



NOTICE OF LAND USE DECISION BY THE COOS COUNTY PLANNING DIRECTOR

Coos County Planning
225 N. Adams St.
Coquille, OR 97423
<http://www.co.coos.or.us/>
Phone: 541-396-7770
Fax: 541-396-1022

This notice is to serve as public notice and decision notice and if you have received this notice by mail it is because you are a participant, adjacent property owner, special district, agency with interest, or person with interest in regard to the following land use application. Please read all information carefully as this decision may affect you. (See attached vicinity map for the location of the subject property).

Date of this Decision: June 28, 2019

File Number: PLA-19-033 and V-19-001

Account Numbers: 99919684, 99919686, 99919687,
Map Number: 25S1206D0-00405/407/408/409

Property Owner/
Applicant: CLARNO, BRETT & GEORGIANNA C
66528 SCHOOLHOUSE RD
NORTH BEND, OR 97459-7564

Situs Address: 94913 KENTUCK WAY LN NORTH BEND, OR 97459

Acreage: 3.23 Acres, 3.42 Acres, 25.58 Acres, 12.52 Acres

Zoning: RURAL RESIDENTIAL-2 (RR-2), EXCLUSIVE FARM USE (EFU)

Special Consideration NATIONAL WETLAND INVENTORY SITE (NWI)
NATURAL HAZARD - LANDSLIDE (NHLND)
NATURAL HAZARD - TSUNAMI (NHTHO)
FLOODPLAIN (FP)
WET MEADOW WETLAND (WM)

Proposal: Request for Planning Director Approval of a Variance to the Property Line Adjustment requirements as provided by Coos County Zoning and Land Development Ordinance (CCZLDO) Articles 5.3 Variances & 6.3 Property Line Adjustments.

Decision: This request meets the criteria subject to conditions of approval found at Exhibit A. **Approval** is based on findings and facts represented in the staff report.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and decision, where you may receive more information, and the requirements if you wish to appeal the decision by the Director to the Coos County Hearings Body. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below pursuant to Coos County Zoning and Land Development Ordinance (CCZLDO) Article 5.8. If you are mailing any documents to the Coos County Planning Department the address is 250 N. Baxter,

Coquille OR 97423. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

The application, staff report and any conditions can be found at the following link:

<http://www.co.coos.or.us/Departments/Planning/PlanningDepartment--Applications2019.aspx>.

The application and all documents and evidence contained in the record, including the staff report and the applicable criteria, are available for inspection, at no cost, in the Planning Department located at 225 North Adams Street, Coquille, Oregon. Copies may be purchased at a cost of 50 cents per page. The decision is based on the application submittal and information on record. The name of the Coos County Planning Department representative to contact Jill Rolfe, Planning Director and the telephone number where more information can be obtained is (541) 396-7770.

This decision will become final at 12 PM July 15, 2019 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Coos County Planning Department.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Authorized by:  Date: June 28, 2019
Jill Rolfe, Planning Director

EXHIBITS

Exhibit A: Conditions of Approval

Exhibit B: Vicinity Map

The Exhibits below are mailed to the Applicant only. Copies are available upon request or may be found at the following website:

<http://www.co.coos.or.us/Departments/Planning/PlanningDepartment--Applications2019.aspx> or

by visiting the Planning Department at 225 N. Baxter, Coquille OR 97423. If you have any questions please contact staff at (541) 396-7770.

Exhibit C: Staff Report

EXHIBIT "A"
CONDITIONS OF APPROVAL

The applicant shall comply with the following conditions of approval with the understanding that all costs associated with complying with the conditions are the responsibility of the applicant and that the applicant is not acting as an agent of the county. If the applicant fails to comply or maintain compliance with the conditions of approval the permit may be revoked as allowed by the Coos County Zoning and Land Development Ordinance. Please read the following conditions of approval and if you have any questions contact planning staff.

