

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 RON BECHTOLD,
5 *Petitioner,*
6

7 vs.
8

9 JACKSON COUNTY,
10 *Respondent,*
11

12 and
13

14 MARY ANN HATHAWAY, PENNY FARSTER,
15 PAUL NARLESKY, FRANK MARTIN and
16 GERALDINE MARTIN,
17 *Intervenors-Respondent.*
18

19 LUBA No. 2001-187
20

21 FINAL OPINION
22 AND ORDER
23

24 Appeal from Jackson County.
25

26 Daniel B. O'Connor, Medford, filed the petition for review and argued on behalf of
27 petitioners. With him on the brief was Huycke, Maulding, O'Connor & Jarvis, LLP.
28

29 No appearance by Jackson County.
30

31 Christian E. Hearn, Ashland, filed the response brief and argued on behalf of
32 intervenors-respondent. With him on the brief was Davis, Gilstrap, Hearn, Saladoff & Smith.
33

34 HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member,
35 participated in the decision.
36

37 AFFIRMED

05/23/2002
38

39 You are entitled to judicial review of this Order. Judicial review is governed by the
40 provisions of ORS 197.850.
41

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NATURE OF THE DECISION

Petitioner appeals a county hearings officer decision that approves in part and denies in part petitioner’s request for approval of a church on property zoned exclusive farm use (EFU).

MOTION TO INTERVENE

Mary Ann Hathaway, Penny Farster, Paul Narlesky, Frank Martin and Geraldine Martin move to intervene on the side of respondent in this appeal. There is no opposition to the motion, and it is allowed.

FACTS

The subject property includes 63 acres and is improved with a number of existing structures: (1) a dwelling, (2) a guesthouse, (3) a barn, (4) several accessory buildings, and (5) a well and pump house. Spruce Island Foundation (Spruce Island) is the contract purchaser of the subject property.

“* * * Spruce Island * * * is an existing church in the San Francisco Bay area practicing the doctrines of the Eastern Orthodox Church. Spruce Island purchased the property with the intent to develop a church/retreat center on the property in an effort to create a presence in the Southern Oregon area. * * * Spruce Island anticipate[s] that its church activities [will] include seminars and programs lasting over the weekend or for several days involving the stay of overnight guests.” Petition for Review 6-7 (record citations omitted).

According to the application, the existing dwelling is to be used as a rectory, the existing guest house is to be remodeled for use as a church office and dormitory for visiting clergy (office/dormitory) and the existing barn is to be remodeled for use as the main chapel. The well and pump house would be used to provide water, and Spruce Island would also use the existing accessory structures for various purposes. The application also proposes approval of the following new structures: (1) a 30-foot by 50-foot convent, (2) a 35-foot by 45-foot private chapel, and (3) five 12-foot by 12-foot private study/prayer rooms.

1 County planning staff approved the application. That decision was appealed to the
2 county land use hearings officer. The hearings officer specifically approved three parts of
3 the request: (1) the conversion of the barn to a main chapel, (2) the five new private
4 study/prayer rooms, and (3) the new 35-foot by 45-foot private chapel.¹ The hearings officer
5 denied the applicant’s request for approval to (1) construct a new building for use as a
6 convent, (2) use the existing dwelling as a rectory and (3) remodel the existing guesthouse
7 for use as an office/dormitory.

8 **INTRODUCTION**

9 Churches are allowed outright in EFU zones. ORS 215.283(1)(b).² In his first
10 assignment of error, petitioner alleges the county erred by not approving the rectory, convent
11 and office/dormitory as a church. In his second assignment of error, petitioner alleges the
12 county erred by not approving the rectory, convent and office/dormitory as uses that are
13 properly viewed as church *accessory* uses. Our resolution of both of those assignments of
14 error turns on the meaning of the word “church” in ORS 215.283(1)(b). Petitioner does not
15 argue under these assignments of error that other church-related residential use of the
16 existing dwelling and existing guesthouse might be permissible without county approval as a
17 continuation of those existing uses, and we therefore do not consider that issue.

