

IN 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 Approving on Remand
Planning Docket No. C-03-22, a Conditional
Use Permit for Tax Lot No. R3328 00102;
Applicant: Grange Hill, LLC

BOARD ORDER 26-030

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on February 12, 2026, Commissioners Kit Johnston, Mary Starrett, and David “Bubba” King being present.

IT APPEARING BEFORE THE BOARD AS FOLLOWS:

WHEREAS, The Applicant, Grange Hill, LLC, submitted a conditional use request for the operation of a nine guestroom bed and breakfast facility as a home occupation; and

WHEREAS, The Board originally approved Planning Docket No. C-03-22 on August 18, 2022, via Board Order 22-263; and

WHEREAS, The Board’s decision was thereafter appealed to the Oregon Supreme Court, where it was ultimately remanded back to the County by LUBA as set forth Exhibit A, attached hereto and incorporated herein; and

WHEREAS, On January 8, 2026, the Board held a remand hearing wherein testimony and evidence was provided confirming that: 1) the bed and breakfast structure does, in fact, constitute a “dwelling”; 2) the “design characteristics” of the bed and breakfast are consistent with both state and local law; and 3) with conditions, the bed and breakfast will be occupied by a “farm operator”; and

WHEREAS, Following deliberation, the Board voted unanimously to re-approve Planning Docket No. C-03-22 based on the reasoning set forth in the findings attached hereto as Exhibit B and incorporated herein; and now, therefore,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. Planning Docket C-03-22 is approved, subject to the following conditions:

1. The bed and breakfast inn may offer a maximum of nine (9) guestrooms for rent.
2. Food service shall be limited to one (1) morning meal for overnight guests.

3. The bed and breakfast is personal to the applicant and property owners, Grange Hill, LLC, and this approval does not run with the land. Any subsequent owner who would like to continue operating the bed and breakfast must receive land use approval for the home occupation.
4. The bed and breakfast will be operated by an onsite resident of the proposed single-family dwelling.
5. Prior to operating the bed and breakfast home occupation, Grange Hill shall provide the Planning Department with evidence that a Grange Hill farm operator is occupying the dwelling.
6. Prior to operation of the bed and breakfast, the driveway access and water supply shall be inspected and approved by Dundee Fire Department.
7. The use shall employ no more than five (5) full or part time employees.
8. The State Administrative Rule requirements for Bed and Breakfast licensing shall be satisfied prior to operation of the bed and breakfast facility.
9. Prior to operation of the home occupation, the application shall obtain an inspection and approval (Authorization Notice) from the County Sanitarian for the septic system.
10. Prior to operation of the home occupation, the applicant shall obtain all necessary building, plumbing and electrical permits from the Yamhill County Building Department.
11. Prior to the operation of the bed and breakfast, the water shall be tested initially and annually for nitrate and arsenic with quarterly bacteria tests thereafter and determined to be safe for public consumption by the Public Health Department. Results of the test shall be submitted to the Yamhill County Planning Department.
12. The use is limited to the operation of a nine (9) guestroom bed and breakfast from a single-family dwelling. Agri-tourism or other celebratory events on the property require additional land use approval.
13. No outside evidence of the home occupation shall be visible except for a sign not to exceed 24 square feet, which is subject to permit and land use approval pursuant to Section 1006 of the *Yamhill County Zoning Ordinance*.
14. An area to provide a minimum of one (1) parking space per guestroom and one (1) parking space for each employee on maximum working shift shall be maintained. There shall be no parking along the road right-of-way or along the easement roadway.

- 15. This approval is valid for one year following the date of final approval and shall expire at that time unless the use has been initiated.
- 16. A review of the bed and breakfast operation shall be required two years following the date of final approval. The operation may be renewed if it continues to comply with the requirements of Section 1004.01 of the *Yamhill County Zoning Ordinance* and the conditions of approval. A fee may be charged for renewal of the permit.
- 17. Modification of any of the above conditions requires approval under Section 1202.05 of the *Yamhill County Zoning Ordinance*. Violation of any of the above conditions may result in revocation of the conditional use permit with the process detailed in Section 1202.07 and 1202.08 of the *Yamhill County Zoning Ordinance*.

Section 2. In support of this Order, the Board adopts the findings set forth in Exhibit B, attached hereto and incorporated herein, which identifies the applicable approval criteria and explains how each respective criteria has been met.

DATED this 12th day of February, 2026, at McMinnville, Oregon.

ATTEST



YAMHILL COUNTY BOARD OF COMMISSIONERS

KERI HINTON
County Clerk

Kit Johnston

Chair KIT JOHNSTON

By: *Carolina Rook*
Deputy CAROLINA ROOK

Mary Starrett

Commissioner MARY STARRETT

FORM APPROVED BY:

Signed by: *Jodi Gollehon*
JODI GOLLEHON
Counsel for Yamhill County

David King

Commissioner DAVID "BUBBA" KING

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

FRIENDS OF YAMHILL COUNTY,
Petitioner,

vs.

YAMHILL COUNTY,
Respondent,

and

GRANGE HILL LLC,
Intervenor-Respondent.

LUBA No. 2022-081

FINAL OPINION
AND ORDER

Appeal on remand from the Supreme Court.

Andrew Mulkey represented petitioner.

Jodi M. Gollehon represented respondent.

Elaine Albrich represented intervenor-respondent.

BASSHAM, Board Member; ZAMUDIO, Board Chair, and WILSON,
Board Member, participated in the decision.

REMANDED

09/19/2025

You are entitled to judicial review of this Order. Judicial review is
governed by the provisions of ORS 197.850.

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals a board of commissioners’ decision approving a conditional use permit (CUP) to operate a bed and breakfast as a home occupation on land zoned exclusive farm use.

BACKGROUND

This matter is on remand from the Supreme Court. *Friends of Yamhill County v. Yamhill County*, 373 Or 790, 572 P3d 278 (2025). In the underlying LUBA decision, we affirmed the county’s decision approving a CUP to operate a bed and breakfast home occupation on land zoned exclusive farm use (EFU), and currently farmed as a vineyard. *Friends of Yamhill County v. Yamhill County*, LUBA No 2022-081 (Dec 27, 2022). In 2020, the county approved an application by a prior owner of the property for a dwelling in conjunction with farm use on the subject property, based on the vineyard use. After acquiring the property, intervenor-respondent Grange Hill, LLC (intervenor) filed the present CUP application for a home occupation bed and breakfast, to be operated within that yet-to-be-constructed farm dwelling. The proposed dwelling would include nine guest rooms and an innkeeper’s suite.

Petitioner appealed our decision to the Court of Appeals. On appeal, the Court of Appeals reversed, concluding that, as a matter of law, the proposed structure was not a “dwelling” at all, but rather a type of motel. *Friends of Yamhill County v. Yamhill County*, 325 Or App 282, 529 P3d 1007 (2003). The Supreme

1 Court granted review of the Court of Appeals' decision, and affirmed the court's
2 decision in part, and reversed in part. The Supreme Court disagreed with the
3 Court of Appeals that the proposed use is a "motel," but agreed that LUBA had
4 erred in affirming the county's approval of the home occupation. According to
5 the Supreme Court:

6 "[T]he legislature intended the 'dwelling' requirement for a home
7 occupation under ORS 215.448 to mean a structure that satisfies the
8 requirements for a particular category of 'dwelling' that the land use
9 laws normally allow on property in the zone. When, as here, the
10 purported category of dwelling is a 'primary dwelling' on EFU land,
11 those requirements include that the structure will be the home for a
12 farm operator. * * * LUBA erroneously dismissed that requirement
13 as irrelevant to whether the proposed structure satisfies the
14 'dwelling' requirement in ORS 215.448[.]" *Friends of Yamhill*
15 *County*, 373 Or at 793.

16 The Supreme Court remanded our decision for us to consider petitioner's
17 challenges to the CUP "under the standards articulated in this opinion." *Id.* at
18 814. We now address the Supreme Court's remand.

