



**MULTNOMAH COUNTY**  
**LAND USE AND TRANSPORTATION PROGRAM**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
<http://www.co.multnomah.or.us/landuse>

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## NOTICE OF DECISION

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This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-2011-1403

**Permit:** Administrative Decision By the Planning Director for a Farm Stand Permit, Verification of a Non-Conforming Use and Road Rules Variance

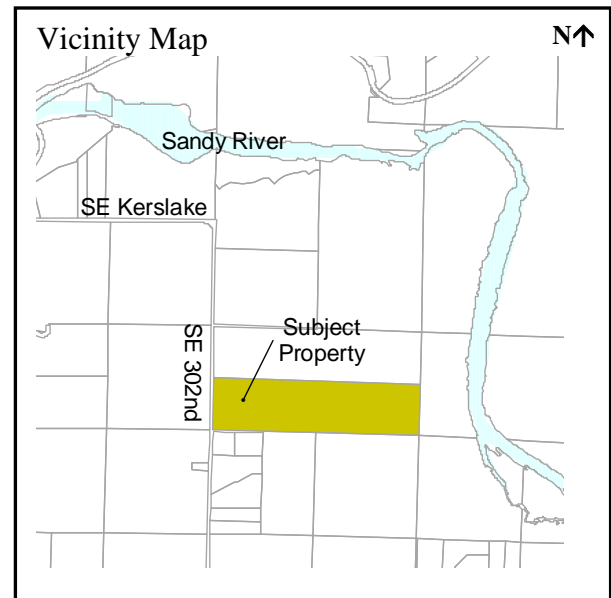
**Location:** 2318 SE 302<sup>nd</sup> Ave  
Tax Lot 1200, Section 05,  
Township 15, Range 5E, W.M.  
#R994050140

**Applicant:** Shelly Burns

**Owner:** Lawrence and Shelly Burns

**Base Zone:** Exclusive Farm Use

**Overlays:** Significant Environmental Concern – Habitat (SEC-h) and Scenic Waterway (SEC-sw).



**Summary:** Approval for a Farm Stand Permit under MCC 36.2625(H), a Verification of Non-Conforming Use for front yard setbacks to a barn and dwelling, and a Road Rules Variance to address the following: request for multiple access points, a variance to the driveway spacing standards of 100 feet for a Rural Collector Road Classification, and a variance from driveway width requirements of 20-35 feet for commercial and agricultural uses.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective Tuesday, May 31, 2011 at 4:00 PM.

Issued by:

By: \_\_\_\_\_  
Don Kienholz, Planner

For: Karen Schilling- Planning Director    Brian Vincent – County Engineer  
Date: Tuesday, May 17, 2011

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Don Kienholz, Staff Planner at 503-988-3043, ext. 29270.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, May 31, 2011 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): 37.0560 Full Compliance; 36.0005 Lot of Record; 36.2625(H) Farm Stands; 36.2660 Dimensional Requirements; 36.2675 Lot of Record; 36.4100 through MCC 36.4215; 36.7055(C)(3) through (7); MCRR 4.000 Access to Public Roads; MCRR 16.000 Variance from County Standards and Requirements.

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse> or <http://web.multco.us/transportation-planning>.

### **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690(B) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

### **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

**Note:** Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, Don Kienholz, at (503) 988-3043 ext. 29270, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building

permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 may be required.

- 1. Any addition of fee-based activities or retail sales of incidental items shall require a modification to this permit or a re-application for a Farm Stand in order to provide the County the necessary opportunity to review the applicable standards [MCC 36.2625(H)(1)].**
- 2. Prior to building permit sign-off, the applicant will finalize plans for closing the northern dwellings second access point (the access closest to the farm stand). The closure will include submittal of an updated site plan showing the closed access point and detailing the method of closing the access. The owner will need to contact Joanna Valencia at 503-988-5050 x29637 for details [MCRR 16.200(A)].**
- 3. Prior to building permit sign-off, the owner shall dedicate 10 feet of right-of-way along the site's SE 302nd Ave frontage to Multnomah County for road purposes. Contact Pat Hinds at (503) 988-5050 Ext. 83712 to complete the easement dedication [MCRR 16.200(C) and MCRR 6.100(A)].**
- 4. The owner shall talk to the City Gresham Building Department to determine if the structure needs building permits. Within 30 days of this decision becoming final, the owner shall provide Multnomah County Land Use Planning with a letter from the City of Gresham indicating building permits are not required; or within 30 days of the decision becoming final, the owner shall submit plans to Multnomah County Land Use Planning for Zoning Sign-off for Building Permit Review. Failure to meet the 30-day requirement may result in code compliance action [MCC 37.0560].**

**Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### **1.00 Project Description:**

**Staff:** The applicant is seeking a farm stand permit to retroactively approve the construction of a 1296 square foot building on site used to store and sell the family’s farm produce. The applicant is also seeking approval for a Road Rules Variance to permit additional access points onto a County maintained road that have historically been used on the property but were placed prior to the requirements of access permits. Lastly, the applicant is seeking a Verification of a Non-Conforming Use by the Planning Director for a large barn that is roughly 5-feet from the front property line as well as a dwelling that is 25-feet from the front property line.

The general nature of the farm stand is a limited duration retail sales use with the majority of the business taking place during the summer months. Additional use of the building occurs sporadically during the traditional off-season. During the spring and fall, the use is similar to a u-pick operation where customers enter the unmanned building, choose their produce and leave payment in a drop off box. During the busier berry seasons, an employee(s) (often family members) is present to run the stand. In fall it converts back to a mostly unmanned farm stand with customers leaving payment in a drop off box.

The applicant has not proposed to include any promotional activities, gatherings, or incidental sales as part of the farm stand. The farm stand is a minimal scale farm stand that also include incidental retail sales, activities, festivals, and other forms of agri-tainment.