18 In the third assignment of error, petitioner alleges that the county’s failure to view the
19 disallowed portions of the proposal as part of a church violates Article I, section 3, of the
20 Oregon Constitution.³ Petitioner does not argue that the county’s decision violates ORS

¹The hearings officer does not specifically approve the proposed uses of the existing accessory buildings or the existing well and pump house. However, neither does he specifically reject the proposed uses of those buildings and the well. The focus of the dispute below and in this appeal concerns the rectory, convent and office/dormitory. We believe the fairest reading of the hearings officer’s decision is that it allows the proposed nonresidential uses of the existing accessory buildings and the existing well and pump house.

²We set out and discuss the statutory language later in this opinion.

³Article I, section 3 provides:

1 215.441⁴ or the federal Religious Land Use and Institutionalized Persons Act of 2000
2 (RLUIPA), 42 USC 2000cc – 2000cc-5,⁵ and we therefore do not consider whether those
3 statutes might directly apply to provide a basis for reversal or remand in this case.⁶

4 We assume for purposes of this opinion that the concept of a “church,” as that term is
5 used in ORS 215.283(1)(b), is not necessarily limited to buildings that are devoted

“No law shall in any case whatever control the free exercise, and enjoyment of [religious] opinions, or interfere with the rights of conscience.”

⁴ORS 215.441 provides as follows:

“(1) If a church, synagogue, temple, mosque, chapel, meeting house or other *nonresidential place of worship* is allowed on real property under state law and rules and local zoning ordinances and regulations, a county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

“(2) A county may:

“(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

“(b) Prohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

“(3) Notwithstanding any other provision of this section, a county may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.” (Emphasis added.)

ORS 215.441 was adopted by the 2001 Legislature but did not take effect until January 1, 2002, after the May 11, 2001 application was submitted in this matter and after the hearings officer’s November 7, 2001 decision.

⁵Where RLUIPA applies, it prohibits government from imposing or implementing “a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.”

⁶However, as explained below, we believe ORS 215.441 provides relevant context for interpreting the meaning of the word “church” in ORS 215.283(1)(b).

1 exclusively to worship services. The legislature’s decision not to include a limiting
2 definition of the term “church” leaves open the possibility that structures beyond those
3 devoted exclusively to formal worship services might qualify as church buildings.⁷
4 However, it is not necessary for us to attempt to locate precise boundaries for the meaning
5 and scope of the term “church” in ORS 215.283(1)(b). To resolve this appeal we are only
6 required to determine whether the hearings officer erred in concluding that the proposed
7 rectory, convent and office/dormitory are not properly viewed as a “church,” as that term is
8 used in ORS 215.283(1)(b).

9 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

10 In his application to the county, petitioner took the position that the proposed rectory,
11 convent and office/dormitory, like the approved aspects of the proposal, are properly viewed
12 as a church. The hearings officer rejected this argument and petitioner assigns error to that
13 aspect of the hearings officer’s decision in his first assignment of error. Although petitioner
14 apparently did not make the argument below, he now argues to us in the alternative that the
15 denied parts of the proposal are also properly viewed and approved as *accessory uses* to the
16 proposed church use.⁸ In his second assignment of error, petitioner assigns error to the
17 hearings officer’s failure to allow those parts of the proposal as accessory uses to the
18 proposed church. We turn to the second assignment of error first.

19 **A. Must the Rectory, Convent and Office/Dormitory be Allowed as Church**
20 **Accessory Uses?**

21 ORS 215.283(1) lists a large number of nonfarm uses that are allowed outright in
22 EFU zones. ORS 215.283(1)(b) allows “[c]hurches and cemeteries in conjunction with

⁷For example, in the present case, the hearings officer apparently viewed the five private study/prayer rooms as part of the church even though they will not be used for church services.

⁸The county did not submit a brief in this matter. Intervenors do not argue that petitioner waived his right to raise this issue by failing to raise it below.