19 **MOTION FOR REMAND**

20 On August 29, 2025, intervenor and the county (together, respondents)
21 filed a joint motion for remand, taking the position that "the sole issue on remand
22 is whether [intervenor's] primary dwelling satisfies the requirements for a
23 category of dwelling that the EFU zone allows[.]" Motion for Remand 2-3.
24 Respondents request that LUBA remand the case to the county "without further
25 proceedings," so that the county can hold a remand hearing and accept evidence

1 on this sole remaining issue. Alternatively, respondents request the opportunity
2 to provide supplemental briefing regarding the “farm operator” issue.

3 Petitioner responds that remand should not be limited to the “farm
4 operator” issue that is primarily raised in the first assignment of error’s second
5 subassignment. Petitioner argues that the Supreme Court reversed and remanded
6 LUBA’s decision *in toto*, which means that none of LUBA’s dispositions
7 survived judicial review. Further, petitioner argues that at least with respect to
8 the “design characteristics” issue also raised in the first subassignment of error’s
9 second subassignment, the Supreme Court explicitly rejected both LUBA’s and
10 the Court of Appeals’ opposing resolutions of that issue, and articulated a more
11 nuanced approach that requires LUBA to re-evaluate that issue on remand.

12 We agree with petitioner that the Supreme Court’s remand to LUBA was
13 not limited to the single “farm operator” issue, but requires re-evaluation of
14 potentially all of LUBA’s dispositions, as necessary to ensure consistency with
15 the court’s rulings and those portions of the Court of Appeals’ decision that the
16 court agreed with or left intact. Accordingly, we deny respondents’ motion to
17 remand solely on the farm operator issue, and further decline, as unnecessary,
18 respondents’ request to supply additional briefing on that issue.

19 For the reasons explained below, we remand the decision back to the
20 county for further proceedings.

1 **FIRST ASSIGNMENT OF ERROR**

2 The county approved intervenor’s bed and breakfast home occupation as a
3 conditional use that operates primarily in a “dwelling.” Petitioner’s first
4 assignment of error is that the county’s decision violates ORS 215.448 and
5 YCZO 1004.01, which authorize home occupations in dwellings or other
6 buildings normally associated with the uses permitted in the underlying zone,
7 here, the county’s EFU zone.¹ Petitioner’s specific arguments are set out in four
8 subassignments of error. The second subassignment of error is most pertinent to
9 the Supreme Court’s remand, so we begin there.

10 **A. Second Subassignment of Error**

11 **1. Farm Operator**

12 Petitioner’s second subassignment of error is that the building being
13 constructed by intervenor is not a “dwelling” or “other building” allowed in the
14 EFU zone and that intervenor’s application therefore does not comply with the
15 requirement in ORS 215.448 that the home occupation be operated therein.
16 Petition for Review 31-32. Petitioner argued, in part, that “[t]he statutory text
17 does not contemplate that a ‘primary’ ‘dwelling’ authorized by ORS

¹ ORS 215.448(1)(c) requires that a home occupation be operated substantially in “[t]he dwelling” or “[o]ther buildings normally associated with uses permitted in the zone in which the property is located[.]” ORS 215.448(3) provides that “[n]othing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.”

1 215.283(1)(e) as anything other than a building designed and used as a home or
2 primary residence for a farm operator.” Petition for Review 26. In its decision,
3 the Supreme Court essentially agreed with that argument.

4 Considering the text, context, and legislative history of ORS
5 215.448(1)(c)(A), the Supreme Court determined that, for purposes of the statute,
6 a “dwelling” is

7 “a structure that satisfies the requirements for a particular category
8 of ‘dwelling’ that the land use laws allow as of right in the zone.
9 Here, the only identified category of allowed dwelling is a ‘primary
10 dwelling in conjunction with farm use,’ and * * * the legislature
11 intended such dwellings to mean a farm operator’s home.” *Friends*
12 *of Yamhill County*, 373 Or at 799.

13 Further, the Court held that there is

14 “a legislative intent that the ‘dwelling’ requirement incorporates the
15 land use laws and regulations that govern whether a proposed
16 structure qualifies as a ‘dwelling’ allowed on property in the
17 particular zone. And when the structure is in any area zoned for
18 exclusive farm use, the categories of dwelling normally allowed, or
19 allowed ‘as of right,’ are limited to dwellings that facilitate the
20 farming operation: ‘primary or accessory dwellings * * *
21 customarily provided in conjunction with farm use,” ORS
22 215.283(1)(e), and a ‘dwelling’ that ‘is occupied by a relative of the
23 farm operator or the farm operator’s spouse’ if ‘the farm operator
24 does or will require the assistance of the relative in the management
25 of the farm use,’ ORS 215.283(1)(d). In other words, it is not enough
26 that the structure will be occupied by ‘a person as their household.’”
27 *Id.* at 803-04.

28 As we understand the Court’s decision, the Supreme Court held that for a
29 building to qualify as a “dwelling” for purposes of obtaining a conditional use

1 permit for a home occupation in the EFU zone, the building must constitute one
2 of the buildings authorized in the EFU zone, in this case, a “dwelling in
3 conjunction with farm use” or “primary dwelling.” As a consequence, in the
4 present case intervenor must demonstrate, and the county must find, among other
5 things, that the dwelling proposed for the home occupation is the home of the
6 “farm operator” for the farm use that qualifies the subject property for the primary
7 dwelling.

8 Intervenor proposed that the dwelling would be occupied by a “resident”
9 who would occupy the innkeeper’s suite, but did not propose, and the county did
10 not find, that any resident of the dwelling would be the “farm operator” who
11 farms the vineyard that qualifies the property for the dwelling. Accordingly, the
12 present record and findings do not provide a basis for the county to conclude that
13 the dwelling proposed for the home occupation qualifies as a “dwelling” for
14 purposes of ORS 215.448(1)(c)(A), under the Supreme Court’s interpretation of
15 that statute. We therefore sustain this portion of the second subassignment of
16 error.

17 **2. Design Characteristics and Structural Code Standards**

18 The remainder of the second subassignment of error concerns arguments
19 that the proposed dwelling, as designed, does not qualify as a “dwelling” for
20 purposes of ORS 215.448(1)(c), because the proposed building will be built to
21 structural building code regulations applicable to non-residential transient
22 housing such as motels and hotels. We rejected that argument, concluding that

1 building code standards are not determinative of whether the building is a
2 “dwelling” for purposes of ORS Chapter 215. *Friends of Yamhill County*, LUBA
3 No 2022-081 (slip op at 14).

4 The Court of Appeals, however, agreed with petitioner that, although not
5 dispositive, “a structure’s design, including applicable building code standards,
6 certainly is relevant to a determination of the nature of the structure.” *Friends of*
7 *Yamhill County*, 325 Or App at 293. On review, the Supreme Court agreed with
8 the Court of Appeals on that point:

9 “[Petitioner] has argued that a bed and breakfast facility with more
10 than five guest rooms must be considered a ‘hotel or motel’ because
11 that is how the state building code’s structural speciality code
12 (OSSC) classifies such occupancies. OSSC 310.2; OSSC 310.4. The
13 Court of Appeals reasoned that those code standards are relevant to
14 the nature of structure but not dispositive of whether the structure is
15 a ‘dwelling’ for purposes of ORS 215.448, and we agree.” *Friends*
16 *of Yamhill County*, 373 Or at 805 n 4.

17 The Supreme Court ultimately rejected the Court of Appeals’ conclusion that,
18 because the structure predominantly has the design characteristics of a hotel or
19 motel, as a matter of law the structure is not a “dwelling.” The Supreme Court
20 specifically rejected the lower court’s view that the “entire structure” must
21 constitute a dwelling in order to qualify as a dwelling for purposes of ORS
22 215.448.