### **2.00 Property Description & History:**

**Staff:** The subject property is zoned Exclusive Farm Use (EFU) and has a small portion of the eastern end within the Significant Environmental Concern Overlay for Habitat and for Scenic Waterways related to the Sandy River. There are no recent land use approvals on the property.

### **3.00 Base Zone and Farm Stand Criteria:**

#### **MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.**

**Except as provided in subsection (A), the County shall not make a land use decision or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.**

**(A) A permit or other approval, including building permit applications, may be authorized if:**

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement**

**Staff:** There currently is an open compliance case on the property (UR 09-028) for construction of the farm stand building without permits. Additionally, there appears to be 2 structures encroaching into the

front yard setbacks; two dwellings on the subject property when in general the code only allows one per Lot of Record; and multiple access points onto the County road while the Multnomah County Road Rules allow one per property.

This decision reviews the farm stand structure in Finding #4 and conditions approval on the structure obtaining proper building permits. The applicant is seeking approval for the multiple access points through a Road Rules Variance Request in Finding #8.

Dwellings in the EFU zone are treated differently than in exception zones such as Rural Residential or Multiple Use Agriculture-20. In the EFU zone, multiple homes can exist if they were *Lawfully Established*. Since both homes were built in the 1940's, they are lawfully established since there were no limits on the number of homes on a property at that time.

Approval of this application brings the property into full compliance by remedying the violations. The farm stand building is approved and will receive building permits as a condition of approval. The setbacks of the structures are permitted in the verification of non-conforming use section below under Finding #7 and the dwellings are lawfully established.

#### **4.00 Base Zone and Farm Stand Criteria:**

##### **A. MCC 36.2625 Review Uses**

##### **(H) Farm Stands when found that:**

1. **(1) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items, and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and**

**Staff:** The applicant has proposed a farm stand to sell farm products to the general public that are grown on the subject property and other properties in the area owned by the family. Products will be sold as a U-pick operation with weighing and payment in the farm stand or by purchasing pre-picked products stored in the farm stand. Products include several types of berries, hay, corn, tomatoes and other vegetables, as well as landscape plants and livestock. No retail sales of incidental items have been proposed, so no analysis of the annual sales of the farm stand have been conducted. The applicant is not proposing fee-based activities as part of the application.

If in the future the applicant wishes to include incidental retail sales or fee-based activities as part of the farm stand, they will need to apply to the County for a modification of this permit so that all applicable standards and requirements can be adequately reviewed and addressed.

*Criterion met.*

2. **(2) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.**

**Staff:** The proposed structure would be used solely for the sale of farm products produced on the farm or from nearby farms. It is not proposed to be designed as a residence or for any other uses other than selling farm products. No banquets, public gathering or public entertainment events shall be allowed in the structure.

*Criterion met.*

3. **(3) As used in this section, “farm crops or livestock” includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, “processed crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.**

**Staff:** The applicant’s products sold on site as described in their narrative (Exhibit A.11) meets the definition of “farm crops or livestock.”

*Criterion met.*

4. **(4) As used in this section, “local agricultural area” includes Oregon or an adjacent county in Washington that borders Multnomah County.**

**Staff:** The products sold at the farm stand are from properties located in the community that meet the definition of “local agricultural area.”

*Criterion met.*

**B. MCC 36.2660 DIMENSIONAL REQUIREMENTS**

1. **(A) Except as provided in MCC 36.2675, the minimum lot size for new parcels shall be 80 acres in the EFU district.**

**Staff:** No new parcels are being created so the minimum lot size does not apply.

2. **(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.**

**Staff:** No new parcels are being created so the minimum lot size does not apply.

3. **(C) Minimum Yard Dimensions - Feet**

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**Staff:** The structure is proposed to be more than 70-feet from the front property line. As seen during the site visit, the structure is a single story building and well under 35-feet in height. The farm stand is also more than 100-feet to either side property line or the rear property line.

*Criterion met.*

4. **(D) The minimum yard requirement shall be increased where the yard abuts a street having in-sufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

**Staff:** The property is adjacent to SE 302<sup>nd</sup> Ave which only has 40-feet of right-of-way. The minimum County standard is 50-feet of right-of-way. The property owners’ share of the right-of-way required to bring it up to County standard would be 5-feet. So, the front yard setback needs to be 35-feet rather than the typical 30-feet. As seen on the site plan, the proposed structure is setback more than 70-feet from the current property line and would not encroach if the additional 5-feet were dedicated to the Right-of-Way.

*Criterion met.*

## **5.00 Lot of Record**

### **MCC 36.2675 LOT OF RECORD.**

**(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district a Lot of Record is either:**

**(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or**

**(2) A group of contiguous parcels or lots:**

**(a) Which were held under the same ownership on February 20, 1990; and**

**(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.**

**1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.**

**2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same owner-ship grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.**

**4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or**

**(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.**

**(4) Exception to the standards of (A)(2) above:**

**(a) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Re-cord that remains separately transfer-able, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.**

**(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:**

**(1) July 10, 1958, F-2 zone applied;**

**(2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;**

**(3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;**

**(4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, Ord. 236 & 238;**

**(5) February 20, 1990, lot of record definition amended, Ord. 643;**

**(6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;**

**(7) May 16, 2002, Lot of Record section amended, Ord. 982;**

**(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 36.2690 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**(D) The following shall not be deemed a Lot of Record:**

**(1) An area of land described as a tax lot solely for assessment and taxation purposes;**

**(2) An area of land created by the foreclosure of a security interest;**

**(3) A Mortgage Lot.**

**(4) An area of land created by court decree.**



## **MCC 36.0005 Definitions**

**Lot of Record** – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 36.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) "Satisfied all applicable land division laws" shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Re-cording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.
2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

**Staff:** The subject property is just under 40-acres in size. While 40-acres does not meet the current minimum lot size standard, it does mean that it cannot be considered aggregated to any of the adjacent parcels since they are all over 19-acres in size. Therefore, the property would be a stand alone Lot of Record provided it met all zoning and land division rules in place at the time it was first placed in the current configuration.

