

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 18-04-17-04 IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR AN APPEAL OF A HEARING OFFICIAL'S DECISION APPROVING A SPECIAL USE PERMIT FOR AN ACCESSORY STRUCTURE OUTSIDE OF THE SAME SITE DEVELOPMENT AREA WITHIN THE IMPACTED FOREST LANDS (F-2) ZONE ON ASSESSOR'S MAP AND TAX LOT 18-01-30-00-00200; (FILE NO. 509-PA17-05644/ZIEGLER).

**WHEREAS**, the Lane County Hearings Official has made a decision approving a Special Use Permit for an accessory structure outside of the same site development area within the Impacted Forest (F-2) zone on Assessor's Map and Tax Lot 18-01-30-00-00200, pursuant to Lane Code 16.211(2)(o) & LC 16211(8), in Department File No. 509-PA17-05644; and

**WHEREAS**, the Lane County Planning Director has received an appeal of the Hearings Official's decision to the Board of County Commissioners pursuant to LC 14.515(3)(f)(ii); and

**WHEREAS**, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal in File No. 509-PA17-05644; and

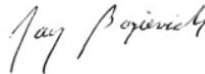
**WHEREAS**, Lane Code 14.600 provides the procedure and criteria that the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

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

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

1. That a decision by the Board cannot be made within the time constraints in ORS 215.427(1) in order to conduct a public hearing. Findings in support of this decision are attached as Exhibit "A."
2. That the Lane County Hearing's Official decision dated February 18, 2018, and the letter affirming the decision dated March 5, 2018, attached as Exhibit "B," which found relevant approval criteria are met, are ratified and affirmed by the Board of County Commissioners as the County's final decision. The Board expressly agrees and adopts the Hearing Official's interpretation and application of Lane Code.

ADOPTED this 17th day of April, 2018.



Jay Bozievich, Chair  
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 4-9-18



LANE COUNTY OFFICE OF LEGAL COUNSEL

## ORDER EXHIBIT "A"

### FINDINGS IN SUPPORT OF THE ORDER

1. The property subject to this application hereinafter referred to as the "subject property," can be identified as tax lot 200, assessor's map 18-01-30. The subject property is owned by Dave Ziegler and is zoned F-2 Impacted Forest Lands. The subject property has an address of 37973 Jasper Lowell Road. The parcel is approximately 31 acres in size.
2. The applicant requests approval for an accessory structure located outside of the "same site" development area as defined by Lane Code 16.211(2)(o)(iii). As proposed, the structure will not contain a kitchen sink, sleeping or cooking facilities, or a 220 volt electrical connection. It is intended to be an art studio.
3. Lane Code defines "guest house" as "*An accessory building without kitchen or cooking facilities and occupied solely by nonpaying guests or by servants employed on the premises.*"

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

The "same site" standard is defined by Lane Code 16.211(2)(o)(i) as a square within the dimensions of 200 square feet centered on the footprint of the primary structure. The proposed accessory structure's development area is located about 300 feet east of the existing primary structure (residence) on the subject property.

4. The subject property is served by an existing driveway that was evaluated under verification of conditions file No. 509-PA95-03379. The applicant has a tentative letter of approval from the Lowell Rural Fire Protection District. The extension of the existing driveway to the site of the proposed accessory structure is about 200 feet. None of the grades of the driveway exceed 20 percent.
5. The findings of fact regarding the eight assignments of error have been incorporated in the Hearings Official's narrative justification of the decision.
6. On July 26, 2017, the request for a Director review and approval of an accessory structure as a guest house and art studio outside of the "same site" development area. The application was reviewed and accepted as complete on August 23, 2017. On September 1, 2017, notice of the application was sent to adjacent property owners and agencies. On December 5, 2017, the Planning Director approved the application. Notice of the determination was mailed to surrounding property owners. On December 18, 2017, a timely appeal was submitted by LandWatch Lane County, represented by attorney Andrew Mulkey.
7. On January 11, 2018, the Lane County Hearings Official conducted a public hearing. The hearing was closed but the record was held open to allow for additional testimony. On February 18, 2018, the Lane County Hearings Official issued a decision approving the Planning Director's decision with modification of conditions of approval No. 1 & 9. Notice of the Hearings Official's decision was mailed to the applicant and all parties of record on February 20, 2018.
8. On February 28, 2018, LandWatch Lane County, represented by attorney Andrew Mulkey, filed a timely appeal. The Appellants request that the Board of County