23 “* * * We understand the Court of Appeals’ concern that this
24 structure purporting to be a ‘primary dwelling’ also has design
25 characteristics of a ‘motel,’ which is not a category of building
26 allowed in an EFU zone. But the county found that the same
27 proposed structure meets the design characteristics of a single-

1 family residence, and LUBA affirmed that finding. There
2 undoubtedly will be structures that seemingly straddle the design
3 standards for two categories of building—whether it is a structure
4 that meets the design standards of a single-family residence but also
5 has nine bedrooms with *en suite* bathrooms or a structure that meets
6 the design standards of a single-family residence but includes an
7 enormous ‘home theater’ space. When that is the case, the county
8 and LUBA must determine whether the structure is a ‘dwelling,’ and
9 the fact that the structure might have characteristics consistent with
10 a single-family dwelling is not dispositive. But the fact that the
11 structure has some characteristics of a motel is not dispositive either.
12 Thus, to the extent that the Court of Appeals concluded that a
13 structure that has some characteristics of a motel cannot be a
14 dwelling, as a matter of law, we disagree.” *Friends of Yamhill*
15 *County*, 373 Or at 807.

16 In footnote 5 appended to the above quote, the court clarified what it was not
17 deciding:

18 “Because we resolve this case on the basis of LUBA’s erroneous
19 conclusion that the structure at issue can qualify as a ‘dwelling’
20 under ORS 215.448 without satisfying the requirements for the
21 ‘primary dwelling’ the structure purports to be—here, without
22 satisfying the requirement that the structure be occupied by a farm
23 operator—we need not, and do not, address when, as a matter of law,
24 a structure that has the characteristics of both a single-family
25 residence and another type of structure is a ‘dwelling.’” *Id.* at n 5.

26 The court cautioned, however, that:

27 “a ‘dwelling’ sharing the design characteristics of a category of
28 building that is not allowed as of right in the zone might struggle to
29 satisfy other requirements of ORS 215.448 that give effect to the
30 legislature’s goal of preserving Oregon’s agricultural economy,
31 including that the home occupation ‘shall not unreasonably interfere
32 with other uses permitted’ in the EFU zone and that the home
33 occupation process does not authorize ‘construction of any structure
34 that would not otherwise be allowed in the zone.’ ORS 215.448(1)
35 (B)(d), (3).” *Id.*

1 When the dust settles, we understand the Court of Appeals and Supreme
2 Court to have both held that design characteristics, including those driven by
3 building code regulations, are relevant but not determinative considerations in
4 concluding whether a proposed structure is a “dwelling” for purposes of ORS
5 215.448. The Supreme Court found that in hybrid situations where a proposed
6 structure has both the design characteristics of a dwelling and another category
7 of use that is not allowed in the applicable zone, the county must initially
8 determine, subject to LUBA’s review, whether the structure qualifies as a
9 “dwelling” for purposes of ORS 215.448.

10 In the present case, the county found, and we affirmed, that because the
11 proposed structure included many of the design characteristics of a dwelling (*e.g.*,
12 bedrooms, a kitchen, bathrooms, common living space, etc.) the structure
13 therefore constituted a “dwelling,” without further analysis. As we understand it,
14 that conclusion is the mirror image of the Court of Appeals’ erroneous conclusion
15 that, because the structure included many design characteristics of a hotel or
16 motel, it therefore cannot constitute a dwelling. Under the Supreme Court’s more
17 nuanced view, in such hybrid situations the county must make an initial
18 determination, based on all relevant considerations, whether the proposed
19 structure is properly characterized as a dwelling or something else.

20 Because the county did not make such an initial determination, at least one
21 based on all relevant considerations, including design characteristics and building
22 code regulations, on remand we conclude that the most appropriate course is to

1 also sustain this portion of the second subassignment of error, and remand for the
2 county to address both the “farm operator” and “design characteristics” issues
3 raised in the second subassignment of error.

4 The second subassignment of error is sustained.

5 **B. First Subassignment of Error**

6 Petitioner’s first subassignment of error focuses on YCZO 1004.01(C), the
7 local cognate of ORS 215.448(1)(c), and associated code definitions. Like the
8 statute, YCZO 1004.01(C) requires that “[t]he home occupation will be operated
9 substantially in the dwelling or in other buildings normally associated with uses
10 permitted in the zone in which the property is located.”

11 Petitioner argues that the county may not approve the home occupation
12 CUP for the bed and breakfast because the building in which the use will occur
13 is not a “dwelling” as that term and associated terms are defined by the YCZO.
14 Petition for Review 10. YCZO 202 defines “dwelling,” in relevant part, as a
15 building containing one “dwelling unit” that is designed for and occupied by “one
16 (1) family only.”² Citing code definitions of “dwelling unit” and “family,”

² YCZO 202 includes the following relevant definitions:

“DWELLING: A building containing one (1) dwelling unit designed for and occupied by one (1) family only. The term dwelling includes a manufactured dwelling but does not include a hotel, motel, travel trailer, boarding, lodging or rooming house, private hospital, rest home or nursing home or other accommodations used for transient occupancy.”

1 petitioner argued that the proposed building does not qualify as a “dwelling,”
2 because it is not a single dwelling unit that is designed for and occupied by one
3 family only, as the relevant terms are defined.

4 In resolving petitioner’s first subassignment of error, we noted that the
5 findings did not explicitly interpret the cited county code provisions and
6 definitions. We chose to exercise our discretion to interpret the code provisions
7 relating bed and breakfast uses to dwellings. ORS 197.829(2); *see also Green v.*
8 *Douglas County*, 245 Or App 430, 440-41, 263 P3d 355 (2011) (explaining when
9 and how LUBA may exercise this discretion). Although we agreed with petitioner
10 that the proposed use of the building does not fit within the code definitions of
11 “dwelling,” “dwelling unit,” and “family,” read in isolation, we ultimately
12 concluded that, read in context with other code provisions that explicitly allow a
13 bed and breakfast in a dwelling as a home occupation, the cited definitions do not

“DWELLING UNIT: One (1) room or rooms connected together, constituting an independent housekeeping establishment designed and used for occupancy by one (1) family, including dependent relatives and caretakers, and includes permanent provisions for living, sleeping, cooking (limited to one kitchen only) and sanitation (full bathroom).”

“FAMILY: One or more person related by blood, marriage, legal adoption or legal guardianship plus not more than five (5) additional persons, including foster and shelter care persons or, up to five (5) unrelated persons, all living together as a single housekeeping unit.”

1 exclude the proposed building from the scope of the code term “dwelling,” as
2 used in YCZO 1004.01(C).

3 Because YCZO 1004.01(C) implements ORS 215.445(1)(c), the Supreme
4 Court’s interpretation of the latter has significance for the former. Home
5 occupations in the EFU zone under ORS 215.283(2)(i) are “conditional uses” that
6 counties may choose to allow or not on EFU lands, subject to whatever additional
7 restrictions the county has adopted. *See Brentmar v. Jackson County*, 321 Or 481,
8 496, 900 P2d 1030 (1995). In approving a use under ORS 215.283(2), the county
9 may be more restrictive than the statute, but not less restrictive. *Id.* Accordingly,
10 the county must apply YCZO 1004.01(C) and the relevant code definitions
11 consistently with the Supreme Court’s holding in this appeal, and at least as
12 restrictively. But, as with all ORS 215.283(2) uses, the county has the option of
13 applying code provisions regarding home occupations on EFU land that are more
14 restrictive than set out by statute. If those code provisions are ambiguous, as in
15 the present case, the county may resolve those ambiguities by interpretation, and
16 such interpretations could potentially result in more restrictive application of
17 local standards than are required by statute.