The subject property shows up on the County's 1962 zoning map (Exhibit B.8) in the same tax lot configuration. The 1962 zoning map was legislatively adopted as the County's first acknowledged zoning map retroactive to 1958. It is also assumed parcel configurations were accurately displayed for properties between 1958 and 1962. Since the property is on the 1962 tax lot map, it is clear it was placed into its current configuration prior to the adoption of the F-2 zoning in 1958. At the time, the subject property was zoned F-2, which has a 2-acre minimum lot size and no other requirements. The subject parcel met the minimum lot size.

Additionally, prior to 1979 there were no partition requirements for the creation of three or fewer parcels within one calendar year. Since the subject property was not part of a subdivision and was created before 1979, it met all land division rules in place at the time it was created.

*The subject property is a Lot of Record.*

## **6.00 Off-Street Parking Requirements**

### **A. MCC 36.4130 LOCATION OF PARKING AND LOADING SPACES**

**(A) Parking spaces required by this Section shall be provided on the lot of the use served by such spaces.**

**(B) Exception – The Planning Director may authorize the location of required parking spaces other than on the site of the primary use, upon a written finding by the Director that:**

- (1) Parking use of the alternate site is permitted by this Ordinance;**
- (2) The alternate site is within 350 feet of the use;**
- (3) There is a safe and convenient route for pedestrians between the parking area and the use;**
- (4) Location of required parking other than on the site of the use will facilitate satisfaction of one or more purposes or standards or requirements of this Chapter; and,**
- (5) There is assurance in the form of a deed, lease, contract or other similar document that the required spaces will continue to be available for off-street parking use according to the required standards.**

**(C) Loading spaces and vehicle maneuvering area shall be located only on or abutting the property served.**

**Staff:** The applicant has provided a site plan that shows six parking spaces for customers and employers (Exhibit A.6). The subject site has a maneuvering area just west of the parking spaces.

*Criteria met.*

### **B. 36.4165 DESIGN STANDARDS: SCOPE**

**(A) The design standards of this section shall apply to all parking, loading, and maneuvering areas except those serving a single or two-family residential dwelling or mobile home on an individual lot.**

**(B) All parking and loading areas shall provide for the turning, maneuvering and parking of all vehicles on the lot. After July 26, 1979 it shall be unlawful to locate or construct any parking or loading space so that use of the space requires a vehicle to back into the right-of-way of a public street.**

**Staff:** There is an area measuring roughly 70-feet by 100-feet for maneuvering and parking. No vehicle will need to back onto the public street as a result of the maneuvering room.

*Criteria met.*

**C. MCC 36.4170 ACCESS**

**(A) Where a parking or loading area does not abut directly on a public street or Private Street approved under MCC 36.7700 et. seq., the Land Division Chapter, there shall be provided an un-obstructed paved drive not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.**

**(B) Parking or loading space in a public street shall not be counted in fulfilling the parking and loading requirements of this section. Required spaces may be located in a private street when authorized in the approval of such private street.**

**Staff:** The subject property and access to the parking area about a public street. No parking or loading spaces are located within the public street or front “yard.”

*Criterion met.*

**D. MCC 36.4175 DIMENSIONAL STANDARDS**

**1. (A) Parking spaces shall meet the following requirements:**

**(1) At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.**

**(2) Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.**

**(3) For parallel parking, the length of the parking space shall be 23 feet.**

**(4) Space dimensions shall be exclusive of access drives, aisles, ramps or columns.**

**Staff:** Six parking spaces are provided and shown on the site plan, although only four are required. All six measure 10-feet wide and 20-feet long as seen on the site plan (Exhibit A.6). There are no overhead obstacles or vegetation that would limit vertical clearance.

2. **(B) Aisle width shall be not less than:**

**(1) 25 feet for 90 degree parking,**

**(2) 20 feet for less than 90 degree parking, and**

**(3) 12 feet for parallel parking.**

**(4) Angle measurements shall be between the center line of the parking space and the center line of the aisle.**

**Staff:** There is only one row of parking spaces so there are no aisles. As such, the requirements above are met.

*Criterion met*

3. **(C) Loading spaces shall meet the following requirements:**

**(1)**

<b>District</b>	<b>Minimum Width</b>	<b>Minimum Depth</b>
<b>All</b>	<b>12 Feet</b>	<b>25 Feet</b>

**(2) Minimum vertical clearance shall be 13 feet.**

**Staff:** No loading areas are depicted on the site plan. Because the proposed use is a Farm Stand and the product sold comes mostly from on site, there is no need for loading spaces since product is not shipped in from other parts of the state or country. Some product is brought in from other parcels in the immediate area owned by the family but it is not shipped in on container trucks or other vehicles that require a formal loading dock or space.

A barn to the south of the farm stand is utilized for the farm and has vehicles going in and out of it; however, the barn is roughly 55-feet from the closest parking space. Such a distance provides ample space for maneuvering without causing potential conflicts with customers utilizing the parking spaces.

*Criterion met.*

E. **MCC 36.4180 IMPROVEMENTS**

1. **(A) Surfacing**

**(1) All areas used for parking, loading or maneuvering of vehicles shall be surfaced with two inches of blacktop on a four inch crushed rock base or six inches of portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds.**

**(2) Large parking fields for intermittent uses such as amusement parks, race tracks, stadiums, and the like may be surfaced with gravel or grass and spaces may be unmarked if the parking of vehicles is supervised.**

**Staff:** The nature and duration of the farm stand is very limited in scope. During the summer the farm stand has on-site employees that help customers during the U-pick operation. Such work entails weighing products, point of sale as well as overseeing the operation of the fields.

During spring and fall, the farm stand is open but is very limited in its operation. In fact, there are no permanent employees on site during the spring and fall seasons. The owner and family members of the owner operate the farm stand while tending the fields. Generally speaking, during those seasons customers drive up, choose produce on their own that has been placed within the farm stand and drop payment into a collection receptacle without any interaction from the owners or farm employees. Customer numbers are such that it would be hard to tell there even was a farm stand on site. No promotional activities are proposed and the applicant has not proposed selling any incidental items as part of the farm stand.