1 churches.”⁹ Churches are allowed in the county’s EFU zone by Jackson County Land
2 Development Ordinance (LDO) 218.030(12)(D), which parallels ORS 215.283(1) and the
3 LCDC rules that limit approval of churches on high value farm land and on land within three
4 miles of an urban growth boundary.¹⁰ LDO 00.040(4) provides the following definition:

5 “ACCESSORY BUILDING, STRUCTURE, OR USE: A building, structure,
6 or use which is necessary for the operation or enjoyment of a lawful use, and
7 appropriate and subordinate to such lawful use. *A use which involves an*
8 *increase in the number of dwelling units in a building, or on a lot, beyond that*
9 *which is permitted outright in the district, or which constitutes, in effect, the*
10 *conversion of a use to one not permitted in the district, shall not be*
11 *considered an accessory use.” (Emphasis added.)*

12 Petitioner reads LDO 218.030(12)(D) and LDO 00.040(4) together to authorize the rectory,
13 convent and office/dormitory as church accessory buildings, structures or uses, even if they
14 are not properly viewed as church structures or uses.¹¹ Petitioner bolsters his accessory
15 church use argument by citing a number of decisions from other jurisdictions that generally

⁹The Land Conservation and Development Commission (LCDC) has adopted administrative rules that prohibit new churches and associated cemeteries on high value farm land and on rural lands within three miles of urban growth boundaries (UGBs). The subject property is not high value farm land and is more than three miles from a UGB. OAR 660-033-0120 Table 1.

¹⁰As relevant, LDO 218.030(12) provides:

“The following uses shall be permitted subject to review through a pre-application conference[:]

“* * * * *

“(D) Churches and cemeteries in conjunction with churches, except on land that qualifies as High Value Farm Land as defined in Subsection 218.025(14) where only existing facilities may be maintained, enhanced, or expanded, subject to other requirements of law. This use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4.”

¹¹Intervenors dispute that reading of the definition and contend the rectory, convent and office/dormitory would violate the emphasized part of the definition. Our disposition of the second assignment of error makes it unnecessary to resolve intervenors’ contention.

1 support his understanding that the rectory, convent and office/dormitory should be viewed as
2 church accessory uses.¹²

3 Counties may not impose locally adopted barriers to churches or the other uses that
4 are allowed outright under ORS 215.283(1). *Brentmar v. Jackson County*, 321 Or 481, 496,
5 900 P2d 1030 (1995). However, neither may counties adopt zoning ordinances that allow
6 uses that the relevant EFU statutes would not allow. *Kenagy v. Benton County*, 112 Or App
7 17, 20 n 2, 826 P2d 1047 (1992). Therefore, even if petitioner is correct that LDO 00.040(4)
8 can be interpreted expansively to allow accessory uses that are not otherwise allowed in the
9 applicable county zoning district if they are shown in individual cases to be “necessary,”
10 “appropriate and subordinate” to an allowed use in the zoning district, the same is not true
11 for the county’s EFU zone.¹³ The county may not expand the uses that are allowed in its
12 EFU zone to allow uses that would not also be allowed by the statute. Therefore, if the
13 disputed rectory, convent and office/dormitory are allowed uses in the county’s EFU zone,
14 they are allowed uses because they are properly viewed as “churches” under ORS
15 215.283(1)(b) and the county’s parallel provision at LDO 218.030(12)(D), not because LDO
16 00.040(4) expands the list of allowable uses in the county’s EFU zone to allow church
17 “accessory building[s], structure[s], or use[s].”

¹²*City of Las Cruces v. Huerta*, 102 NM 182, 692 P2d 1331 (1984) (operation of a parochial school found to require a special permit under zoning ordinance and court rejected argument that parochial school should be allowed without the special permit as a church accessory use); *Havurah v. Zoning Bd. Of Appeals*, 177 Conn 440, 418 A2d 82 (1979) (nontraditional synagogue’s use of building for overnight accommodations all days of the week found to constitute church accessory use under applicable zoning ordinance); *Overbrook Farms Club v. Zoning Board*, 351 Pa 77, 40 A2d 423 (1945) (conversion of one single-family dwelling to use as a dwelling, rabbi’s office and synagogue found to be permissible in a zoning district that allowed single-family dwellings, offices and places of worship); *Richmond Heights v. Presbyterian Church*, 764 SW2d 647 (1989) (daycare center on church property found to qualify as a church accessory use under broad zoning ordinance definition of accessory use); *Board of Zoning Appeals v. Wheaton*, 76 NE2d 597 (1948) (proposal to construct housing for nuns who would teach in a church’s parochial school must be approved under zoning district that allowed construction of churches and schools).

¹³LDO 00.040(4) is a general provision and applies generally to all county zoning districts.