18 In the present case, the foregoing counsels that LUBA withdraw the code
19 interpretations that we adopted under ORS 197.829(2), in the absence of
20 reviewable county interpretations, and remand the decision in part to allow the
21 county board of commissioners the opportunity to adopt necessary interpretations
22 in the first instance. In other words, because the Supreme Court overruled our

1 interpretation of the statutory meaning of “dwelling” as applied in this case and
2 the decision must be remanded in any event, it is more consistent with *Green* to
3 give the county governing body the opportunity to interpret its own legislation in
4 the first instance, than for LUBA to continue to impose its own interpretations.
5 On remand, the county must apply YCZO 1004.01(C) consistently with the
6 Supreme Court’s decision. In addition, the county must address the YCZO 202
7 definitions of “dwelling,” “dwelling unit,” and “family” and determine whether
8 the proposed building use constitutes a “dwelling” for purposes of YCZO
9 1004.01(C), when read in context with those definitions and any other relevant
10 code text.

11 The first subassignment of error is sustained.

12 **C. Third Subassignment of Error**

13 Petitioner’s third subassignment of error is framed as an alternative. If
14 LUBA agrees that the proposed building is not a “dwelling,” petitioner argues
15 that the county cannot nonetheless approve the home occupation by treating the
16 building as an “other building normally associated with uses allowed in the zone”
17 set out in ORS 215.448(1)(c)(B) and YCZO 1004.01(C). Petitioner argued: “To
18 the extent that the evidence in the record * * * could be used to provide an
19 alternative basis for approval, * * * this sub-assignment of error demonstrates
20 why those alternative bases are wrong as a matter of law.” Petition for Review
21 33.

1 We concluded that the county did not rely on the “other building” language
2 in ORS 215.448(1)(c)(B) and YCZO 1004.01(C) to approve the home
3 occupation, but relied solely on the conclusion that the building constitutes a
4 “dwelling.” Neither the Court of Appeals’ nor the Supreme Court’s decision
5 provides any reason to disturb that disposition. Accordingly, this alternative
6 subassignment of error is denied.

7 **D. Fourth Subassignment of Error**

8 We rejected the fourth subassignment of error as entirely derivative of the
9 first three subassignments, and hence not stating an independent basis for reversal
10 or remand. The Supreme Court’s decision does not require us to revisit our
11 resolution of petitioner’s fourth subassignment of error.

12 Petitioner’s first assignment of error is sustained, in part.

13 **SECOND ASSIGNMENT OF ERROR**

14 Under its second assignment of error, petitioner argued in part that the
15 2020 approval for a farm operator dwelling had expired by its terms and there
16 was no evidence in the record that it had been extended. We rejected that
17 argument, noting that the record included testimony that the 2020 permit had
18 been extended. The Supreme Court’s decision does not require us to revisit that
19 resolution.

20 Petitioner also challenged the adequacy of the county’s findings regarding
21 whether the proposed use qualifies as a “dwelling” as that term is used and
22 defined in statute and county code. We concluded that the findings met the basic

1 requirements of adequate findings, that is, they identified the applicable standards
2 and explained why the facts found demonstrate that those standards are met.
3 However, that disposition was based in part on conclusions that were overturned
4 on appeal. Under the Supreme Court's decision, the county's existing findings
5 are clearly inadequate in at least one respect: failure to address whether the
6 structure is the residence of the farm operator. Because remand is necessary under
7 the first assignment of error for the county to adopt new or additional findings,
8 possibly supported by new or additional evidence, addressing whether the
9 proposed structure constitutes a "dwelling" under the applicable statutory and
10 code provisions, we also sustain this portion of the second assignment of error
11 and remand for the county to adopt more adequate findings.

12 The second assignment of error is sustained, in part.

13 **DISPOSITION**

14 The county's decision is remanded for further proceedings consistent with
15 the Supreme Court's decision and this opinion.

EXHIBIT B
SUPPLEMENTAL FINDINGS IN SUPPORT OF APPROVAL ON REMAND
(Board Order 26-030)

HEARING DATE: January 8, 2026

DOCKET NO.: C-03-22

REQUEST: A conditional use request to operate a nine (9) guestroom Bed and Breakfast facility as a home occupation.

APPLICANT: Grange Hill, LLC

OWNER: Grange Hill, LLC

TAX LOT: 3328-00102

LOCATION: 9580 NE Worden Road, Dundee

ZONE: Exclusive Farm District (EF-40)

CRITERIA: The following YCZO sections were applicable to the underlying application only and are not subject to consideration on remand except as such criteria inform the remand question presented. Sections 202, 402.04(I), 402.09, 1004.01, 1101, 1012, and 1202.02 of Yamhill County Zoning Ordinance.

SUPPLEMENTAL FINDINGS OF FACT:

A. Background Facts

1. *Incorporation of Previously Established Background Facts.* The original background facts as stated in Board Order C-03-22 are incorporated here by reference.
2. *Appellate History.* In 2022, the Board affirmed the Planning Commission's approval of a conditional use permit for Grange Hill, LLC ("Grange Hill") to operate a bed and breakfast home occupation in a dwelling on EFU land.¹ Friends of Yamhill County filed a petition for review in the Land Use Board of Appeals ("LUBA") challenging that approval on five specified grounds. LUBA affirmed the Board's decision, and Friends of Yamhill County appealed to the Oregon Court of Appeals, which reversed LUBA.

¹ The YCZO uses the term "bed and breakfast inn," and the bed and breakfast inn at issue is a proposed home occupation on EFU land. These findings use the term "bed and breakfast" to mean a "bed and breakfast inn" as that term is defined in YCZO 202, operated as a home occupation under YCZO 1004.

Grange Hill petitioned for review to the Oregon Supreme Court, which accepted review and affirmed in part and reversed in part. The Oregon Supreme Court remanded to LUBA for proceedings consistent with the Court's decision. *Friends of Yamhill County v. Yamhill County*, 373 Or. 790 (2025) ("Supreme Court Decision"). On September 19, 2025, LUBA remanded to the Board for further proceedings, specifying what assignments and sub-assignments of error from Friends of Yamhill County's initial LUBA petition for review the Board must address in this remand proceeding.

B. Scope of Remand Issues

The Supreme Court Decision and LUBA's remand directions required the Board to consider the following issues on remand:

1. Interpretation of the YCZO 202 definitions of "dwelling," "dwelling unit," and "family" to determine whether the Grange Estate structure constitutes a "dwelling" as used in YCZO 1004.01(C) for purposes of Grange Estate's proposed home occupation use, when read in context with those YCZO definitions and any other relevant code text.²
2. The "design characteristics" of the Grange Estate structure, to ensure application of YCZO 1004.01(C) is consistent with the Supreme Court Decision.
3. The requirement that Grange Estate be occupied by a "farm operator," to ensure application of YCZO 1004.01(C) is consistent with the Supreme Court Decision.

In light of the remand on these issues, LUBA directed the Board to "adopt more adequate findings" regarding "whether the proposed structure constitutes a 'dwelling' under the applicable statutory and code provisions."

C. Findings Following Remand

The Board took new evidence and argument on January 8, 2026, to determine whether Grange Hill's bed and breakfast would be conducted in a "dwelling" within the meaning of ORS 215.448(1)(c)(A) and YCZO 1004.01(C), consistent with the Supreme Court Decision. The Board received oral and written testimony during the January 8, 2026 hearing, including Applicant's representatives, Friends of Yamhill County representatives, and members of the public. The Board continued the matter until January 15, 2026, at which time the Board deliberated and voted 3-0 to approve the Grange Hill bed and breakfast conditional use permit. The Board hereby makes the following findings to support its decision. The findings adopted

² Whether YCZO 1004.01(C) properly implements ORS 215.448(1)(c) has never been in question and thus was not identified as an issue on remand. LUBA remanded for the Board to interpret arguable ambiguity in the YCZO's definitions as relates to the application of YCZO 1004.01(C) to Grange Hill's application. For these reasons, the Board limits its analysis to interpretation of the YCZO and then to ensuring that the structure at issue meets the statutory and YCZO meaning of "dwelling" as used in both ORS 215.448(1)(c) and YCZO 1004.01(C).

under Board Order C-03-22 are hereby incorporated by reference, except where the findings on remand supersede and supplement the earlier findings.