Taken as a whole, it is clear the proposed farm stand is an intermittent use and very limited in nature and scope. No surfacing is required for such a use as is currently on site and proposed for the farm stand.

*Criterion met.*

2. **(B) Curbs and Bumper Rails**

**(1) All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.**

**(2) The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height and at least three feet from the lot line or any required fence.**

**Staff:** The parking area is not adjacent to the public road. Rather, the parking spaces are located up against the front of the farm stand building as seen on the site plan. Staff conducted a site visit on January 28, 2011 and took photographs of the site (Exhibit B.11). As seen during that site visit, there is a significant buffer of grass and landscaping plants and bushes that separates the maneuvering area associated with the parking from the public street. With no parking occurring in the front 'yard' and a buffer of landscaping separating the maneuvering area from the public street on portions of the property, there is no need or requirement for curbs or bumper rails.

*Criteria met.*

3. **(C) Marking – All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 36.4120, and such marking shall be continually maintained.**

**Staff:** The farm stand has been identified as an intermittent use under MCC 36.4180(A). With being an intermittent use, the parking area does not need to be permanent and paved as provided for under MCC 36.4180(A). Since the parking area is graveled and temporary, parking space markings would not last. Staff finds in this case that since the farm stand is an intermittent use and the parking area is intermittent and not surfaced, that the parking spaces also do not need to be permanent and marked. The applicant may mark the spaces with temporary materials such as rope, or numbered signs, or parking curbs at the front of the spaces at their discretion.

*Criterion met.*

4. **(D) Drainage – All areas for the parking and maneuvering of vehicles shall be graded and drained to provide for the disposal of all surface water on the lot.**

**Staff:** The graveled area used for maneuvering and parking has existed for decades. The property has been a working farm owned by the Burns' family and the area proposed for the parking spaces and maneuvering has been historically used in conjunction with the barn on site and equipment changes. The area is already graded and does not need additional grading. A Stormwater Certificate has been included with the application (Exhibit A.10) noting that a stormwater system is not necessary on site for a 10-year/24-hour storm event.

*Criterion met.*

5. **(E) Covered Walkways – Covered walkway structures for the shelter of pedestrians only, and consisting solely of roof surfaces and necessary supporting columns, posts and beams, may be located in an O-P district. Such structures shall meet the setback, height and other requirements of the district which apply.**

**Staff:** No covered walkways are proposed as part of the project.

*Criterion met.*

**F. MCC 36.4185 LIGHTING**

**Any artificial lighting which may be provided shall be shielded or deflected so as to not shine into adjoining dwellings or other types of living units, and so as not to create a hazard to the traveling public on any street.**

**Staff:** No lighting is proposed as part of this application.

*Criterion met.*

**G. MCC 36.4195 DESIGN STANDARDS: SETBACKS**

**(A) Any required yard which abuts upon a street lot line shall not be used for a parking or loading space, vehicle maneuvering area or access drive other than a drive connecting directly to a street.**

**(B) A required yard which abuts a street lot line shall not be paved, except for walkways which do not exceed 12 feet in total width and not more than two driveways which do not exceed the width of their curb cuts for each 150 feet of street frontage of the lot.**

**Staff:** The front yard is not proposed to be used for parking. The parking spaces identified on the site plan are adjacent to the farm stand building which is over 70-feet away from the front property line. The applicant is not proposing any paving adjacent to the right-of-way.

*Criteria met.*

## **H. MCC 36.4200 LANDSCAPE AND SCREENING REQUIREMENTS**

**(A) The landscaped areas requirements of MCC 36.7055(C)(3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 36.4165 (A).**

**Staff:** The relevant standards of MCC 36.7055 are below:

### **MCC 36.7055 REQUIRED MINIMUM STANDARDS**

#### **1. (C) Required Landscape Areas**

**The following landscape requirements are established for developments subject to design review plan approval:**

**(3) The following landscape requirements shall apply to parking and loading areas:**

- a. **(a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totaling no less than 25 square feet per parking space.**

**Staff:** A Farm Stand use is not identified within MCC 36.4205, which is the section that determines how many parking spaces are required. However, previous Multnomah County Farm Stand Land Use Decisions have determined that the most similar use under the code would be a store under MCC 36.4205(C)(1). For a store, one parking space is required for each 400 square feet of gross floor area. Since the proposed farm stand is 36x36 feet, or 1,296 square feet, then 6 spaces would be required. Since there are less than 10 parking spaces, no landscaping is required.

*Criterion met.*

- b. **(b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in**

**width, and any other lot line by a landscaped strip at least 5 feet in width.**

**Staff:** No parking or loading spaces are proposed to be adjacent to the public street.

*Criterion met.*

**I. MCC 36.4205 MINIMUM REQUIRED OFF-STREET PARKING SPACES**

**(E) Unspecified Uses**

**Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.**

**Staff:** Farm stands are not listed uses. The County has determined previously that farm stands are similar to stores and supermarkets in that customers patronize farm stands to purchase farm produce. As such, the requirements of MCC 36.4205(C)(1) will apply.

**(C) Retail and Office Uses**

**(I) Store, Supermarket, and Personal Service Shop - One space for each 400 square feet of gross floor area**

**Staff:** The farm stand building is proposed to be 36x36-feet, or 1,296 square feet. The criterion above will require that there are 4 parking spaces provided. The site plan shows that six are provided.

