STAFF REPORT FOR ADMINISTRATIVE DECISION ACU-13-30

REPORT DATE: December 16, 2013

APPLICANT/OWNER: Daniel Farmer
PO Box 411
Bandon OR 97411

REQUEST: A Grandfather Determination for a dwelling

DECISION: APPROVED

STAFF CONTACT: Jill Rolfe, Planning Director

MAP NUMBER(S) / LEGAL DESCRIPTION

ASSESSOR’S MAPS: Township 28S Range 14W Section 34 Tax Lots 1800

PROPERTY LOCATION

The subject property is located at 54068 Morrison Road southeast of the City of Bandon.

SPECIAL DISTRICTS

City of Bandon, Bandon RFPD, Southern Coos Health District

APPLICABLE CRITERIA

Coos County Zoning and Land Development Ordinance (LDO) and Coos County Comprehensive Plan (CCCP)

| LDO Article 3.4 | Grandfather Provisions |
| LDO Section 3.4.100 | Use and Alteration of Buildings, Structures, or Land Existing Prior to Enactment of this Ordinance. |
| LDO Section 3.4.400 | Process for Determining a Grandfather Use. |

I. BASIC FINDINGS

A. Lawfully Created Parcel: The subject property was lawfully created in accordance with LDO § 3.3.800(1) which states that parcels created prior to January 1, 1986 are lawfully created parcels. This parcel was part of a larger parcel and tract but in 1983 was deeded off due the road bisecting the property. The property has been in the same configuration since then and complies with § 3.3.800(1).

B. Zoning: The subject property is zoned Rural Residential-5. The purpose of the “RR-5” district is to provide for acreage homesites outside of Urban Growth Boundaries (UGB), where a moderate intensity of land development is appropriate, but where urban services and facilities may not be available. The “RR-5” district provides for the orderly development of rural land so as to encourage the continued existence of rural family
life and to provide a transition of densities between urban development and exclusive agricultural or forestry uses.

C. **Site Description:** The subject property is a rectangular shape and the main part of the development is located in the center of the parcel. The parcel is surrounded by trees along the boundary of the property. The property has a driveway that accesses Morrison Road.

D. **Surrounding Land Uses:** The property is in the RR-5 and is bordered on the west and south by Forest. The small tax lot to the north is RR-5 and across the road is RR-5.

E. **Background:** The property is developed with two dwellings (one conventional and one 1973 mobile home) and three accessory structures. According to planning records this parcel was once part of a larger ownership and from 1974 to 1976 there were several permits given for development. The records are very old and impossible to determine the exact location of the approved development. Furthermore, there were several permits issued in 1974 & 1975 with the statement that there was no official adopted ordinance in place; therefore, the property was unzoned. The interim zoning was adopted in July of 1975. This property was eventually deeded out of the larger ownership at the beginning of 1976 as ten acres consisting of 7 acres on the west side of the road and 3 acres on the east side of the road for a total of 10 acres. Staff speculates because the property was 10 acres and consisted of two dwellings it would have met the density requirements or there were no density requirements in place if it was prior to July 1975.

Staff can verify that there were two homes that existed as of March 16, 1976 because of the date application was filed for rezone. At that time this property was part of a larger parcel that crossed the county road. The property owners at that time had applied for a rezone to the portion across the road to allow for a land division and homesite. This was denied but a variance was granted to the lot size of approximately 3 acres on the east side of Morrison Road to allow for an additional dwelling; however, as a condition of approval on the remaining acreage, located on the west side of Morrison road the mobile home was only allowed as family hardship dwelling for the elderly parents of Mr. Hennick. The Family hardship dwelling was to be removed when the reason for having it ceased to exist. Staff believes after reviewing the matter that the third dwelling could have only been allowed if one of the dwellings was considered temporary. The applicant agreed to that in his application for a rezone. However, the rezone was denied but the hearings body did approve a variance to the lot standards and the second dwelling on the west side of the road was to be considered a hardship dwelling. However, it appears to staff based on all of the information on file that the April 22, 1976 application approval for a variance was not implemented and; therefore, is no longer valid. Leaving the question of, what is the status of the two dwellings.

The perplexing fact to staff is that it seemed that there were two dwellings sited on this property in 1975 but instead of declaring them both to be grandfathered they chose to justify one of the dwellings as a family hardship. The controlling county law that was in effect at the time of this application would have been the July 1975 Interim Ordinance. This ordinance was not acknowledged by the Land Conservation and Development Commission at the time but was put into place while the County worked on obtaining acknowledgment.