YCZO 402.04 Conditional Uses.

The following uses are allowed in the Exclusive Farm Use District upon conditional use approval. Approval of these uses is subject to the Conditional Use criteria and requirements of Section 1202, and subsection 402.07(A) of this ordinance and any other provision set forth below. Applications shall be reviewed under the Type B procedure of Section 1301:

- I. Home occupation, subject to standards and limitations set forth in Section 1004.*

* * * * *

1004.01 Standards and Limitations

- C. The home occupation will be operated substantially in the dwelling or in other buildings normally associated with uses permitted in the zone in which the property is located.*

Grange Hill’s original conditional use permit application sought approval to operate a bed and breakfast in a previously-approved, to-be-constructed principal farm dwelling on EFU land (Docket C-03-22). Since the Board’s decision in Docket C-03-22, the dwelling, commonly referred to as Grange Estate, was constructed on the property. Grange Hill presented new evidence and legal arguments in this remand proceeding to demonstrate to the Board’s satisfaction that the Grange Estate structure, as constructed, constitutes a “dwelling” within the meaning of YCZO 1004.01(C) and ORS 215.448(1)(c)(A), consistent with the Supreme Court Decision and LUBA’s direction. The Board adopts findings for each remand issue and together, these findings are the basis for the Board’s conclusion that Grange Hill’s application complies with YCZO 1004.01(C) and ORS 215.448(1)(c)(A).

- 1. Giving meaning to all YCZO definitions and with the particular controlling the general, lodging for compensation in a bed and breakfast is not “transient occupancy” that removes the Grange Estate structure from the YCZO definition of “dwelling.”**

The Grange Estate, as constructed, constitutes a “dwelling” under YCZO 1004.01(C), when read in the context of the YCZO’s definitions of “dwelling,” “dwelling unit,” “family,” and “bed and breakfast inn” and the YCZO’s (and state law’s) rules of construction. The Board concludes that, reading the YCZO as a whole and giving effect to all provisions, offering lodging for compensation to overnight guests as a bed and breakfast does not turn the Grange Estate structure from a “dwelling” into a “motel” or otherwise remove the structure from the YCZO’s definition of “dwelling.”

In applying the YCZO, the Board considers the YCZO’s rules of construction, specifically the rule that particular provisions control over general provisions. YCZO 201.01(A). The Board likewise considers state law rules of construction, which also state that particular provision

controls over an inconsistent general provision. *Western Land & Cattle, Inc. v. Umatilla Cnty.*, 230 Or App 202, 210 (2009 (“Although [ORS 174.010 and ORS 174.020(2)] are written to pertain to ‘the construction of a statute,’ we use them as well in the interpretation of local ordinances.”); ORS 174.020(2) (“When a general provision and a particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.”). Where possible, the Board must interpret the YZCO to give effect to all provisions. ORS 174.010 (“[W]here there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.”).

YCZO 1004.01(C) implements ORS 215.448(1)(c) and requires, consistent with state law, that a “home occupation will be operated substantially in the dwelling or in other buildings normally associated with uses permitted in the zone in which the property is located.”³ The Board addresses below in Sections 2 and 3 the criteria at issue on remand regarding whether Grange Estate is a “dwelling” within the meaning YCZO 1004.01(C) and ORS 215.448(1)(c). Here, the Board interprets the various YCZO definitions and provisions at issue, particularly given LUBA’s question whether the YCZO imposes standards that are more restrictive than required by statute. It does not.

YCZO 202 defines “dwelling” as:

A building containing one (1) dwelling unit designed for and occupied by one (1) family only. The term dwelling includes a manufactured dwelling but does not include a hotel, motel, travel trailer, boarding, lodging or rooming house, private hospital, rest home or nursing home or other accommodations used for transient occupancy.

YCZO 202 defines “dwelling unit” as:

One (1) room or rooms connected together, constituting an independent housekeeping establishment designed and used for occupancy by one (1) family, including dependent relatives and caretakers, and includes permanent provisions for living, sleeping, cooking (limited to one kitchen only) and sanitation (full bathroom).

The Grange Estate structure has the characteristics of a “dwelling unit.” It has one or more rooms connected together and with living spaces for family occupancy. The front entrance opens into a sitting area with a fireplace and to a living area with large windows facing the valley, which is then connected to the eating and kitchen areas. The Board recalls that the kitchen in the original application was the subject of debate and wants to specifically address the nature of the Grange Estate kitchen and cooking provisions. The Board finds that there is only one kitchen within the meaning of “dwelling unity” as there are only permanent provisions for one cooking set up – one stove, one cooktop, etc. The kitchen space extends across the open kitchen area in the large front

³ See note 1 above, explaining that YCZO 1004.01 properly implements ORS 215.448 locally.

room (with refrigerator, sink, cabinets, kitchen island, open shelving, etc.) to the smaller back kitchen area (with the stove, cooktop, storage, etc.), but kitchen provisions may span two areas without creating more than one kitchen in the dwelling. The kitchen provisions operate as a single functional kitchen and therefore constitute only one kitchen. Off the kitchen area is a door onto the front porch patio and also a back door out of a mud room. The first level also hosts a half bath, two bedrooms with ensuite baths, a utility room, a work-out room, and a study/library. The second story is connected to the first floor living space by internal stairways behind the fireplace that lead to two wings of the house, with additional sleeping, bathing, and living areas.

For these reasons, the Board finds that the Grange Estate living spaces, collectively, share a common atmosphere and constitute an independent housekeeping unit, designed and used for family occupancy consistent with YCZO 202. The Board also finds that the Grange Estate has permanent provisions for living, sleeping, cooking, and sanitation by a family.⁴ The Board relies on new substantial evidence in the record, including the as-builts and the Grange Estate photograph look book, to conclude that the Grange Estate falls within the definition of “dwelling unit.”

Because the Grange Estate is a “dwelling unit,” the Board also finds the Grange Estate structure is a “dwelling” within the meaning of YCZO 202. In making this finding, the Board notes that the “dwelling” definition excludes hotels, motels, and “other accommodations used for transient occupancy” and finds that this language does not undermine the fact that the Grange Estate structure amounts to a “dwelling” under the YCZO. The Board reconciles the YCZO language by applying the YCZO rules of construction. As particular provisions control over general provisions, the YCZO’s specific provisions governing home occupations show that having guests stay in one’s residence does not turn a dwelling into a motel, hotel, or anything other than a dwelling.

“Home occupation” means:

An activity involving off-site sales, the manufacture of a product or *the provision of a service* carried on in compliance with Section 1004 of this ordinance *by a resident of the property on which the business is located*. Home occupation does not include the retail sale of products unless such sales are secondary to the primary home occupation use.

YCZO 202 (emphasis added). A Bed and Breakfast Inn—which both the YCZO and ORS 215.452 (and ORS 215.4449 and ORS 215.451) specifically contemplate as a home occupation—means

⁴ A “family” means “[o]ne or more person related by blood, marriage, legal adoption or legal guardianship plus not more than five (5) additional persons, including foster and shelter care persons or, up to five (5) unrelated persons, all living together as a single housekeeping unit.” YCZO 202. A single person occupying the structure meets the definition of “family.”

A single-family dwelling where lodging is offered for compensation, having no more than nine (9) sleeping rooms for this purpose. A bed and breakfast inn may offer a morning meal for overnight guests only. A bed and breakfast inn is conducted within the residence of the operator.

YCZO 202 (emphasis added). By definition, paid guest occupancy is to occur within a “single-family dwelling” in which the resident provides a service on the property. To the extent that providing lodging paying bed and breakfast guests constitutes “transient occupancy” the YCZO’s more particular provisions governing home occupations and bed and breakfast operations control over the YCZO’s general provision defining “dwelling.” Reading the YCZO as a whole and in light of the more particular provisions governing bed and breakfasts, the reference to “transient occupancy” in the definition of “dwelling” must exclude “transient occupancy” by guests of a bed and breakfast when a resident of the property lives in the dwelling. Any other reading renders meaningless the multitude of provisions (in both the YCZO and ORS) specifically contemplating bed and breakfasts as home occupations.