1 For essentially the same reason, the decisions from other jurisdictions that petitioner
2 cites lend no support to his argument that the rectory, convent and office/dormitory must be
3 allowed as accessory church uses under ORS 215.283(1)(b) and LDO 00.040(4). Decisions
4 that interpret zoning ordinances that (1) are worded differently than ORS 215.283(1)(b) and
5 (2) are structured differently than ORS 215.283 have little or no bearing on the meaning and
6 scope of ORS 215.283(1)(b). *See Anderson v. Peden*, 284 Or 313, 315, 587 P2d 59 (1978)
7 (“Zoning law is not common law but a branch of state and local legislation and
8 administrative law, created by particular statutes, rules, charters, comprehensive plans,
9 ordinances, and resolutions * * *.”).

10 We repeat that we recognize that what the legislature meant in using the undefined
11 word “church” in ORS 215.283(1)(b) is sufficiently ambiguous that a particular building or
12 use might arguably be described as either a church building or a building accessory to a
13 church building. However, for purposes of the required legal analysis in this case, the
14 meaning of LDO 00.040(4) is irrelevant, because whatever it means it may not expand the
15 meaning of the word “church” in ORS 215.283(1)(b) to allow buildings, structures or uses
16 that the statutory term itself does not include.

17 It is the meaning of “church” in ORS 215.283(1)(b) that controls. Petitioner’s second
18 assignment of error is based on the faulty premise that LDO 00.040(4) could operate to
19 expand the universe of uses allowable under ORS 215.283(1)(b). In our discussion of the
20 first assignment of error below, we address petitioner’s closely related argument that the
21 word “church” in ORS 215.283(1)(d) is itself sufficiently broad to include church accessory
22 uses generally and the proposed rectory, convent and office/dormitory specifically.

23 The second assignment of error is denied.

1 **B. Are the Rectory, Convent and Office/Dormitory Properly Viewed as**
2 **“Churches” Within the Meaning of ORS 215.283(1)(b)?**

3 As we noted earlier, the word “church” is not defined in ORS chapter 215.¹⁴ In
4 support of his argument that the rectory, convent and office/dormitory are properly viewed as
5 church buildings, petitioner relies heavily on two cases. The first case is a 1917 Oregon
6 Supreme Court decision. *Scott Co. v. Roman Catholic Archbishop*, 83 Or 97, 163 P 88
7 (1917). That case involved interpretation of a deed restriction that limited use of lots in the
8 Laurelhurst neighborhood of Portland to residential use. The Laurelhurst Company, which
9 drafted and included the deed restriction, reserved a right to waive the restriction to allow
10 buildings “to be used for school or church purposes.” 83 Or at 105. One of the issues in that
11 case was whether the company’s reserved right to allow buildings used for church purposes
12 included a right to allow a convent. The Supreme Court concluded that it did:

13 “* * * The word ‘church’ applies not only to a building used for worship, but
14 to any body of Christians holding and propagating a particular form of belief,
15 as, for instance, the Baptist Church, the Methodist Church, or the Catholic
16 Church; and any building intended to be used primarily for purposes
17 connected with the faith of such religious organization may be said to be used
18 for church purposes. It is a matter of universal, and therefore judicial,
19 knowledge, that associations of nuns, sisters of charity, and the like are as
20 much a part of the organization of the Catholic Church as its priesthood, and
21 that convents are as much a part of its organization and church policy as
22 church buildings; and in this sense the erection of a convent is as much a
23 church purpose as a house of general worship. * * *” 83 Or at 108-09.

¹⁴*Webster’s Third New Int’l Dictionary*, 404 (unabridged ed 1993) defines “church,” in part, as follows:

“**1:** a building set apart for public esp. Christian worship <visit the ~es of a city>: as **a:** the principal house of a parish **b:** a house of worship in Great Britain for members of the established or formerly established church as distinguished from those of nonconformists and Roman Catholics – compare CHAPEL * * * **2:** a place of worship of any religion * * * **3:** a church service: divine worship or religious service in a church: the church building with the service going on in it <go to ~> <attend ~> [.]”

LDO 00.040(50) provides the following definition:

“CHURCH: a place of worship and religious training.”