1. This application is for to all for two property line adjustments and variance to allow the property line to cross the zone boundary. It seems reasonable if a use crosses a zone boundary to allow the property lines to conform to the use. As a condition of approval the properties will not be allowed to be reconfigured in the futures unless it is resolve an encroachment issues.
2. All applicable mapping and filing requirements shall be complied with as listed below. If a map is required it shall be submitted to the Surveyor's office with the deeds. The deeds shall not be filed and that map has the appropriate signatures. Copies of all recorded deeds shall be submitted as the final step in the process.
3. Shall comply with any requirements from Coos County Surveyor.

Mapping and Filing Requirements

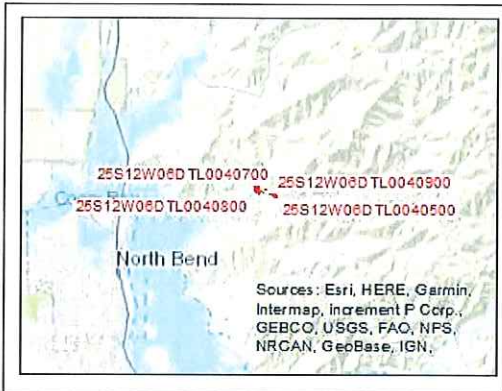
1. Map and Monuments Required:
 - a. For any resulting lot or parcel ten acres or less, a survey map that complies with ORS 209.250 shall be prepared;
 - b. The survey map shall show all structures within ten (10) feet of the adjusted line;
 - c. The survey shall establish monuments to mark the adjusted line.
2. Approval and Filing Requirements:
 - a. Upon determination that the requirements of this section have been met, the Director shall advise the applicant in writing that the line adjustment is tentatively approved;
 - b. Within one year from the date of tentative approval, the applicant shall prepare and submit to the Director any map required by Section 6.2.800(4) and Section 6.2.800(5) if a survey is required. If no map is required, the applicant shall submit proof that the requirements of the tentative approval have been met. The Director shall indicate final approval by endorsement upon the map, if any, or if no map is required the Director shall advise the applicant in writing that final approval has been granted;
 - c. Once endorsed by the Director, the map shall then be submitted to the County Surveyor. When the map is filed, the County Surveyor shall indicate the filing information on the map;
 - d. A line adjustment shall be effective when the map is filed by the County Surveyor and an instrument (e.g. deed or covenant) is recorded with the County Clerk. If no map is required, then the line adjustment shall be effective when final approval is granted by the Director and an instrument is recorded with the County Clerk;
 - e. If a survey is required, the Deed shall be recorded and the Survey Map shall be filed simultaneously. The survey map, with the signature of the Coos County Planning Director shall be submitted to the County Surveyor along with the required filing fee. The survey map will be given a filing number which will be added to the Property Line Adjustment deed. The deed will then be recorded whereupon the recording number for said deed will be added to the face of the survey map. Said map will then be filed with the County Surveyor, completing the process.
 - f. The property line adjustment deed must be submitted on the exact format found in § 6.3.175.f.