*Criterion met.*

**J. MCC 36.4210 Minimum Required Off-Street Loading Spaces**

**(E) Unspecified Uses**

**Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.**

**Staff:** Farm stands are not a listed use so staff must determine which category the proposed use most closely resembles. Given the choices, staff finds the most similar use would be wholesale or storage:

**(C) Manufacturing, Wholesale, Storage**

<b>Square foot of Floor or Land Area</b>	<b>Minimum Loading Spaces Required</b>
Under 5,000	0

**Staff:** The proposed farm stand building is only roughly 1300 square feet. Therefore, no loading space is required.



## 7.00 Verification of Non-Conforming Use

### MCC 36.7204 VERIFICATION OF NONCONFORMING USE STATUS.

- A. **(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:**

**Staff:** The subject property contains two buildings that appear to encroach into the front yard setback: a dwelling and a barn. The dwelling is one of two located on the property. This decision is reviewing the front yard setbacks to the southern dwelling and barn since they both encroach into the required 30-foot front yard (which is expanded to 35-feet since SE 302<sup>nd</sup> has inadequate right-of-way to meet the County standard). For the barn that encroaches into the front setback, this decision also looks at its lawful establishment.

1. **(I) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and**

**Staff:** The northern dwelling measures out to be over 50-feet from the front property line and therefore meets the required 35-foot setback. The setback from the front property line to the southern dwelling is shown on the site plan as being 25-feet (Exhibit A.6). In order to be lawfully established, the dwelling would have had to have been established prior to the adoption of zoning that restricted the front yard setback to 30-feet. The first zoning on the property was F-2, adopted in 1958. The 1962 zoning map (Exhibit B.8) shows the first zoning on the property. Both homes on the property were established as of 1943 according to Multnomah County Assessment and Taxation records. Since zoning and setbacks were not in effect in 1943, the setback was lawfully established.

The barn on site does not have a “Year Built/Effective Date” on the Assessment and Taxation Information sheet. However, since it is known the property has been farmed for several generations by the Burns’ family and the homes on site were established in the 1940’s, it is reasonable to believe the barn was also established around the same time. During the staff site visit, it was clear the barn was of significant age. No permits are on record establishing the barn, only a permit for an addition to the barn. Staff site photos show the wear on the barn that came over decades (Exhibit B.11). County air photos show the barn in existence on each of the years that they were taken, including 1977 (Exhibit B.7).

Generally speaking, Assessment and Taxation groups buildings on the tax rolls with other buildings that are associated with the dwelling by giving them a common ID number. On Multnomah County Assessment and Taxations improvement information (Exhibit B.3), dwelling 1 is given the ID ‘1’ and is only 616 square feet on the main floor. Dwelling ‘2’ is 1,144 square feet with an attached garage (given the ID ‘2.4’). It is clear based on the site visit and air photos that Dwelling 2 is the northern dwelling. Dwelling 1 is the southern dwelling, and is located within 15 feet of the barn. The improvement information

notes that there is a 1,872 square foot barn associated with Dwelling by giving it the ID number 1.4.

Lastly, a building permit is on file from 1975 granting approval to Arthurs Burns for a 35-foot 5-inch x 26-foot 4-inch addition to a structure. It does not indicate to which building the addition was for. But, given the square footages of the dwellings, it is clear it was not an addition to a dwelling. Furthermore, photographs provided by the applicant (Exhibit A.13) and verified by staff on the site visit, shows that the barn had a substantial addition at some point. There is a clear line delineating the original wall and roof line of the original barn. It is reasonable to believe the addition permit was for the barn on site. Since the permit was issued in 1975, it is clear the original barn was established prior to that time. The County reviewed the permit request and thus had to have acknowledged the original structure and its setback to the front property line.

Given this the information as a whole, staff finds that the barn was likely originally constructed around the same time as the southern dwelling (ID #1) in the 1940's, was acknowledged by the County, and is therefore considered lawfully established.

*Criterion met.*

2. **(2) Has not been abandoned or interrupted for a continuous two year period.**

**Staff:** The non-conforming setbacks are to structures that were constructed prior to the adoption of zoning that restricted setbacks. The first zoning on the property was F-2 and was adopted in 1958. The F-2 zone did not regulate setbacks until December 9, 1975. The only way to abandon or interrupt a non-conforming setback would be to remove the building that is within the setback. There is no evidence that either the barn or southern dwelling was ever destroyed, demolished or relocated. All evidence in the record indicates the structures were established in the 1940's and have continuously been in the same locations.

*Criterion met.*

B. **(B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:**

1. **(1) Description of the use;**

**Staff:** The setback to the barn and southern dwelling is the non-conformity that is being reviewed. Use is not a factor being reviewed in this decision.

2. **(2) The types and quantities of goods or services provided and activities conducted;**

**Staff:** No goods or services are being reviewed.

3. **(3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**

**Staff:** There is no change in scope of use being reviewed.

4. **(4) The number, location and size of physical improvements associated with the use;**

**Staff:** The location of both structures has not changed since their establishment in the 1940's. The barn was added onto in 1974 (Exhibit A.17) and at that time, there were no setback requirements in the F-2 zone (Exhibit B.12). At this time, there are no additional improvements requested as part of this verification.

5. **(5) The amount of land devoted to the use; and**

**Staff:** The setbacks were established by the building line of each structure. The building lines run parallel to the front property line and there is no request to encroach further.

6. **(6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.**

**Staff:** The nature and extent of the non-conformity is only the setback of the established buildings to the front property line.

7. **(7) A reduction of scope or intensity of any part of the use as determined under this sub-section (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use be-came nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.**

**Staff:** Setbacks to property lines have no change in 'level' or 'scope' unless the structure establishing the setback to the property line is removed or altered under the Alteration to a Non-Conforming Use provisions, or the property line is adjusted. As such, there is no evidentiary proof that the setback has been altered and therefore the level and scope of the setback has not changed.

C. **(C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.**

**Staff:** The F-2 zone was first adopted on the property in 1958. The F-2 zone first regulated setbacks in December of 1975 (Exhibit B.13). Both the barn and the dwelling were established to their current 'nature, scope and intensity' prior to the adoption of setbacks in 1975 and therefore were in full compliance with the rules regulating setbacks at the time of their establishment.