Commissioners not conduct a hearing on the appeal and deem the Hearings Officer's decision the final decision of the County, pursuant to LC 14.515(3)(f)(ii).

9. On March 5, 2018, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1).
10. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
  - *The issue is of Countywide significance.*
  - *The issue will reoccur with frequency and there is a need for policy guidance.*
  - *The issue involves a unique environmental resource.*
  - *The Planning Director or Hearings Official recommends review.*
11. The election to hear the appeal in a public hearing must be completed within the time constraints of ORS 215.427(2). As of the Elect to Hear meeting, a total of 147 days will have elapsed since the application was deemed complete. The Planning Director acknowledges the issue may be of some Countywide significance and likely recur. However, it would not be feasible for the Board to hold a hearing on this matter without surpassing the statutory timelines and exposing the County to a possible Writ of Mandamus. Furthermore, the Hearings Official's decision is sufficient in order for the County to retain deference if this matter is appealed to the Land Use Board of Appeals.
12. The Board finds that the subject property does not constitute a unique environmental resource. The issues raised in this appeal do not relate to, or involve, a unique environmental resource. The property does not contain any unique or notable environmental resources, nor does it contain any regulated water bodies, rivers, creeks, or wetlands.
13. The Planning Director does not recommend review of the appeal on the record for the reasons cited above.
14. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.
15. The Board has reviewed this matter at its meeting on April 17, 2018, and declines further review, and elects not to hold an on the record hearing for the appeal.
16. The Board elects not to conduct an on the record hearing for the appeal, to affirm and ratify the Lane County Hearings Official decision as the County's final decision, and expressly agree with and adopt the Hearing Official's interpretation and application of Lane Code.



March 5, 2018

Ms. Lydia Kaye, Manager  
Land Management Division  
3050 N. Delta Highway  
Eugene, OR 97408


Re: *Appeal of affirmation of Planning Director approval of the request (PA 17-05644) by Dave Ziegler for a special use permit for an accessory structure (art studio) in the Impacted Forest Lands District on tax lot 200, assessor's map 18-01-30.*

Dear Ms. Kaye:

On February 16, 2018, I issued a decision affirming the Planning Director's approval of the request (PA 17-05644) by Dave Ziegler for a special use permit for an accessory structure (art studio) in the Impacted Forest Lands District on tax lot 200, assessor's map 18-01-30. On February 28, 2018 this decision was appealed by LandWatch Lane County. Upon a review of this appeal, I find that the allegations of error have been adequately addressed in that decision and that a reconsideration is not warranted.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my February 16, 2018 reconsidered decision without further consideration. Please advise interested parties of this decision.

Sincerely,

  
Gary L. Darnielle  
Lane County Hearings Official

cc: Deanna Wright (file)

EXHIBIT B

**LANE COUNTY HEARINGS OFFICIAL  
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A SPECIAL USE  
PERMIT FOR A VACATION RENTAL FACILITY WITHIN AN RURAL  
COMMERCIAL DISTRICT**

**Application Summary**

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

**Parties of Record**

Dave Ziegler  
Lauri Segel

Kim O'Dea  
Andrew Mulkey

LandWatch Lane County

**Application History**

Hearing Date:            January 11, 2018  
   (Record Held Open Until February 8, 2018)