By contrast, construing the Grange Estate structure as a motel because it offers overnight lodging for pay would require ignoring the YCZO’s definitions described above and the interplay among them. The fact that Grange Estate will offer lodging for compensation as a bed and breakfast does not make it a motel. A motel does not have a “family” living in it or have permanent provisions for living, sleeping, cooking, or sanitation. If providing lodging to paying overnight guests in a structure where a farm operator lives constituted “transient occupancy,” removing the structure from the definition of “dwelling,” no one could *ever* operate a bed and breakfast, even though the YCZO and the ORS both expressly contemplate bed and breakfasts as home occupations on EFU land. *See Friends of Yamhill Cnty.*, 373 Or. at 806 (“[A] limitation that precluded a structure from qualifying as a ‘dwelling’ under ORS 215.448 if part of the structure is used for transient lodgers would be incompatible with newer land use provisions that expressly contemplate that a bed and breakfast is one type of home occupation that may be approved for EFU land.”).

The YCZO’s legislative history further supports the Board’s interpretation of the YCZO that transient occupants in connection with a bed and breakfast home occupation do not turn a dwelling into a motel or hotel. In 2002, as part of a larger zoning code update, the County received requests to have the number rooms authorized under YCZO 1012– Bed and Breakfast Facilities increase from 5 to 7 rooms. In considering the new YCZO code language, the Planning Commission specifically considered whether there was “interest to raise the number of bedrooms to rent.” *See Grange Hill Hearing Binder, Tab 7 (Planning Department Memo to the Planning Commission Regarding a Summary of Proposed Ordinance Changes 3 (Sept. 25, 2002))*. Through this legislative process, the County had the opportunity to assess whether allowing transient lodging in 5, 7, or more rooms of a dwelling converts the dwelling into a motel. The ultimate outcome of the legislative process was to unanimously approve an increase from 5 to 9 rooms under YCZO 1012– Bed and Breakfast Facilities. *See Grange Hill Hearing Binder, Tab 7 (Board of Commissioner Meeting Minutes (November 14, 2002); Yamhill County Ord. 720 (Film 74, Page 1323))*. The County has consistently recognized that a dwelling remains a

dwelling even if up to 9 bedrooms are used for overnight (*i.e.*, transient) bed and breakfast guest occupancy, as long as the dwelling is occupied by a resident of the property.

The Board received testimony arguing that the Grange Estate, as built, renders the relevant YCZO definitions meaningless. Friends of Yamhill County argues that the definition of “motel” is more relevant and is the operative definition. The Board understands Friends of Yamhill County’s argument but disagrees with it. Grange Estate has the features of a dwelling and functions as a home for a farm operator. The arguments Friends of Yamhill County raises relating to ownership or neighboring operations are not the subject of this remand and are irrelevant to the questions before us.

Our conclusion is consistent with LUBA’s analysis in its initial decision, which articulated that the YCZO’s definition and bed and breakfast provisions “provide that bed and breakfasts may occur within dwelling structures and distinguish the resident of the property from the guests to whom the resident provides a service” and that interpreting the YCZO’s definition of “dwelling” to allow transient occupancy as part of a bed and breakfast home occupation “gives effect to all provisions.” [LUBA 2022 at 25]. LUBA explained:

Because a bed and breakfast occurs in a dwelling, that is, a residence, it is the “particular” and applicable type of lodging, and the “motel” and “hotel” definitions are not applicable. [Interpreting “dwelling” to exclude bed and breakfast inn transient occupancy] would require us to disregard code sections specifically providing that bed and breakfast inns are uses that occur within dwellings and involve providing a service to guests.

[LUBA 2022 at 26]. Accordingly, the Board finds that the Grange Estate structure is a “dwelling unit” and “dwelling” within the meaning of YCZO 202 and constitutes a “dwelling” as contemplated by YCZO 1004.01(C).

2. Grange Estate has design characteristics of a “dwelling” within the meaning of YCZO 1004.01(C) and ORS 215.448(1)(c)(A).

The Grange Estate is a principal dwelling on EFU land. Nothing in the YCZO or the ORS prescribe with any degree of specificity the design characteristics to qualify as such a dwelling. The Board made findings in its earlier decision (Docket C-03-22) that the Grange Estate would be operated in a properly-approved, single-family dwelling based on evidence presented on the record. Grange Estate is now constructed and new evidence has been provided into the record documenting the features of the as-built Grange Estate structure. We confirm our initial findings and supplement as follows.

The as-built plans and photographs of the structure show that Grange Estate has the design characteristics of a single-family dwelling. The living space is all within a single common structure, with access to the living areas, kitchen, bedrooms, bathrooms, utility, and accessory spaces all from within the structure after entering the front or one of the side doors. Most bedrooms are on the second floor, a common design for a single-family residence. Each bedroom

is accessed from a hallway shared with other bedrooms, except for one bedroom off the kitchen, which has access via the back door and mud room. There are common areas and living space on both floors, with a sitting room in each shared wing of the upstairs and shared dining, living, sitting, and study areas in the downstairs area, all sharing common atmosphere. Like with the upstairs bedrooms, the downstairs bedrooms connect to a shared hallway, which leads to the shared common areas. These features show that the bedrooms share a common atmosphere with the rest of the structure. The structure also has kitchen space and full bathrooms. *See also* the Board’s findings above relating to the YCZO 202 definitions, which are incorporated here by reference. All of these features are consistent with the design features of single-family dwelling. *See* Grange Hill Hearing Binder, Tab 3 (Grange Estate As-Built Drawings) and Tab 4 (Grange Estate photograph look book).

We agree with Grange Hill that dwellings in the County, including dwellings on EFU land, come in all shapes and sizes. This is consistent with the Oregon Supreme Court’s guidance in the Supreme Court Decision, which recognized that there “will be structures that seemingly straddle the design standards for two categories of building—whether it is a structure that meets the design standards of a single-family residence but also has nine bedrooms with en suite bathrooms or a structure that meets the design standards of a single-family residence but includes an enormous ‘home theater’ space.” *Friends of Yamhill County*, 373 Or at 807. Having some characteristics consistent with one type of structure is not dispositive. *Id.* The Board must take a holistic view and make a reasoned determination based on its overall assessment of the structure’s design characteristics. This is how the Board has consistently applied the YCZO; Grange Hill’s evidence demonstrates dwellings in the County have unique size and features and nonetheless are considered permissible single-family dwellings. *See* Grange Hill Hearing Binder, Tab 5 (Other County Dwellings Photograph Look Book). The fact that these dwellings may have a basketball court, gazebo, ballroom, or commercial kitchen does not make the dwellings something other than a permissible dwelling on rural land.

The analysis of design characteristics also may include consideration of building codes, as the Supreme Court Decision noted that building “code standards are relevant to the nature of a structure but not dispositive of whether the structure is a ‘dwelling’ for purposes of ORS 215.448.” *Friends of Yamhill County*, 373 Or. at 805 n. 4. Without further direction from the Court, the Board considers the building code standards applied to Grange Estate structure as an element in its analysis of the overall design features of the structure. However, for the reasons presented below, the Board concludes that building code standards used to construct Grange Estate structure, while relevant, are not determinative, and the Grange Estate structure still amounts to a “dwelling unit” under YCZO and “dwelling” under YCZO and ORS.