*Criterion met.*

- D. **(D) Except for nonconforming uses considered under MCC 36.7214 (B), the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification.**

**Staff:** No additional conditions are required in order to verify the non-conformity status of the setbacks.

- E. **(E) An applicant may prove the continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.**

**(F) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 20-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.**

**Staff:** As noted earlier, non-conforming setbacks can only be discontinued if the structure or property line is moved. Evidence in the record demonstrates that the setbacks have not been altered since they were established in the 1940's and became non-conforming in December of 1975. The permitted addition was parallel to the setbacks and did not encroach further. As such, the applicant has demonstrated a rebuttable presumption that the setback has continued unabated the last 10-years.

*Criterion met.*

*Taken as a whole and considering the evidence in the record, staff finds the non-conforming setbacks were lawfully established and have not been abandoned.*

## **8.00 Transportation Standards**

### **MCRR 4.000 Access to County Roads**

- A. **MCRR 4.200 Number:** Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property will be the standard for approval. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system.

**Staff:** Currently, there are five access points and the applicant is requesting a total of four. The northern dwelling has a circular driveway accessing the County road in two locations, one of which would be removed; the farm stand area has one large access; the non-conforming barn has a

door that opens up to the public road that serves as the personal access point to access the lower portion of the barn; and the southern dwelling has one access point. The applicant is requesting approval to continue to keep four of the five access points. County code only allows one access outright. Therefore, the County must review such requests as a Road Rules Variance under MCRR Chapter 16.

Additionally, since SE 302<sup>nd</sup> is a Rural Collector, there are spacing standards of 100-feet between access points. Since some of the existing access points do not meet that standard, a Road Rules Variance must be applied spacing less than 100-feet.

Lastly, the applicant is also seeking a variance to the driveway width standard. The access utilized by the farm stand and vehicles entering the fields exceeds the width standards of commercial and agricultural access points. The standard is 20-35 feet for commercial and agricultural uses but it current is 50-55 feet wide.

## **16.000 Variance from County Standards and Requirements**

### **B. 16.100 Variance Requirements:**

1. **(A) Multnomah County Code 29.507 provides for a variance by the County Engineer from County standards and requirements when written documentation substantiates that the requested variance is in keeping with the intent and purpose of County Code and adopted rules, and the requested variance will not adversely affect the intended function of the County road system or related facilities. A variance approval may include mitigation measures as conditions of approval.**

**Staff:** The general intent of the Road Rules and limiting access to the public road system is to ensure a safe transportation system and reduce the number of conflicts between traveling vehicles and those entering the roadway. The County's limitation of one access point as a right is to reduce the number of potential conflicts along a properties road frontage to the minimum possible. However, in certain circumstances, additional access points may be approved if the circumstances warrant additional access points. One of those circumstances could be the uses on any given property as well as the linear feet of road frontage a property has in combination with the uses of the site.

In addition to the number of access points, the applicant is also requesting variances to the driveway spacing and width standards. The Road Rules recognizes that if it is not feasible to access a site and meet the access spacing standards, access may be located so as to provide the best access spacing possible. Driveway widths should conform to the private access width standards identified under Table 1.2.4 in the County Design and Construction Manual (DCM). The table identifies a standard of 12-25 feet for single family residential uses and 20-35 feet for commercial and agricultural uses. It is recognized, that larger widths may be used if there are high turning movements which require an additional traffic lane entering and/or exiting the driveway. The DCM identifies that larger widths shall be secured through the variance process to accommodate a safe turning movement for buses or large trucks.

Variances may be granted if the standards below listed under 16.200 are met.

2. **(B) All requests for a variance to these Road Rules that are part of a development that requires approval of that development as a “land use decision” or “limited land use decision,” as defined in ORS 197.015, shall be submitted to the County Engineer at the time that application for the land use review is submitted to the applicable planning office having land use jurisdiction. The County Engineer’s decision on the variance to these Road Rules shall not become effective until the date that the associated land use decision becomes effective.**

**Staff:** The Road Rules Variance request is being processed concurrently with the Type 2 Farm Stand permit.

*Criterion met.*

3. **(C) For properties within unincorporated areas of Multnomah County for which Multnomah County has not contracted for planning and zoning services, the Hearings Officer shall be the final County decision maker for all applications for variances to these Rules that are in conjunction with applications for development classified as a “Type III” or an appeal of a “Type II” land use permit application under MCC Chapter 37 or the corresponding code parts in MCC Chapter 38, as applicable.**

**Staff:** The Road Rules Variance is being processed as a Type 2 Land Use Decision.

*Criterion met.*

**C. 16.200 General Variance Criteria:**

**In order to be granted a variance, the applicant must demonstrate that:**

1. **(A) Special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. The circumstances or conditions may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses;**

**Staff:** The subject property is unique and different when compared to other properties in the area partly because of the varied uses that exist. Currently, there are two single-family dwellings on the property, a commercial farm, and a proposed farm stand.

Having two dwellings on Exclusive Farm Use zoned property is unusual for the rural area. The State of Oregon’s and Multnomah County’s land use laws governing rural properties in general limits density to one dwelling per Lot of Record. In the case of farm and forest zoned properties, dwellings aren’t outright allowed uses. So a property zoned Exclusive Farm Use that has two lawfully established dwellings is unusual. It is assumed that each dwelling has a separate family residing within it and since the dwellings are roughly 200-feet apart, a common access point is not practicable. Each dwelling should have its own access point and driveway.

Additionally, the applicant is requesting that the farm stand, located between the dwellings, have its own separate access point for customers to utilize when going to the U-pick

operation or purchasing pre-picked farm products at the farm stand. This access is also used for larger trucks to maneuver in and out of the site. These trucks vary in size from delivery trucks up to a semi-truck. In addition to large trucks, this area is also used to maneuver farm implements to access the barn. A separate access is appropriate to provide privacy to the residents in the dwellings and limit the potential for conflicts in the residential driveways since they aren't as wide as accesses for commercial or agricultural uses. As part of this, the applicant is also requesting a wider than normal access for the farm stand access. While the standards allow such an access to be between 20 and 35 feet in width, the current one is 55-feet wide to accommodate the maneuvering of varying sized vehicles accessing the site. Having two similar yet distinct uses utilizing the access point is a circumstance that doesn't apply to the majority of properties in the surrounding area. Sharing an access allows more land to be dedicated to the farm use on the property and keeps more high value farm land in production. Having a wider access also allows farm stand customers to use the access at the same time the owners may be using it for their farm implements or while they are loading/off-loading equipment to the barn, which shares the maneuvering area of the farm stand.