Decision Date:            February 16, 2018

**Appeal Deadline**

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

**Statement of Criteria**

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

**Findings of Fact**

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

2. The Applicant requests approval for an accessory structure located outside of the 'same site' development area as defined by Lane Code 16.211(2)(o)(iii). As proposed, the structure will not contain a kitchen sink, sleeping or cooking facilities, or a 220 volt electrical connection. It is intended to be an art studio.
3. Lane Code 16.090 defines "guest house" as "*An accessory building without kitchen or cooking facilities and occupied solely by nonpaying guests or by servants employed on the premises.*"

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

The "same site" standard is defined by Lane Code 16.211(2)(o)(i) as a square with the dimensions of 200 square feet centered on the footprint of the primary structure. The proposed accessory structure's development area is located about 300 feet east of the existing primary structure (residence) on the subject property.

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

### Decision

THE PLANNING DIRECTOR'S DECISION APPROVING THE REQUEST (PA 17-05644) BY DAVE ZEIGLER FOR AN ACCESSORY STRUCTURE ON TAX LOT 200, ASSESSOR'S MAP 18-01-30 IS AFFIRMED with the following modification to Conditions of Approval #1 and #9:

1. *Approval of 509-PA17-05644 is based upon the application as warranted by the Applicant. In this regard, the accessory structure may not be used for cooking or sleeping. Approval of 509-PA17-05644 this permit is valid for a two-year period from the final date of approval. Lane County may grant an initial extension period of one year if: ...*
- 9.c. *The building inspector shall verify that the completed structure does not contain kitchen or cooking facilities or sleeping accommodations.*

**Justification for the Decision (Conclusion)**

The Appellant argues that an accessory structure is not allowed under ORS Chapter 215 or OAR 660-006. Initially, the Applicant requested that the accessory structure serve as a guest house and art studio. At the hearing on this matter, the Applicant modified the proposal to remove the guest house aspect of the accessory use and limit its use to an art studio. The Appellant objected to this last minute change. This objection was noted but overruled as the modification of the application did not change the fundamental nature of the proposal nor did it increase its potential scope and intensity. Further, the change does not require that the approval criteria be analyzed in a different way. *Welch v. Yamhill County*, 56 Or LUBA 166 (2008) The issue of whether the accessory structure constitutes a “dwelling” has been made moot by this modification. (See discussion below.) The application of the approval criteria of Lane Code 16.211(2)(o)(iii) are still applicable and determinative.

The following is a discussion of the allegations of error raised by the Appellant:

***1. The Applicant is proposing a new dwelling on the subject property.***

The Applicant’s original proposal identified the proposed accessory structure as an art studio/guest house and the Appellant has argued that a “guest house” should be considered as a dwelling. As defined by Lane Code 16.090, a “dwelling” is defined as:

*“A building or portion thereof which is occupied in whole or in part as a residence or sleeping place, either permanently or temporarily, but excluding hotels, motels, auto courts, mobile homes and camping vehicles. ...”*

A “Guest House, Servant's Quarters” is defined by Lane Code 16.090 as:

*“An accessory building without kitchen or cooking facilities and occupied solely by nonpaying guests or by servants employed on the premises.”*

It is my understanding that defining a “guest house” as a structure without kitchen or cooking facilities was an attempt to distinguish this use from a dwelling. However, the definition of “dwelling” would nevertheless include a guest house because the latter would be considered to be a “sleeping place.”

At the hearing on this matter, the Applicant modified his proposal to remove the “guest house” characterization from his proposal. Through his attorney, he warranted that the structure would not have sleeping accommodations nor would it have kitchen facilities. I do not believe that a structure that does not have kitchen or sleeping accommodations can be characterized as a “dwelling.”