**EXHIBIT B
Vicinity Map**

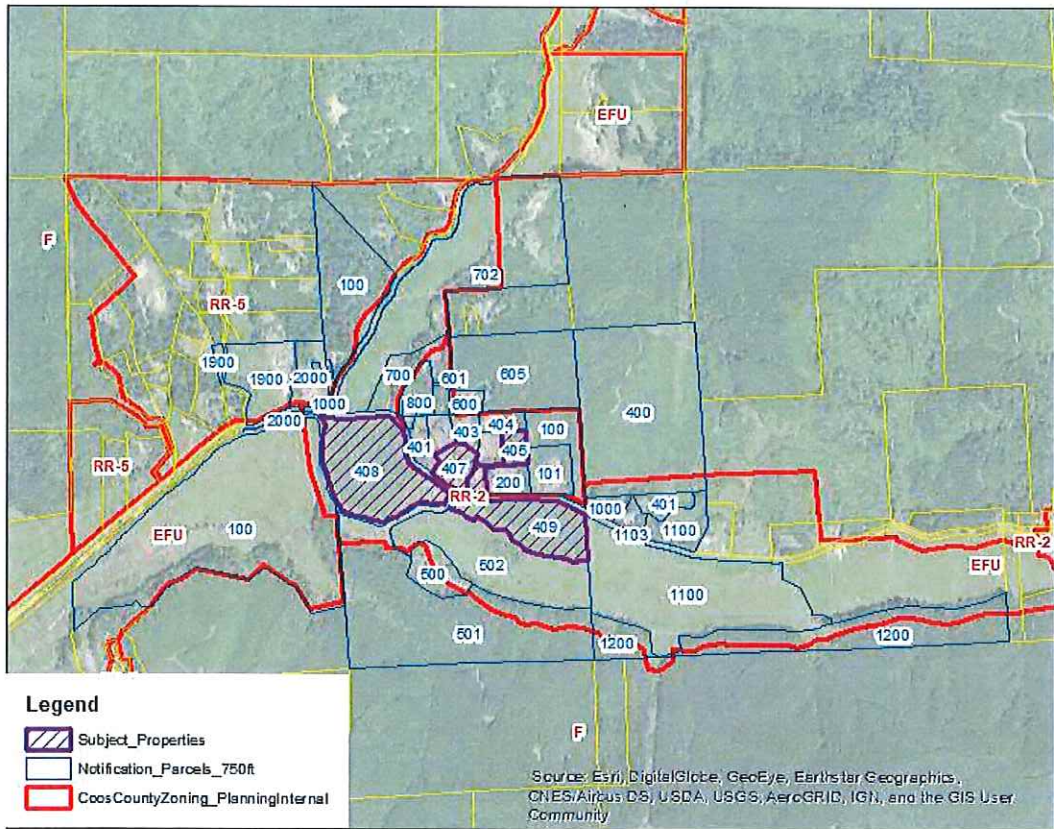


COOS COUNTY PLANNING DEPARTMENT

Mailing Address: 250 N. Baxter, Coos County Courthouse, Coquille, Oregon 97423
 Physical Address: 225 N. Adams, Coquille Oregon
 Phone: (541) 396-7770
 Fax: (541) 396-1022/TDD (800) 735-2900



File: V-19-001/PLA-19-003
 Applicant/
 Owner: Brett Clarno
 Date: June 19, 2019
 Location: Township 25S Range 12W
 Section 06D TL 406/407/408/409
 Proposal: Variance & Property Line Adjustment



- Legend**
- Subject_Properties
 - Notification_Parcels_750ft
 - CoosCountyZoning_PlanningInternal

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

EXHIBIT "C"
Staff Report

File Number: PLA-19-033 and V-18-001
Account Numbers: 99919684, 99919686, 99919687,
Map Numbers: 25S1206D0-00405/407/408/409

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NATURAL HAZARD - LANDSLIDE (NHLND)
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FLOODPLAIN (FP)
WET MEADOW WETLAND (WM)

Reviewing Staff: Crystal Orr, Planning Specialist and Jill Rolfe, Planning Director
Date of Report: June 28, 2019

I. PROPOSAL

Request for Planning Director Approval for a variance to the Property Line Adjustment standards as provided by Coos County Zoning and Land Development Ordinance (CCZLDO) Articles 5.3 Variances & 6.3 Property Line Adjustments.

II. BACKGROUND INFORMATION

Planning Staff reviewed the background information and found that all land use actions have been done lawfully.

The applicant would like to complete two property line adjustments but they crosses zones lines. The purpose of the crossing the zone boundary is to allow the existing dwellings to be part of the farm operations. This requires a variance to the property line adjustment criteria. Therefore, this application is for to all for two property line adjustments and variance to allow the property line to cross the zone boundary. It seems reasonable if a use crosses a zone boundary to allow the property lines to conform to the use. As a condition of approval the properties will not be allowed to be reconfigured in the futures unless it is resolve an encroachment issues.