Lastly, the established barn on the property has a door facing the front property. The applicant has indicated that the door is too small for a vehicle to enter, but it is used for personnel accessing the lower level of the barn on a limited basis. Most properties in the area do not have barns so close to the property line such that an existing door can only be accessed from the right-of-way as is the case for the applicant. Since the opening is too small for a vehicle, the County considers it a personal access and not a vehicular access.

Taking those circumstances into account, it is reasonable that each use has its own access point to the county road system. The distance between each access point is 70-feet between the northern residential driveway and the farm stand entrance; 50-feet between the farm stand entrance and the personal access to the barn; and 80-feet between the personal barn access and the southern residential access. Since SE 302<sup>nd</sup> is a rural collector, there are spacing standards of 100 feet between access points. Since the barn access is used only intermittently, staff views it as a limited access that does not need to be reviewed for spacing purposes. That said, the spacing between the northern dwelling access and the farm stand access is 70-feet and 150-feet between the farm stand access and the southern dwelling. However, the farm stand access is also 55-feet wide as shown on the site plan, which could provide extra distance and increase the spacing anywhere from 70-feet to 100-feet and still leave 20-feet for vehicles to enter the farm stand. The 50-foot wide farm stand access is important to the applicant because while residential vehicles enter and exit the site to patronize the farm stand, farm vehicles such as tractors, trucks and other implements also enter the property at that point to access the fields and barn on the property. Since the doors of the barn facing SE 302<sup>nd</sup> aren't large enough for a vehicle to pass through, they must go through the larger doors on the barns side facing the farm stand. Due to the different traffic patterns associated with the barn and farm stand occurring at the same access point, it is appropriate for a wider access to reduce the potential of conflicts amongst vehicles and allow for safe turning movements for the large trucks and farm implements.

The applicant has demonstrated that the property has unusual circumstances relating to uses on the property, location of structures on the property and the property's road frontage. In order to address the driveways accessing the northern dwelling, a condition has been added to provide for a separation between the access to the dwelling and the

access to the farm stand. As indicated by the applicant, the paved driveway closest to the farm stand gravel area can be decommissioned, which could include the installation of a gate, or planter boxes to cut-off the access. Prior to building permit sign-off the applicant will need to finalize plans for closing this access point, which may include submittal of a updated site plan showing the method of closing off the access, or submittal of a narrative describing the method.

*As conditioned, this criterion is met*

2. **(B) The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards;**

**Staff:** Denial of multiple access points would prevent a substantial property right and result in an extraordinary hardship to the property owners. Denial would mean that the two separate dwellings on site, separated by over 220-feet, would either have to share a single access point or not have access at all. This may involve extensive grading and further loss of land currently in farm production in order to accommodate a single shared driveway. The existing barn on the property already creates a barrier to a shared access since it is sited between the homes. The farm stand is proposed to also be between the homes since there is an already established gravel maneuvering area associated with the barn on site, the equipment from the barn is utilized for the farm stand, and high value farm land would not need to be removed from production if located elsewhere. Again, to try and have a shared access for the dwellings would result in even more prime farm land being taken out of farm production. Requiring the farm stand to share access with one or more of the dwellings would also create a hardship to the residents who occupy the homes since they would have to compete for access with patrons visiting the farm stand. Such a situation would increase the potential for vehicular conflicts. In addition, as indicated by the applicant, the farm stand driveway also serves as a maneuvering area for large trucks and farm implements as part of the farm use. This area is needed in order to access the barn, minimize conflict and provide for an area to accommodate safe turning movements.

Providing an access for each dwelling and the farm stand separately would also cause the homes to continue to have access to the public street without creating a hazardous traffic situation. Since the barn's access to SE 302<sup>nd</sup> is used so intermittently, there is no real conflict being generated for its use. This access preserves the continuing use of the barn given its unique location and recognizing that the access is for personal use and is limited due to the size of the doors not being able to accommodate a small sized automobile.

*Criterion met.*

3. **(C) The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties;**

**Staff:** Authorization for the road rules variances would reduce the potential hazardous situation by reducing the amount of potential traffic conflicts. If only one access point were allowed, then two dwellings, a farm stand, and a commercial farm would all be sharing the same singular access point. The amount of traffic entering and existing the site would be significant and adversely impact both the residents living on the property as well



as the farm workers tending to the fields and the farm stand. Customers of the farm stand would also have to compete for access with the residents and workers. It is conceivable that at high season for the farm and farm stand there would be traffic stacked in the streets to turn into the property if only one access were permitted.

Given that the property has nearly 700-feet of road access, providing for 3 vehicular access points with 70-feet and 150-feet between them, and one personal access to the barn, would not be a create a material detrimental situation to the public welfare. Rather, staff believes requiring only one access would create a materially detrimental situation that would be hazardous to the public welfare due to all traffic to and from the site for four distinct uses being funneled through one entrance.

In addition, the applicant has submitted a Traffic Analysis (Exhibit A.18) recognizing that a traffic impact study is not warranted for the site. The analysis found that considering the minimal traffic along SE 302<sup>nd</sup>, the ease of access to and from the site, and the minimal traffic to be generated by the farm stand, a full study was not needed. County transportation concurred with the study. It should be noted that the study does find that additional trips generated based on gross floor area is expected to be less than 100 trips per day. A transportation impact per the Multnomah County Road Rules is defined as the affect of any new construction or alteration which will increase the number of trips generated by a site by more than 20%, by more than 100 trips per day, or by more than 10 trips in the peak hour shall be found to have a transportation impact, with a minimum increase of 10 new trips per days being required to find a transportation impact.