The Appellant questions whether the Applicant is sincere in this promise and is skeptical that the County will be able to enforce the promises that the structure will not be utilized as a dwelling. First, there is nothing in the record that would suggest that the Applicant intends to utilize the proposed accessory structure for sleeping or cooking purposes. Second, my affirmation of the Director's decision will include an additional conditions of approval that will prohibit the structure from being put to these uses and require that an occupancy permit be denied if the structure is overtly constructed to provide for those uses. The building should essentially be constructed as a studio with, at most, a bathroom.

2. ***The County's definition of "same site" is inoperative as the Ordinance that adopted it (Ordinance 14-09) was subject to a voluntary remand by Lane County and the ordinance has not been readopted with amendments.***

Ordinance 14-09 expanded the definition of 'same site' from "a square with dimensions of 200 square feet which is centered on the footprint of the primary structure," an area of about one square acre, to a definition that would have encompassed about 5 square acres. This ordinance was challenged at LUBA by the Appellant<sup>1</sup> and Lane County voluntarily remanded the ordinance.

Rather than modify Ordinance 14-09, Lane County used a new ordinance to readopt the original language that was changed by Ordinance 14-09.<sup>2</sup> The adoption of the new ordinance was noticed to LCDC in a timely manner and it was not appealed. The 'same site' standard of Lane Code 16.211(2)(o)(i) remains as "a square with dimensions of 200 square feet which is centered on the footprint of the primary structure ..."

*This allegation of error is dismissed.*

3. ***Lane County's definition of "same site" is overly broad and is inconsistent with Rural Comprehensive Plan Policy 3 of Goal 3, ORS 215.284(1) and OAR 660-006-0025(1).***

It appears that the Appellant's concerns are addressed at the 'same site' definition that was used by Ordinance 14-09 and not the standard that is actually being applied. As noted above, Lane County Ordinance 16-01 was not appealed and was acknowledged by LCDC. In terms of the Appellant's concerns, Lane Code 16.211(2)(o)(iii) requires that accessory structures that are located outside of the 'same site' as the primary structure comply with the discretionary siting standards of LC 16.211(8)(a), (b), (c)(i)(aa), (c)(iii), and (e). Lane Code 16.211(8)(a) provides, in part, that the structure be located on the least suitable portion of the tract for forest use and have a minimal intrusion into forest areas undeveloped by non-forest uses. This language has been acknowledged by LCDC as being

<sup>1</sup> *Landwatch Lane County v. Lane County* (LUBA No. 2015-007)

<sup>2</sup> Lane County Ordinance 16-01, adopted January 26, 2016.



consistent with statutory language and Chapter 660, Division 33 of the Oregon Administrative Rules.

*This allegation of error is dismissed.*

4. ***The Applicant should have considered locating the proposed accessory structure within the 'same site' area as the primary structure.***

The primary structure, the Applicant's existing dwelling, is surrounded by 130' of fuel break; a 30' primary fuel break and a 100' secondary fuel break. The former area has been cleared of trees but the latter area is forested, as allowed by the Code. By placing the accessory structure within the secondary fuel break the structure would be intruding upon a forested area.

Lane Code 16.211(2)(o)(iii) allows an applicant to choose to locate an accessory structure outside of the 'same site' development area. The Code leaves the option to the applicant. In the present case, the Applicant has chosen to site the proposed accessory structure on a portion of the property that is not forested. By making this choice, the Applicant must comply with the applicable siting standards of Lane Code 16.211(8), several of which address the impact of the proposed structure on forestland.

*This allegation of error is dismissed.*

5. ***The Director's decision violates the roadway standards of LC 16.211(8)(c).***

Lane Code 16.211(8)(e) (i) provides different width standards for roads (20') and driveways (12'). The last two sentences of Lane Code 16.211(8)(e) explain the difference in the two types of facility:

*"... As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling."*

The Appellant has argued that the accessory structure, which was initially characterized as a "guesthouse/art studio," constituted a "dwelling" and therefore required 'road' access. The definition of "Guest House, Servant's Quarters" in Lane Code 16.090 provides that these structures may not contain kitchen or cooking facilities. However, the same section of the Code defines "dwelling" as "A building or portion thereof which is occupied in whole or in part as a residence or sleeping place, either permanently or temporarily, ..."