To complicate the matter more, in 1983 when the ordinance was updated there was a provision that acknowledged roads divide property. Therefore, the property on the east side of the road became a legally created pre-existing parcel under the 1983 rules. The property on the east side of the road was deeded out but not developed until the 1990’s.

In all of this time no one has ever addressed the two dwellings on tax lot 1800 until now. Staff has spent a considerable amount of time reviewing all of the material and prior ordinances.
II. FINDINGS TO THE APPLICABLE REVIEW CRITERIA

<table>
<thead>
<tr>
<th>LDO Section 3.4.100</th>
<th>Use and Alteration of Buildings, Structures or Land Existing Prior to the Enactment of this Ordinance</th>
</tr>
</thead>
</table>

The lawful use of any building, structure or land at the time of the enactment or amendment of this Ordinance may at the discretion of the owner be continued.

***

A change of ownership or occupancy shall be permitted

***

FINDING: The applicant would like to replace one of the two dwellings located on his property. However, the records were unclear on how long the dwellings had existed on the property. Therefore, the applicant submitted an application request to determine if the uses were grandfathered. The dwelling existed on the date the current ordinance was adopted (January 1986). Therefore, replacement of the grandfathered use is permitted.

<table>
<thead>
<tr>
<th>LDO Section 3.4.400</th>
<th>Process for Determining a Grandfathered Use</th>
</tr>
</thead>
</table>

When a grandfathered use is not known to exist and must be established, an application may be submitted. The Planning Director shall determine the validity of a Grandfathered use, based on documentation submitted by the applicant. Said review shall be conducted in accordance with Article 5.7, and any appeals shall be conducted in accordance with Article 5.8. (OR-98-01-002PL 5/4/98)

For the purposes of verification, an applicant must prove the existence, continuity, nature and extent of the use for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable Ordinance was adopted and has continued uninterrupted until the date of application. (OR-98-01-002PL 5/4/98)

FINDING: There is extensive evidence in the planning records and applications to show that the uses have existed at least 10 years immediately preceding the date of this application. Therefore, this criterion has been met.

III. ANALYSIS

The property records show that the dwellings were both sited by March 1976. There was a lot of research required to determine when and why the dwellings were allowed. Staff found that there were many permits given for this area prior to the property being deeded out into smaller parcels; therefore, it is plausible that the prior property owners obtained required permits or there were no permits required. There was some information to show at one time the mobile home was considered a hardship dwelling and as a condition of approval the dwelling was to be removed when the hardship ceased to exist. However, that application was never implemented voiding the condition of approval. Then staff had to review the record to determine the legality of the two dwellings. Staff finds that the dwellings are grandfathered because they meet the criteria in place at the time the application was submitted as described in this report.

IV. NOTIFICATION

The Planning Department mailed individual written notice of the decision to the owners of record of all property located as required in Section 5.0.900. Notice of Decision with a copy of the staff report was forwarded to
Applicant(s), Owner(s) and Dave Perry, DLCD. Notice of Decision was also provided to the following: Coos County Planning Commission, the special districts identified above. In addition, notice of the decision was posted at the Coos County Courthouse, Coquille Annex and North Bend Annex. All notices were mailed and posted on December 16, 2013.

V. NOTICE OF APPEAL RIGHTS
This decision may be appealed to the Coos County Hearings Body pursuant to Article 5.8 of the Coos County Zoning and Land Development Ordinance within 15 days from the date of written notice. This means that appeals must be received in the Planning Department by 5 p.m. on December 31, 2013, in order to be considered. This decision will not be final until the period for filing an appeal has expired. Detailed information about the appeal process, filing fees and additional information will be provided by the Planning Department upon request. The decision is based upon the submitted application, supporting evidence, facts, and findings to the criteria.

VI. CONDITIONS

1. Pursuant to ORS 215.416(1), the fees charged by the Planning Department for permit applications represent the average cost of processing the application. If the actual cost of processing the application exceeds the average cost, then the applicant shall be responsible for paying the full amount. If such an amount is due, it must be paid before a zoning compliance letter can be issued.
2. Any alteration or replacement of the grandfathered uses will require a plot plan and zoning compliance letter.

Attachments: Decision Notice Notification Map Application