III. PROPERTY DESCRIPTION AND PROPOSAL

LAWFULLY CREATED: All Parcels were created pursuant to CCZLDO § 6.1.125.1.c through an approved Subdivision Application (SUB-17-001).

LOCATION: The subject property is located off of Kentuck Way Lane, northeast of North Bend.

SITE DESCRIPTION AND SURROUNDING USES: The subject property is zoned Exclusive Farm Use (EFU) and Rural Residential-2 (RR-2).

IV. APPROVAL CRITERIA & FINDINGS OF FACT

Property Line Adjustments:

• **SECTION 6.3.125 PROCEDURE:**

1. *An application for a line adjustment or elimination shall be filed by the owners of all lots or parcels affected. The application shall be accompanied by an appropriate fee and contain the following information:*
 - a. *Reason for the line adjustment;*
 - b. *Vicinity map locating the proposed line adjustment or elimination in relation to adjacent subdivisions, partitions, other units of land and roadways;*
 - c. *A plot plan showing the existing boundary lines of the lots or parcels affected by the line adjustment and the approximate location for the proposed adjustment line. The plot plan shall also show the approximate location of all structures within ten (10) feet of the proposed adjusted line;*
 - d. *A current property report (less than 6 months old) indicating any taxes, assessment or other liens against the property, easements, restrictive covenants and rights-of-way, and ownerships of the property of the proposed development. A title report is acceptable.*
 - e. *A notice of application and decision will be provided to any and all lien holders of record for the property that will be affected by the proposed adjustment. Applicants should consult with any and all such lien holders prior to submittal of an application.*

FINDING: This application is found to be complete and contain all documents required by this section. Tax lot 405 has a lien through Lakeview Loan Servicing, a Notice of Decision will be mailed to them. Therefore, these criteria have been addressed.

2. *A line adjustment is permitted only where an additional unit of land is not created and where the lot or parcel reduced in size by the adjustment complies with the requirements of the applicable zone except that a line adjustment for the purpose of exchange or transfer of land between resource land owners shall be allowed so long as:*
 - a. *No parcel is reduced in size contrary to a condition under which it was formed;*
 - b. *The resulting parcel sizes do not change the existing land use pattern (e.g. two conforming parcels must remain conforming); and*
 - c. *Two non-conforming parcels may remain non-conforming; and, two parcels, one conforming and one non-conforming, may remain as such regardless of which parcel is non-conforming after the exchange or transfer).*

FINDING: Both tax lots were lawfully created pursuant to § 6.1.125.1.c through an approved Subdivision Application (SUB-17-001).

This property line adjustment will not create an additional unit of land.

Two of the tax lots (408 and 409) are legal nonconforming lots and the other two are legal conforming lots. Upon completion of the property line adjustments all lots will

remain in same conformance as they were prior to the property line adjustment. The lots in the Rural Residential-2 zone will remain with at least two (2) acres to meet the conforming lot standard. The lots in the Exclusive Farm Use (EFU) zone will gain acreage to become more compliant with the acreage requirement but still remain below the standard 80 acre minimum lot size.

3. *An encroachment of existing or planned structures will not be created within required setbacks as a result of the line adjustment.*

FINDING: No encroachment of existing structures will be created by adjusting the property boundary line. Therefore, this criterion has been met. Any future structures will be required to comply with the setback requirements in the applicable zoning district.

4. *A line adjustment for a lot or parcel that contains a dwelling, not on a public sanitation system, and is less than an acre before the adjustment and further reduced as a result of the adjustment shall obtain documentation from Department of Environmental Quality (DEQ) that the sanitation system will still meet their requirements.*

FINDING: All lots are over an acre and will remain so after the adjustment. Therefore, this condition does not apply.