At the hearing on this matter, the Applicant modified the character of the accessory structure to warrant that it would not be constructed with any permanent fixtures that would support its use as a 'sleeping place.' In addition,

the Applicant warranted that it would not be put to that use. There is no evidence in the record to suggest the contrary other than the expressed concerns of the Appellant. The issue of whether the proposed accessory structure is a dwelling has been rendered moot by the modification to the application. Accordingly, the way of access to the primary structure and accessory structure must be considered to be a driveway.

*This allegation of error is dismissed.*

6. ***The proposal does not comply with the 80-foot safety zone standard required by the LC 16.211(8)(c) or the secondary fuel break standards of that section.***

Lane Code 16.211(8)(c)(i) provides that all structures be surrounded, at a minimum, by a 30-foot primary safety zone. Lane Code 16.211(8)(c)(i)(aa) provides that the size of the primary safety zone (fuel break) increases with the percentage of slope. The Applicant notes in his January 26, 2018 submission that the primary safety zone is measured from the edge of a structure. This is true in most cases but not in the present instance because, at the Applicant's request, the Planning Director has approved a 100-foot by 100-foot development area; an area within which the proposed structure may be sited. In this case, the primary safety zone must be measured from the boundary of the development area since we don't know exactly where the structure will be located within the development area.

The Applicant's site plan places the borders of the development area at 800 feet from the northern property line, 145 feet from the eastern property line, 30 feet from the southern property line and 820 feet from the western property line. Thus, if the property around the development area is flat or has a slope less than 10 percent, the primary safety area will be 30 feet on all sides of the borders of that area.

The Appellant has cited the Applicant's January 26, 2018 submission for the proposition that a portion of the slope surrounding the development area has a grade of 17 percent. The topographic map submitted by the Applicant shows steeper slopes to the north and northeast of the development area but it is difficult to know how close these slopes are to the development area. If, for purposes of argument, these slopes abut the 30-foot primary safety zone, then the safety zone would have to be enlarged by 50 feet to a total of 80 feet. The Code does not require that the entire primary safety zone be enlarged; just the portion that has slopes greater than 10 percent. As mentioned above, the borders of the development area are 145 feet and 800 feet, respectively, from the eastern and northern property lines. The Applicant's site plan demonstrates that a primary safety zone of 80 feet could be extended in these directions without exceeding the boundaries of the subject property. The development area is no closer than 30 feet from the southern property line and would conform to Lane Code

16.211(8)(c)(i)(aa) as the area is flat and only 30 feet of primary safety zone is required.

The Appellant also argues that the Planning Director's decision violates Lane Code 16.211(8)(c)(i)(bb) requirements regarding a secondary fuel break around the primary fuel break. However, Lane Code 16.211(8)(c)(i) states that secondary fuel breaks are only required on land surrounding "the dwelling or manufactured dwelling" and this is consistent with the language of OAR 660-006-0035(3), which reads:

*"The owners of the dwellings and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner ..."*

As proposed by the Applicant, the accessory structure is not a dwelling, and no secondary fuel break is required.

*This allegation of error is dismissed.*

**7. The Director's decision violates OAR 660-006.**

Goal 4: Forest Lands Policy #8 of the Lane County Rural Comprehensive Plan provides that:

*"New structures must comply with the Siting and Fire Safety Standards of OAR 660-06-029 and 660-06-035."*

OAR 660-006-029(1)(c) requires that dwellings and structures shall be sited on the parcel so that "[T]he amount of forest lands uses to site access roads, service corridors, the dwelling and structures is minimized." This standard is embodied in Lane Code 16.211(8)(a), which was applied to the proposed accessory structure. The Appellant does not argue that the Director's analysis of this criterion was in error.

