Application of DCC 18.116.070 to subject application (Hearing Officer's Decision pages 32-33)

The Applicant is requesting the Board waive the transcript requirements outlined in DCC 22.32.024(D). Further, the Applicant requests a limited de novo review centered on the above-referenced issues.

IV. BOARD OPTIONS

There are three versions of Order No. 2023-029 attached to this memo; one to hear the appeal *de novo*, one to hear the appeal *limited de novo*, and one to decline to hear the appeal. In determining whether to hear the appeal, the Board may consider only:

1. The record developed before the Hearings Officer;
2. The notices of appeal; and
3. Recommendation of staff¹

¹ Deschutes County Code 22.32.035(D)

In addition, if the Board decides to hear the appeal, it may consider providing time limits for public testimony.

Reasons to hear

The Board may want to take testimony and make Code interpretations relating to the Hearings Officer's Decision. The Board may be afforded local deference with respect to its Code interpretations, and the Board may also want to reinforce or refute some or all of the decision findings/interpretations prior to Land Use Board of Appeals review. Further, the Board may want to interpret Code language that may have County-wide implications related to housing choices. Lastly, there was participation from the public and neighbors in the land use process. Staff received comments in support of the application and comments in opposition. Public participation was not focused on the specific criteria for which the Hearings Officer denied the application.

If the Board chooses to hear this matter, the appellant requests the Board conduct a *limited de novo* hearing. Under Deschutes County Code 22.32.027(B)(3), the Board may choose to hear a matter *de novo* at their sole discretion. If the Board chooses to hear this matter, Staff includes considerations for the Board below on *limited de novo* vs. *de novo*.

Reasons to hear *limited de novo*

- The Hearings Officer found that all relevant approval criteria were met by the applicant in this case, except for DCC 18.116.070, so a *limited de novo* hearing would allow the Board to consider new evidence and testimony that would be focused solely on this decision point.
- Public participation in opposition during the prior proceedings generally included concerns with the ongoing Code Compliance case, setbacks, commercial use on the property, and on-site well and septic permits. However, the Hearings Officer did not issue the denial based on these concerns and found that except for DCC 18.116.070, the proposal met applicable criteria.
- The applicant states a *limited de novo* review would limit complexity and scope of appeal proceedings and thereby reduce cost for property owner.
- The applicant has requested *limited de novo* proceedings.
- *Limited de novo* review could better focus the Board's attention on the Code interpretation issue on which it may be accorded deference by LUBA.

Reasons to hear *de novo*

- This allows the Board to consider any relevant issue not related to the reason for denial and include new evidence and testimony on any topic as it sees appropriate.
- Public participation in opposition during the prior proceedings focused on other concerns unrelated to the criterion under which the Hearing's Officer denied the application.
- Any scope of review exercised by the Board (*de novo* or *limited de novo*) will provide an opportunity for the Board to make a final decision on interpretation of local criteria to which LUBA may defer.

Reasons not to hear

- The Hearings Officer's Decision could be supported, as the record exists today, on appeal to the Land Use Board of Appeals (LUBA). In addition, the applicant was represented by a land use consultant.

If the Board decides the Hearings Officer's Decision shall be the final decision of the county, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. The decision on the land use application and associated appeals becomes final upon the mailing of the Board's decision to decline review.

V. 150-DAY LAND USE CLOCK

The 150th day on which the County must take final action on this application is September 17, 2023.

VI. RECORD

The record for File No. 247-23-000162-CU and the Notices of Appeal for Appeal No. 247-23-000516-A are as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/247-23-000162-CU>

Attachments:

1. DRAFT Board Order 2023-029 Accepting Review of the Hearings Officer's Decision (*de novo*)
2. DRAFT Board Order 2023-029 Accepting Review of the Hearings Officer's Decision (*limited de novo*)
3. DRAFT Board Order 2023-029 Declining Review of the Hearings Officer's Decision
4. Notice of Appeal (Appeal No. 247-23-000516-A)
5. Hearing's Officer Decision (File No. 247-23-000162-CU)
6. Deschutes County Code 18.116.050 and .070