5. *In resource lands, a unit of land containing a dwelling, or approved for construction of a dwelling, cannot be adjusted with a vacant resource unit of land for the purpose of qualifying the vacant unit for a 160-acre dwelling.*
 - a. *A resource unit of land less than 160 acres and containing a (preexisting) dwelling, or approved for construction of a dwelling, cannot be adjusted with a vacant resource unit of land for the purpose of qualifying the vacant unit for a 160-acre dwelling;*
 - b. *A resource unit of land 160 acres or greater and containing a (preexisting) dwelling, or approved for construction of a dwelling, cannot be adjusted below 160 acres with a vacant resource unit of land for the purpose of qualifying the vacant unit for a 160-acre dwelling;*
 - c. *A resource unit of land 160 acres or greater and containing a dwelling approved as a 160-acre dwelling, or approved for construction of a 160-acre dwelling, cannot be reduced below 160 acres for the purpose of qualifying the vacant unit for a 160-acre dwelling.*

FINDING: The purpose of the adjustment is not to allow for a new dwelling in the resource zone but provide for the existing dwellings to be relocated and be allowed to sell with the farm. The properties would not qualify for a 160 acre dwelling currently or when the property line is adjusted. Therefore, this criterion does not apply.

6. *Same Designation: A line adjustment shall only be permitted where the sale or transfer of ownership is made between abutting owners of like designated lands, residential lands, commercial lands, industrial lands, resource lands, and estuary zoned lands unless an existing structure encroaches over an existing property boundary or the boundary line adjustment is required to comply with requirements of the State Department of Environmental Quality for a subsurface sewage system.*

FINDING: The applicant has requested a variance to this standard. The property was originally split zoned Rural Residential and Exclusive Farm. The two dwellings

were used in the farm operation and the applicant has requested that that they are allowed to continue to be used with the farm use. The variance will allow the use to extend beyond the zone boundary but as a condition of approval the properties will not be allowed to be reconfigured or divided further unless the property line adjustment is found necessary to resolve an encroachment issues. This criteria has been addressed.

- **SECTION 6.3.150 EASEMENTS AND ACCESS:**

A line adjustment shall have no affect on existing easements or access. Access shall not be eliminated through a property line adjustment process. If an access is potentially affected then an easement may be created for access to comply with this criterion.

FINDING: No access is proposed to be eliminated through this application request.

ARTICLE 5.3. VARIANCES

- **SECTION 5.3.100 GENERAL:**

Practical difficulty and unnecessary physical hardship may result from the size, shape, or dimensions of a site or the location of existing structures thereon, geographic, topographic or other physical conditions on the site or in the immediate vicinity, or, from population density, street location, or traffic conditions in the immediate vicinity. Variances may be granted to overcome unnecessary physical hardships or practical difficulties. The authority to grant variances does not extend to use regulations, minimum lot sizes or riparian areas within the Coastal Shoreland Boundary.

FINDING: The applicant has requested a variance to allow a property line to cross a zone boundary. The property was originally split zoned Rural Residential and Exclusive Farm. The two dwellings were used in the farm operation and the applicant has requested that that they are allowed to continue to be used with the farm use. The variance will allow the use to extend beyond the zone boundary but as a condition of approval the properties will not be allowed to be reconfigured or divided further unless the property line adjustment is found necessary to resolve an encroachment issues.

A new farm dwelling would not be practical as portions of the property that are zoned EFU are located within the flood hazards area with the exception of a small portion on tax lot 408 that contains the barn. The flood hazard ordinance promotes development to be located outside of the flood hazard area. By allowing a property line adjustment it will allow for small farm operations to continue and the count to preserve the farmland for farming and allow but allow the property owner to live on the farm. This is a reasonable alternative and allows the intent of the comprehensive plan zones to be utilized along with promotion of protections of farmland. The applicant did explore the option of rezoning the RR-2 portion but it was not consistent with the comprehensive plan exception language. Therefore, a variance was only option.