1 The above language interpreting the meaning of “church purposes” in the context of a
2 developer’s reserved right to waive a deed restriction lends some support to petitioner’s
3 broad interpretation of ORS 215.283(1)(b), but not much support. Although deciding
4 whether operating a convent constitutes use of a building for a “church purpose” is similar to
5 deciding whether a convent is a “church,” it is not the same question. Moreover interpreting
6 a deed restriction that limits use of residential property is different from construing the word
7 “church” in its statutory context.¹⁵ Finally, *Scott Co.* predates the relevant statutes in this
8 case and modern land use planning enabling statutes generally.

9 Petitioner also relies heavily on the Court of Appeals’ opinion in *Damascus Comm.*
10 *Church v. Clackamas Co.*, 45 Or App 1065, 610 P2d 273, *rev den* 289 Or 588 (1980), *appeal*
11 *dismissed* 450 US 902, 101 S Ct 1336, 67 L Ed 2d 326 (1981), to support his arguments that
12 the convent, rectory and office/dormitory are properly viewed as a church. In *Damascus*
13 *Comm. Church*, the church had previously been granted a conditional use permit for a church
14 under a zoning ordinance that allowed “churches” as a conditional use. 45 Or App at 1068.
15 The church constructed both a building for worship and a parochial school. The central legal
16 issue was whether that conditional use permit for the church also authorized the parochial
17 school. In arguing that it did, the church relied principally on *City of Concord v. New*
18 *Testament Baptist Church*, 118 NH 56, 382 A2d 377 (1978) to argue successfully to the trial
19 court that the parochial school should be viewed as part of the church. The Oregon Court of
20 Appeals reversed and provided the following explanation for why *City of Concord* did *not*
21 support the church’s legal position:

22 “[In *City of Concord*,] the New Hampshire Supreme Court concluded that a
23 parochial school was a facility ‘usually connected with a church,’ and was
24 therefore a permitted use under a city ordinance authorizing the operation of
25 churches and ‘facilities usually connected with a church’ in the area in
26 question. The court stated:

¹⁵We discuss that statutory context more fully below.

1 “* * * The question of what facilities are “usually” connected
2 or associated with a church could be considered from the
3 viewpoint of the specific church, of churches generally, or of
4 the city. The problem with the latter view is that it involves
5 governmental determination of propriety in religious matters
6 and thus could infringe on the free exercise of religion * * *.’
7 118 NH at 58, 382 A2d at 379.

8 “The court then summarily reviewed the historical background of religious
9 educational facilities in New England and in Pennsylvania, and concluded:

10 “* * * While every church may not “usually” have a full-time
11 school associated with it, we hold that the Heritage Christian
12 School is a proper permitted use connected with, and is a part
13 of, the New Testament Baptist Church.’ 118 NH at 60, 382
14 A2d at 380.

15 “The *City of Concord* case is not analogous to the present one. Unlike the
16 ordinance considered by the New Hampshire court, the county’s ordinance
17 here does not refer to ‘facilities usually connected with a church.’ *It may be*
18 *that certain types of ancillary uses ‘usually connected with a church’ are*
19 *implicitly encompassed by conditional use permits for churches issued under*
20 *the county ordinance, notwithstanding the absence of language in the*
21 *ordinance so providing.* However, we need not decide that question here,
22 because it is clear that full-time parochial schools are not among the uses
23 which could be regarded as implicit in a conditional use permit for a church
24 under this ordinance. The section of the ordinance governing conditional uses
25 treats churches under one subsection and parochial and private schools under
26 other subsections. The minimum conditions for the church use and for the
27 school use differ. Thus, the ordinance clearly manifests the county’s
28 legislative decision to make the granting of and criteria for conditional use
29 permits for churches and for parochial schools different and independent. We
30 accordingly conclude that, under the ordinance, a conditional use permit for a
31 church does not automatically authorize the operation of a full-time parochial
32 school.” 45 Or App at 1070-71 (footnotes and original emphasis omitted;
33 emphasis added).

34 Petitioner relies exclusively on the emphasized language in the above-quoted
35 language from *Damascus Comm. Church*, but ignores the above-quoted language that
36 precedes and follows the emphasized language. Petitioner’s argument here mirrors the
37 church’s argument in *Damascus Comm. Church* and fails for similar reasons.