The Appellant also argues that OAR 660-006-029(5)(c) requires the Applicant to submit a stocking survey report because the parcel is larger than 30 acres. This provision is not applicable to this application because it only applies to the siting of a dwelling.

Finally, the Appellant argues that the Applicant has failed to demonstrate how the application complies with the requirements of OAR 660-006-0035. This administrative rule has six subsections, five of which apply only to dwellings. OAR 660-006-0035(3) requires the owners of "dwellings and structures" to maintain a primary fuel-free break area surrounding all structures and to maintain

a “secondary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner ...”. The application is consistent with the provisions of OAR 660-006-0035 because the proposed structure is not a dwelling and because a secondary fuel-free break area is not required to be established around it.

*This allegation of error is dismissed.*

**8. *The proposed accessory structure is not an essential or accessory improvement normally associated with a dwelling.***

The Appellant cites *Wetherell v. Douglas County*, 56 Or LUBA 120 (2008) for the proposition that an art studio is not an accessory structure that is allowed on forest land. The *Wetherell* case concerned whether the term “dwelling,” as it is used in ORS 215.284(2)(b), included accessory structures that were “customarily provided in conjunction with a dwelling” in an attempt to determine whether they had to be located on “generally unsuitable land” for agricultural purposes like the primary dwelling. LUBA opined that there was nothing in the statutes that treated “accessory structures” as separate uses and that therefore they must be associated with the dwelling. In this regard, LUBA classified improvements such as septic drainfields and garages as essential or accessory components of a dwelling.

The Lane Code does not define “accessory use.” Webster's Third New International Dictionary of the English Language, Unabridged, Copyright 1981 (Principal Copyright 1961) defines “accessory,” when used as a noun, as “*a thing of secondary or subordinate importance*” and “*an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else.*”

When used as an adjective Webster defines “accessory” as something that is: “*aiding or contributing in a secondary or subordinate way*” or “*supplementary or secondary to something of greater or primary importance.*”

As used by the dictionary, a thing that is accessory does not have to be essential to the primary use but rather may support it. Thus, it cannot be distinct from the residential use in that it supports something other than a residential use of the subject property.

A drainfield is accessory to a dwelling in the sense that it is essential to the residential use of a parcel and an art studio is also accessory in the sense that it can support the residential use of the parcel. While not essential to the residential use of the subject property, the proposed art studio clearly supplements the primary residence on the subject property and would be a convenience to the residents of the primary residence as the mess and odors that might be associated

with the use of the studio may not be appropriate to a residence. In many respects, the studio is not much different from a similar sized structure that would serve as wood-working workshop. Arguably, the use of both structures would benefit from being located away from the primary residence for purposes of solitude, exclusion of residential distractions, and possibly the shielding of the residents from noise or odor impacts from the accessory structure. If the accessory structure substantially serves the residents on the property and is subject to the same siting standards as the primary residence, I do not see why such an accessory structure would be inconsistent with the statute.

It must also be pointed out that the language of Lane Code 16.211(2)(o) explicitly allows development and uses that are accessory to existing development and uses and allows these uses to be located outside of the 'same site' as the primary structure. This provision was acknowledged by LCDC as being in compliance with the Statewide Planning Goals and applicable statutes and administrative rules.

The Appellant theorizes that the proposed structure might be used to create commercial artwork and therefore might be a home occupation. Home occupations are discretionary uses under Lane Code 16.211(3)(n) and require a special use permit approval from the Planning Director. If the Applicant were to use the art studio for commercial purposes then he would have to apply for a permit to operate as a home occupation.

*This allegation of error is dismissed.*

**Summary**

This decision primarily revolves around the determination that the proposed accessory structure is not a dwelling. I believe that the warrants made by the Applicant, in conjunction with the modifications to the conditions of approval, are sufficient to ensure that the structure will not be utilized as a dwelling.

Respectfully Submitted,



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**Gary Darnielle**  
**Lane County Hearings Official**