First, the Board addresses the distinction between state building codes and state land use laws. While both may be implemented by a local jurisdiction, building codes and land use laws serve distinct purposes. ORS chapter 455 establishes minimum *specifications* for *individual* buildings—and it does so to account for the safety and welfare of a governed building’s occupants rather than any comprehensive state- or county-wide land use plan. The legislature authorized the Oregon Department of Consumer and Business Services to promulgate the Oregon Structural Specialty Code (“OSSC”) to “govern the construction, reconstruction, alteration and repair of buildings and other structures * * * [and] establish uniform performance

standards providing reasonable safeguards for *health, safety, welfare, comfort and security of the residents of this state who are occupants and users of buildings.*” ORS 455.020(1) (emphasis added). By contrast, ORS chapter 215, which the County implements through the YCZO, broadly governs the use of land. ORS chapter 215 addresses comprehensive land use planning and zoning by counties. *See generally* ORS ch 215. The chapter’s purpose includes safeguarding community interests rooted in collective land use, as opposed to those interests of the governed landowner or occupant. *See, e.g.,* ORS 215.185 (providing remedies to counties or people “whose interest in real property in the county is or may be affected by” another person’s violation under the chapter). The statutory schemes are disparate in both content and purpose.

The record reflects that the Grange Estate was built using R-1 building code standards to enhance the safety and security of the structure for its proposed bed and breakfast home occupation use. The R-3 occupancy group imposes the *minimum* construction safety standards applicable to “where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I[.]” 2022 OSSC 310.4. The R-1 group imposes minimum construction standards for “occupancies containing *sleeping units* where the occupants are primarily *transient* in nature,” including hotels and motels. *Id.* § 310.2 (italicization in original to identify defined terms).⁵

Grange Hill built to R-1 standards because it seeks to operate a bed and breakfast home occupation in its dwelling. A bed and breakfast home occupation contemplates “transient” occupancy in the sense of providing overnight lodging for compensation. As such, building to R-1 standards makes sense. But as discussed above, providing lodging to guests for compensation as part of a bed and breakfast does not change the fact that the structure is a dwelling (in fact, it compels it, because a bed and breakfast can only occur in a single-family dwelling). Likewise, complying with R-1 building code standards to account for bed and breakfast guest occupancy within the single-family dwelling does not change the dwelling into something else. Finally, the fact that some common spaces have occupancy class A also does not change the nature of the structure. That just reflects, e.g., that bed and breakfast guests may assemble for breakfast in such a common area or access a room dedicated to fitness equipment. Indeed, even the Oregon Supreme Court recognized that a single-family residence that “includes an enormous ‘home theater’” could still be a dwelling, even though the enormous home theater would likely be built under A-1 standards. *Friends of Yamhill County*, 373 Or at 807.

Grange Hill built to R-1 (and some occupancy class A) standards not only to enhance safety for bed and breakfast guests but also because the YCZO contemplates that when reviewing bed and breakfast applications, the County consider the “[s]tructural [s]uitability” of the dwelling, including “[s]afety and security,” “[d]esign and privacy,” and “[o]ther structural considerations.” YCZO 1012.01(C)(3). As new construction, Grange Hill had the opportunity to maximize safety and other features for the Grange Estate structure as a way to enhance the “structural suitability” for the contemplated bed and breakfast operation. This fact does not undermine the conclusion that the Grange Estate structure also has the design features and layout constituting a dwelling. The R-1 (and A) building code standard is relevant only to show enhanced suitability and the

⁵ The OSSC defines “transient” as “Occupancy of a *dwelling unit* or *sleeping unit* for not more than 30 days.”

anticipated bed and breakfast operation. If Grange Hill were not seeking a conditional use permit at the same time as it was constructing the dwelling, it could have simply built the dwelling with identical enhanced safety features for its farm operator to live in. In that scenario, it is inconceivable that safety features such as the enhanced fire walls would have made the dwelling a “motel” or some other structure in that circumstance.

Even if the Board were to remove Grange Hill’s intended bed and breakfast use from the analysis, differences between R-1 group standards and the R-3 occupancy standards do not inform whether a structure is a dwelling under ORS 215.448(1)(c)(A) or YCZO 1004.01(C). The R-3 occupancy group imposes the *minimum* construction safety standards applicable to “where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I[.]” 2022 OSSC 310.4. The R-1 group imposes minimum construction standards for “occupancies containing *sleeping units* where the occupants are primarily *transient* in nature,” including hotels and motels. *Id.* § 310.2 (italicization in original to identify defined terms). Nothing in the OSSC suggests the owner of an R-3 group structure cannot build to higher R-1 group standards without changing the structure into something different. The OSSC does not impose safety *limits*; its purpose is “to establish the *minimum requirements* to provide a reasonable level of safety, health and general welfare through structural strength, means of egress, stability, sanitation, light and ventilation, energy conservation, and for providing a reasonable level of safety to fire fighters and emergency responders during emergency operations.” *Id.* § 101.3.

Building to a higher-than-required standard does not change the nature of the structure. For example, R-1 structures (hotels and motels) require three-hour fire walls, whereas “high-hazard Group H occupancy” includes “manufacturing, processing, generation or storage of materials that constitute a physical or health hazards” and requires four-hour fire walls. 2022 OSSC 307.1, OSSC 706.4. Building a motel with four-hour fire walls, however, would not make the motel a hazardous occupancy. The same principle applies to building a dwelling with three-hour fire walls; it does not turn a dwelling into a motel. The fact that a structure may be built to higher OSSC safety standards than required for a dwelling does not mean it is not a dwelling under ORS chapter 215 or the YCZO. *See, e.g.*, Grange Hill Hearing Binder, Tab 6 (Certificates of Occupancy for other dwellings hosting B&B operations). Holding otherwise would punish those who choose enhanced safety features and create a perverse incentive to build *less safe* dwellings. Grange Hill’s structure has the design characteristics of a dwelling, and the building code specifications to which it is built do not change the nature of the structure.

The Board received testimony arguing that the Grange Estate has guest suites and that its design is “not typical.” The Applicant provided additional evidence into the record to illustrate the features of Grange Estate, as built (Grange Estate Look Book), along with photos and descriptions of other dwellings in Willamette Valley (Other Dwelling Look Book). While it may not be typical, and design can be within the “eye of the beholder,” meaning we all can have different perceptions, no applicable law limits the size, scale, or design of single-family dwellings on agricultural land. There is the notorious Del Smith mansion with over 26,000 square feet and numerous bedrooms and bathrooms, a ballroom, and other extravagances; there is the Youngberg home with 13 bedrooms and expansive vineyard views; there is the Wilken Lane castle like home with opulent living areas; and there are other large homes with ranging

design features similar to Grange Estate with wood, steel, and large open living areas. The Grange Estate will function as a dwelling and the new information provided into the record provides substantial evidence upon which we base our findings.

Accordingly, the Board finds that the building code standards to which Grange Hill built its structure does not change the nature of the structure. Holding otherwise would punish those who choose enhanced safety features and create a perverse incentive to build *less safe* dwellings.

3. Grange Hill will satisfy the occupancy requirement for a principal dwelling on EFU land.

The Supreme Court Decision specified that for Grange Hill’s structure to be a dwelling within the meaning of ORS 215.448(1)(c)(A) and YCZO 1004.01(C), the structure must be occupied by a “farm operator.” The Board looks to the Supreme Court Decision to determine whether the Grange Estate will be occupied by a “farm operator” as that decision requires. Although the Supreme Court Decision did not define “farm operator,” and the term “farm operator” for purposes of ORS 215.448(1)(c)(A) and YCZO 1004.01(C) is not defined by ORS chapter 215 or implementing administrative rules or the YCZO, the Supreme Court Decision flagged that LUBA has found that OAR 660-033-0130(9) informs the meaning of “farm operator.” *Friends of Yamhill Cnty.*, 373 Or. at 811 n. 7. For purposes of an allowed dwelling for a relative of the farm operator, that rule defines a “farm operator” as the “person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.” OAR 660-033-0130(9). In that same context, all that is required for “farm operator” status is that the person have some significant involvement in the farm operations. Where there is some division of duty among more than one person, a person who has a predominant role in the management and farm use of the farm qualifies as the “farm operator.”