38 Simply stated, *Damascus Comm. Church* holds that under a zoning scheme that
39 separately authorizes churches and parochial schools, approval of a church does not also

1 constitute approval of a parochial school. *Damascus Comm. Church* does not directly
2 address whether a zoning scheme that authorizes churches, but does not separately authorize
3 church-related accessory uses such as the proposed rectory, convent and office/dormitory
4 might be interpreted to allow such church-related accessory uses. The *dictum* that petitioner
5 cites and relies on lends some support to his position.

6 Intervenor's rely on the holding in *Damascas Comm. Church* and the existence in the
7 EFU zoning statutes of separate provisions that authorize farm dwellings and nonfarm
8 dwellings to argue that the holding in *Damascus Comm. Church* is actually inconsistent with
9 petitioner's argument under the first assignment of error.¹⁶ Neither petitioner's reliance on
10 the above-noted *dictum* in *Damascas Comm. Church* nor intervenors' attempt to extend the
11 holding of that case to the decision before us in this appeal is persuasive.

12 The legislature's intent in using the word "church" in ORS 215.283(1)(b) is a
13 question of statutory construction. Although interpretations of the word "church" and similar
14 or related terms in other contexts may have some bearing on resolving the meaning of that
15 word in ORS 215.283(1)(b), *Damascas Comm. Church* makes it clear that in resolving
16 whether the legislature intended ORS 215.283(1)(b) to authorize both churches and related
17 accessory uses like rectories, convents and offices/dormitories our initial focus must be on
18 the text and context of ORS 215.283(1)(b).

19 Our interpretation of ORS 215.283(1)(b) is governed by *PGE v. Bureau of Labor and*
20 *Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). Turning to the language of ORS
21 215.283(1)(b) itself, the scope of the term "church" is ambiguous. The LDO definition and
22 the dictionary definition of church quoted earlier at n 14 do not offer much assistance in

¹⁶Intervenors' argument requires two steps. Intervenors first suggest that the rectory, convent and office/dormitory could be approved as nonfarm dwellings. Based on their assumption that the rectory, convent and office/dormitory could be approved as nonfarm dwellings, intervenors rely on *Damascus Comm. Church* to argue that because different sections of the EFU statute authorize nonfarm dwellings under different approval standards, approval of a church could not include approval of the rectory, convent and office/dormitory under the holding in *Damascus Comm. Church* discussed in the text.

1 determining whether the proposed uses and structures at issue in this appeal should be
2 viewed as church uses and structures. These definitions of “church” are sufficiently open-
3 ended and ambiguous that the likely picture that those definitions evoke will vary
4 dramatically from person to person.

5 Turning to relevant context, ORS 215.283(1)(b) itself offers the most immediate
6 context. ORS 215.283(1)(b) separately and expressly authorizes two uses: (1) “churches”
7 and (2) “cemeteries in conjunction with churches.” The legislature’s choice to authorize
8 “cemeteries in conjunction with churches” separately and expressly, while not separately and
9 expressly authorizing rectories, convents, offices/dormitories, or other uses that are
10 frequently constructed in conjunction with churches, is at least some indication that such uses
11 are not outright permitted uses in EFU zones under ORS 215.283(1)(b).

12 The suggestion just noted is strengthened by the somewhat different approach the
13 legislature took in authorizing schools in ORS 215.283(1)(a), which permits “[p]ublic or
14 private schools, *including all buildings essential to the operation of a school.*” (Emphasis
15 added.) This somewhat open-ended provision in ORS 215.283(1)(a) would potentially
16 allow approval of a variety of accessory, school-related buildings. The legislature’s choice
17 to include a relatively open-ended provision for other buildings “essential to the operation of
18 a school” while including only a limited provision for “cemeteries in conjunction with
19 churches,” undercuts petitioner’s reading of ORS 215.283(1)(b) to grant open-ended
20 approval for uses that are accessory to churches.

21 We next note that the legislature took a still different approach in authorizing
22 wineries. Unlike its approach with schools and churches, the legislature adopted a very
23 detailed explanation of the features that can or must be included in a winery in the EFU zone.

1 ORS 215.452.¹⁷ This statute shows that the legislature is capable of imposing detailed
2 guidelines where it views particular features of an allowed use as either critical or improper.