- **SECTION 5.3.150 SELF-INFLICTED HARDSHIPS:**

A variance shall not be granted when the special circumstances upon which the applicant relies are a result of the actions of the applicant, current owner(s) or previous owner(s) willful violation.

This does not mean that a variance cannot be granted for other reasons.

FINDING: This is not a self-inflicted hardship as all other application possibilities were explored and given that the property was originally split zoned it seems reasonable it remain with a condition that it cannot be reconfigured or divided in the future to meet the intent of the property line adjustment criteria and the preservation of farmland designation. Therefore, this criterion has been addressed.

- **SECTION 5.3.200 VARIANCE:**

The Planning Director shall consider all formal requests for variances for zoning and land development variances.

- **SECTION 5.3.350 CRITERIA FOR APPROVAL OF VARIANCES:**

No variance may be granted by the Planning Director unless, on the basis of the application, investigation, and evidence submitted;

1. Both findings “a” and “b” below are made:
 - a. One of the following circumstances shall apply:
 - i. That a strict or literal interpretation and enforcement of the specified requirement would result in unnecessary physical hardship and would be inconsistent with the objectives of this Ordinance;
 - ii. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply to other properties in the same zoning district; or
 - iii. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges legally enjoyed by the owners of other properties or classified in the same zoning district;
 - b. That the granting of the variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the near vicinity.
2. In addition to the criteria in (1) above, no application for a variance to the Airport Surfaces Floating Zone may be granted by the Planning Director unless the following additional finding is made: “the variance will not create a hazard to air navigation”.
3. In lieu of the criteria in (1) above, an application for a variance to the /FP zone requirements shall comply with Section 4.6.227.

Variance regulations in CCZLDO Article 5.3 shall not apply to Sections 4.11.400 through 4.11.460, Chapter VII and Chapter VIII.

FINDING: The applicant has requested a variance to allow a property line to cross a zone boundary. Section 5.3.350 requires that the variance be granted if one of the circumstances under subsection “a” exists and subsection “b”. The Planning Director in this case finds that the strict or literal interpretation and enforcement of the specified requirement would result in unnecessary physical hardship and would be inconsistent with the objectives of this Ordinance. As explained earlier in this section the property was originally split zoned Rural Residential and Exclusive Farm. The two dwellings were used in the farm operation and the applicant has requested that that they are allowed to continue to be used with the farm use. The variance will allow the use to extend beyond the zone boundary but as a condition of approval the properties will not be allowed to be reconfigured or divided further unless the property line adjustment is found necessary to resolve an

encroachment issues.

A new farm dwelling would not be practical as portions of the property that are zoned EFU are located within the flood hazards area with the exception of a small portion on tax lot 408 that contains the barn. The flood hazard ordinance promotes development to be located outside of the flood hazard area. By allowing a property line adjustment it will allow for small farm operations to continue and the count to preserve the farmland for farming and allow but allow the property owner to live on the farm. This is a reasonable alternative and allows the intent of the comprehensive plan zones to be utilized along with promotion of protections of farmland.

The residual lots in the Rural Residential will remain two (2) acres to remain conforming to with the new lots in rural residential zone requirements.

The second requirement under the variance standard is that granting of the variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the near vicinity. This will not create a public health, safety or cause materially injurious to adjacent properties. The dwellings are already in existence and will continue to be used for the farm parcels that have been in existence since the enactment of the Coos County Comprehensive Plan and implementing ordinance.

This variance request is not a minimum lot size, floating zone or riparian area; therefore, it can be considered. It seems reasonable to given the hazards, topographical area and requirements to preserve farmland. Therefore, the applicant has met the burden of proof.

VI. DECISION:

There is evidence to support the Property Line Adjustment the Variance to the request. There are conditions that apply to this use that can be found at Exhibit "A".