Considering the statutory and regulatory scheme, the intent behind the requirement, the Supreme Court Decision’s guidance, and other relevant authority, and the practical realities of farm management, the Board defines “farm operator” as follows:

A “farm operator” is the person primarily engaged in providing on-site management and oversight of farm operations, including advising about, and participating in, day-to-day decisions about such things as planting, harvesting, maintenance, and third-party contracting.

This definition encompasses the concept of the person primarily engaged in using the land as referenced in the Supreme Court Decision and also recognizes the distinction between farm *ownership* and farm *operation*. The Board finds nothing in state law or the YCZO that requires the farm *owner* to be the farm *operator*. But, as a practical matter, a farm owner who is not the farm operator still may retain ultimate decisional authority regarding what crops are planted, what contractors are brought onto the property, what is an acceptable sale price for the crop, and other similar matters—especially financial matters. The adopted definition of “farm operator” balances the intent that the “farm operator” have a primary on-site role managing a farming

operation with the reality that final decisional authority on key matters may remain with the farm owner.

The Board received testimony challenging the farm operator occupation, raising, among other things, whether an occupant can both perform the functions of a farm operator and have oversight responsibilities of a bed and breakfast operation in the home. We do not find the testimony convincing and note that ORS 215.448(1)(b) contemplates that the operator of a home occupation may employ up to five full-time employees in connection with the home occupation. Applicant has met its burden of proof to address the occupancy requirement on remand.

The Board finds that evidence shows that Grange Estate will be a farm operator's home and thus qualifies as a "dwelling" under YCZO 1004.01 and ORS 215.448(1)(c)(A). We find that Grange Hill's farm operator job description meets definition of a farm operator because the person "provides on-site management and oversight of the farm operations at Grange Estate," "reside[s] at the home on the property" and the "role requires significant involvement in vineyard farm work, including participating in day-to-day decisions, negotiating for farm services, managing farm employees, participating in staffing decisions, and negotiating contracts for the sale of wine grapes grown on the property." *See* Grange Hill Hearing Binder, Tab 8 (Grange Hill's Farm Operator Job Description). The job description lists detailed job responsibilities showing a high degree of management and oversight of farm operations, all consistent with being a farm operator. The fact that the farm operator will also have some responsibilities for operating the bed and breakfast as the onsite resident does not affect that person's ability to serve as a farm operator. The employees of the bed and breakfast will handle day-to-day operations as contemplated by the home occupation employee allowance in both ORS 214.448 and YCZO 1004.01 (see Condition 7).

There was testimony challenging the Board's proposed condition to require evidence of the farm operator's occupancy prior to operation. The Board disagrees with the characterization that imposing this type of post-approval condition amounts to deferral of a discretionary decision-making. The elements of the farm operator definition were discussed at the public hearing, and the opponents had the opportunity to argue that the elements of the farm operator definition were not adequate – the condition simply requires documentation to show that a person meeting the farm operator definition, which the Board determined was appropriate during the hearing, has been objectively satisfied. Applicant addressed that this will be done through providing a resume and employment agreement.

The Supreme Court Decision and LUBA's remand directions did not instruct the Board to address any other approval criterion for an EFU principal farm dwelling other than the farm operator criterion. To the extent the Board may be required to consider all approval criteria for an EFU principal farm dwelling, the Board makes the following supplemental findings in an abundance of caution. These findings also respond to testimony on the record challenging Applicant's ability to meet the farm income test.

YCZO 402.03(A) allows principal dwellings on EFU land subject to three requirements: (1) the subject tract produces at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years; (2) the dwelling is occupied by the farm

operator; and (3) no other dwellings are on the subject tract. The property is comprised of a single parcel owned by Grange Hill, LLC (Tax Lot 102). There is only one dwelling approval and one dwelling on the parcel. The property is planted with about 12.8 acres of vineyard, with about 3 acres of chardonnay grapes and 9.8 acres of pinot noir. Aerial photographs document established vineyards across the property. Grange Hill provided evidence into the record demonstrating that the vineyard produced over \$80,000 from grape sales in 2022, 2023, and 2024. For these reasons, to the extent required, the Board finds that that the record contains substantial evidence to demonstrate that Grange Hill still meets the principal dwelling approval criteria in YCZO 402.03(A) and may operate the bed and breakfast in the Grange Estate dwelling.

The Board adopts Grange Hill's proposed condition requiring that Grange Hill provide evidence that a farm operator is occupying Grange Estate prior to beginning the bed and breakfast operations.

CONCLUSIONS FOR APPROVAL

1. The request is for a conditional use to operate a nine (9) guestroom Bed and Breakfast facility as a home occupation.
2. With conditions, the request can be made compatible with the applicable conditional use review criteria listed in Sections 402.04(I), 402.9, 1004.01, 1101, 1012, and 1202.2 of the Yamhill County Zoning Ordinance.
3. The request complies with the goals and policies of the Yamhill County Comprehensive Plan.

DECISION:

Based upon the above findings and conclusions, the request by Grange Hill, LLC for a conditional use to operate a nine (9) guestroom Bed and Breakfast facility as home occupation on Exclusive Farm District zoned property shall be approved, subject to the original conditions of approval from Board Order C-03-22 as modified below in **redline**:

1. The bed and breakfast inn may offer a maximum of nine (9) guestrooms for rent.
2. Food service shall be limited to one (1) morning meal for overnight guests.
3. The bed and breakfast is personal to the applicant and property owners, Grange Hill, LLC, and this approval does not run with the land. Any subsequent owner who would like to continue operating the bed and breakfast must receive land use approval for the home occupation.
4. The bed and breakfast will be operated by an onsite resident of the proposed single-family dwelling.

5. Prior to operating the bed and breakfast home occupation, Grange Hill shall provide the Planning Department with evidence that a Grange Hill farm operator is occupying the dwelling.
- ~~56.~~ Prior to operation of the bed and breakfast, the driveway access and water supply shall be inspected and approved by Dundee Fire Department.
- ~~67.~~ The use shall employ no more than five (5) full or part time employees.
- ~~78.~~ The State Administrative Rule requirements for Bed and Breakfast licensing shall be satisfied prior to operation of the bed and breakfast facility.
- ~~89.~~ Prior to operation of the home occupation, the application shall obtain an inspection and approval (Authorization Notice) from the County Sanitarian for the septic system.
- ~~910.~~ Prior to operation of the home occupation, the applicant shall obtain all necessary building, plumbing and electrical permits from the Yamhill County Building Department.
- ~~1011.~~ Prior to the operation of the bed and breakfast, the water shall be tested initially and annually for nitrate and arsenic with quarterly bacteria tests thereafter and determined to be safe for public consumption by the Public Health Department. Results of the test shall be submitted to the Yamhill County Planning Department.
- ~~1112.~~ The use is limited to the operation of a nine (9) guestroom bed and breakfast from a single-family dwelling. Agri-tourism or other celebratory events on the property require additional land use approval.
- ~~1213.~~ No outside evidence of the home occupation shall be visible except for a sign not to exceed 24 square feet, which is subject to permit and land use approval pursuant to Section 1006 of the *Yamhill County Zoning Ordinance*.
- ~~1314.~~ An area to provide a minimum of one (1) parking space per guestroom and one (1) parking space for each employee on maximum working shift shall be maintained. There shall be no parking along the road right-of-way or along the easement roadway.
- ~~1415.~~ This approval is valid for one year following the date of final approval and shall expire at that time unless the use has been initiated.
- ~~1516.~~ A review of the bed and breakfast operation shall be required two years following the date of final approval. The operation may be renewed if it continues to comply with the requirements of Section 1004.01 of the *Yamhill County Zoning Ordinance* and the conditions of approval. A fee may be charged for renewal of the permit.
- ~~1617.~~ Modification of any of the above conditions requires approval under Section 1202.05 of the *Yamhill County Zoning Ordinance*. Violation of any of the above conditions may result in revocation of the conditional use permit with the process detailed in Section 1202.07 and 1202.08 of the *Yamhill County Zoning Ordinance*.