3 Finally, a common theme in the three buildings that the hearings officer concluded
4 could not be allowed as church buildings is that they are to be used in large part for
5 residential purposes. The legislature has specifically provided for and regulates a number of

¹⁷ORS 215.452 provides, in relevant part, as follows:

- “(1) A winery, authorized under ORS 215.213 (1)(s) and 215.283 (1)(q), is a facility that produces wine with a maximum annual production of:
 - “(a) Less than 50,000 gallons and that:
 - “(A) Owns an on-site vineyard of at least 15 acres;
 - “(B) Owns a contiguous vineyard of at least 15 acres;
 - “(C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
 - “(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or
 - “(b) At least 50,000 gallons and no more than 100,000 gallons and that:
 - “(A) Owns an on-site vineyard of at least 40 acres;
 - “(B) Owns a contiguous vineyard of at least 40 acres;
 - “(C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or
 - “(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph.
- “(2) The winery described in subsection (1)(a) or (b) of this section shall allow only the sale of:
 - “(a) Wines produced in conjunction with the winery; and
 - “(b) Items directly related to wine, the sales of which are incidental to retail sale of wine on-site. Such items include those served by a limited service restaurant, as defined in ORS 624.010.
- “(3) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards, described in subsection (1)(a) and (b) of this section, have been planted or that the contract has been executed, as applicable.”

1 different residential uses in the EFU zone.¹⁸ The legislature’s failure to provide specifically
2 for church-related residences is some indication that the legislature did not intend to
3 authorize church accessory residential uses. Even more to the point, the 2001 Legislature
4 adopted ORS 215.441 to limit local authority to deny land use approval for churches and
5 related customary activities. *See* n 4. ORS 215.441 did not take effect until January 1,
6 2002, after the application was submitted in this appeal and after the challenged decision was
7 issued by the hearings officer. As previously noted, petitioner does not argue that ORS
8 215.441 applies directly in this case or that the hearings officer’s decision violates the statute
9 so we do not consider that question. However, we believe ORS 215.441 does provide
10 context for interpreting ORS 215.283(1)(b) and specifically provides contextual support for
11 the hearings officer’s view that the church buildings that are allowable under ORS
12 215.283(1)(b) do not include buildings that serve a significant residential function, as each of
13 the rejected parts of the proposal do. ORS 215.441(1) refers to churches, synagogues,
14 temples, mosques, chapels and meeting houses as “nonresidential place[s] of worship.” We
15 have no reason to believe the word “church” in ORS 215.441 means something different than
16 the word “church” in ORS 215.283(1)(b). The legislature’s use of the word “church” in ORS
17 215.441 suggests that the legislature views residential buildings that may commonly
18 accompany churches as being something other than churches.

19 Given the lack of textual or contextual support for petitioner’s broad reading of ORS
20 215.283(1)(b) and the existence of some textual and contextual support for a narrow
21 construction that would not encompass the proposed rectory, convent and office/dormitory
22 that petitioner proposes under ORS 215.283(1)(b), we are mindful of the Court of Appeals’

¹⁸ORS 215.278 (farmworker dwellings); 215.281 and 215.282 (dwellings in conjunction with commercial dairy farms); 215.283(1)(e) (dwellings for farm operator’s relatives); 215.283(1)(f) (“dwellings * * * customarily provided in conjunction with farm use”); 215.283(1)(o) (replacement dwelling); 215.283(1)(s) (“[a]lteration, restoration, or replacement of a lawfully established dwelling”); 215.283(2)(l) (temporary hardship dwelling); 215.283(2)(o) (residential home); 215.283(2)(u) (room and board arrangements); 215.284 (nonfarm dwellings).

1 frequently stated admonition that the EFU zoning statutes should be interpreted, where
2 possible, to limit approval of nonfarm uses on agricultural lands. *Utsey v. Coos County*, 176
3 Or App 524, 573, 32 P3d 933 (2001) (Deits, J., dissenting), *rev allowed* 334 Or 75 (2002);
4 *Warburton v. Harney County*, 174 Or App 322, 328-29, 25 P3d 978, *rev den* 332 Or 559
5 (2001); *McCaw Communications, Inc. v. Marion County*, 96 Or App 552, 555, 773 P2d 779
6 (1989); *Hopper v. Clackamas County*, 87 Or App 167, 172, 741 P2d 921 (1987), *rev den*
7 304 Or 680 (1988).

8 Based on the language of ORS 215.283(1)(b) and the relevant statutory context
9 discussed above, we conclude the church buildings authorized by ORS 215.283(1)(b) do not
10 include residential church buildings such as the proposed rectory, convent, and
11 office/dormitory. This is not to say that a rectory, convent and office/dormitory could not be
12 allowed in conjunction with the church buildings. It simply means that ORS 215.283(1)(b)
13 does not allow them outright in the EFU zone as it does churches. It may be, as intervenors
14 argue, that the proposed rectory, convent and office/dormitory could also be allowed as
15 nonfarm dwellings. If not, an exception to Goal 3 would be required to allow the subject
16 property to be rezoned to allow the desired use of the property. But, in view of the context in
17 which ORS 215.283(1)(b) appears, petitioner’s broad understanding of the word “church” in
18 ORS 215.283(1)(b) is untenable.

19 The first assignment of error is denied.

20 **THIRD ASSIGNMENT OF ERROR**

21 Petitioner’s entire argument under the third assignment of error is as follows:

22 “The decision infringes on Petitioner’s religious activities by denying
23 Petitioner the use of the church office, dormitory, convent and rectory. * * *
24 The Oregon Constitution states:

25 “‘Section 3. Freedom of religious opinion. No law shall in
26 any case whatever control the free exercise, and enjoyment of
27 religious * * * opinions, or interfere with the rights of
28 conscience.’ Oregon Constitution, Art. I, §[3].

1 “* * * Consequently, the decision’s disallowance of the proposed church
2 office, rectory, dormitory and convent, constitute an unconstitutional
3 (Oregon) infringement of Petitioner’s free exercise of religion.” Petition for
4 Review 18-19.

5 In support of the above-quoted argument, petitioner cites *Scott Co.* and *Damascus*
6 *Comm. Church*, but makes no attempt to explain why he believes either of those cases
7 supports his argument that the challenged decision violates Article I, section 3, of the Oregon
8 Constitution.

9 As was the case with his accessory church use argument, it does not appear that
10 petitioner asserted his Article I, section 3 argument below and the challenged decision does
11 not address the argument. In any event, *Scott Co.* lends no support to petitioner’s argument,
12 and *Damascus Comm. Church* appears to be contrary to petitioner’s argument under this
13 assignment of error.¹⁹ As the hearings officer interpreted ORS 215.283(1)(b), it allows the
14 main chapel, private chapel and private study/prayer rooms outright, but it does not allow the
15 proposed rectory, convent or office/dormitory outright. We agree with that interpretation.
16 Although the petition for review might be read to suggest in a very general way that an on-
17 site rectory, convent and office/dormitory are an integral part of the church’s right to free
18 exercise of religion, petitioner makes no attempt under this assignment of error or elsewhere
19 to explain why that may be the case. There is no argument that the rectory, convent and
20 office/dormitory must be located on the same 63-acre site as the chapels and study/prayer
21 rooms or that nearby rural lands that are not zoned EFU are either unavailable or could not

¹⁹In rejecting the church’s argument that the county’s failure to view conditional use approval of a church as also approving the church’s parochial school violated the free exercise clause, the Court of Appeals explained:

“The county ordinance is clearly intended as land use regulation, and it permits both churches and parochial schools, but not necessarily on the same site if the requirements are not met. There is no contention that the county, as a matter of practice, has not permitted parochial schools or has discriminated in favor of, or against, any school sponsored by any particular sect. A full-time school is a more intensive use than a church, and there is no constitutional prohibition against the county’s adopting different requirements for the two uses.” 45 Or App 1073.

1 accommodate the rectory, convent or office/dormitory.²⁰ Even if petitioner could establish
2 that the rectory, convent and office/dormitory are an integral part of the proposal and must be
3 located on the 63-acre site, as we have already noted, there may be other ways a rectory,
4 convent and office/dormitory could be approved on the subject property.

5 Petitioner's Article I, section 3 argument is not sufficiently developed to warrant
6 further discussion.

7 The third assignment of error is denied.

8 The county's decision is affirmed.

²⁰For example, the county's Farm Residential, Rural Residential and Applegate Rural Residential Districts allow the following as a conditional use:

"Religious retreat facility which may be comprised of a monastery, seminary, a guest room building, a chapel and related structures, subject to site plan review." LDO 220.030(12); 222.030(18); 222A.030(15).