MCRR 6.000 lists improvement requirements for developments found to cause a transportation impact. The County standard right of way for a Rural Collector facility is 60 feet. This standard 60-foot cross section is designed to include two 12-foot wide travel lanes, 6-foot shoulders and drainage on each side. Currently, 40-feet of right of way exist between the site's property line and the centerline of SE 302<sup>nd</sup> Ave. This right of way is insufficient to accommodate the County's standard cross section for a Rural Collector. The proposal will add new trips along the SE 302<sup>nd</sup> Ave corridor, which extends from SE Kerslake Road to SE Division. The existing road is substandard and the future road width is needed to serve the property. In order to serve these new trips more effectively and improve the roadway to serve growing travel demand, the applicant is required to dedicate 10-feet along the site's frontage to achieve a proportional share of this standard. This right of way dedication is roughly proportional to the impact on SE 302<sup>nd</sup> Ave created by this proposal. The applicant is required to dedicate 10-feet in order to achieve a proportional share of this standard. This right of way will be used to improve the roadway to serve growing travel demand, which in part will be generated by this proposed action. The applicant will need to contact Pat Hinds at (503) 988-5050 Ext. 83712 to complete the easement dedication. A condition has been added to address the dedication requirement.

Lastly, no adversarial comments were received during the comment period by surrounding property owners that would indicate approval would negatively impact them.

*Criterion met.*

**5. (D) The circumstances of any hardship are not of the applicant's making.**

**Staff:** The current owner of the property did not settle the land and initiate the four uses on the property, therefore the circumstances are not of the applicant's making. The homes and barn were established in the 1940's and the farm most likely was established even prior to that. As such, the proposed access points had already existed on the property. The farm stand wouldn't be creating a new access point – rather it would be sharing the access used for the farm equipment, vehicles and workers. It is not reasonable to have the owner move the existing dwellings on site so they can share an access point; nor is it reasonable to require all but one access points be closed since a road system would essential be required to be constructed on the property for all the uses.

*Criterion met.*

**D. 16.225 Access Variance Standards:**

**Exceptions to access standards may be made by the County Engineer when spacing or other safety considerations make non-standard access acceptable. In addition to the variance requirements of Section 16.200 of these Rules, the applicant will be required to demonstrate that the proposed variance will not negatively impact the safety or capacity of the transportation system for a variance to be granted. The following are examples of variances that may be considered along with specific criteria that must be addressed before such a variance can be granted.**

- 6. (A) Multiple Access Points: The County Engineer may allow multiple access points when all spacing standards can be met, or when the additional access(es) will not negatively impact the safety or functionality of the transportation system and a single access point cannot reasonably serve a site. Movement restrictions, such as right-in, right-out, may be placed on accesses to protect the safety and/or functionality of the transportation system.**

**Staff:** As determined above, the spacing of the multiple access points will not negatively impact the functionality of the transportation system. However, requiring only one access point would most likely have a significant negative impact on the road system due to all trips generated by two dwellings, a commercial farm and a farm stand utilizing a single driveway. Traffic would likely be stopped in the street awaiting a left hand turn and right hand turns into the property would be impacted by the increased traffic at one point, competing with slow farm implements, and a narrow access opening.

*Criterion met.*

- 7. (B) Access Spacing: If it is not feasible to access a site and meet the access spacing standards, access may be located so as to provide the best access spacing possible. The County Engineer may require additional measures to mitigate sub-standard access spacing, such as a median or other restrictions.**

**Staff:** As determined above, denial of multiple access points would prevent a substantial property right and result in an extraordinary hardship to the property owners. The distance between each access point is 70-feet between the northern residential driveway and the farm stand entrance; 50-feet between the farm stand entrance and the personal access to the barn; and 80-feet between the personal barn access and the southern residential access. Since SE 302<sup>nd</sup> is a rural collector, there are spacing standards of 100 feet between access points. Since the barn access is used only intermittently, staff views it

as a limited access that does not need to be reviewed for spacing purposes. That said, the spacing between the northern dwelling access and the farm stand access is 70-feet and 150-feet between the farm stand access and the southern dwelling. However, the farm stand access is also 55-feet wide as shown on the site plan, which could provide extra distance and increase the spacing anywhere from 70-feet to 100-feet and still leave 20-feet for vehicles to enter the farm stand. The farm stand access is important to the applicant because while residential vehicles enter and exit the site to patronize the farm stand, farm vehicles such as tractors, trucks and other implements also enter the property at that point to access the fields and barn on the property. Due to the different traffic patterns associated with the barn and farm stand occurring at the same access point, it is appropriate to have a wider access and reduced driveway spacing to reduce the potential of conflicts amongst vehicles and allow for safe turning movements for the larger trucks and farm implement.

## 9.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Administrative Decision by the Planning Director, Verification of a Non-Conforming Use, and the Road Rules Variance to establish a Farm Stand in the Exclusive Farm Use zone with multiple access points onto the public transportation system. This approval is subject to the conditions of approval established in this report.

## 10.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

Exhibits with a “\*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2011-1403 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit
A.1	1	General Application Form
A.2*	1	Building Permit Card for Addition to Barn
A.3	3	Fire District Access Review
A.4	6	Fire District Review – Fire Flow Requirements
A.5	1	Fire Flow Test From Lusted Water District
A.6*	1	January 12, 2011 Site Plan
A.7	1	January 12, 2011 Floor Plan Showing Existing Structure and Proposed Accesses
A.8	1	January 12, 2011 Site Plan Showing Proposed Farm Stand Building and Portion of Barn Approved in 1974
A.9	3	Certificate of Onsite Sewage Disposal
A.10	7	Burton Engineering Letter, Stormwater Certificate and Drainage Calculations
A.11	4	January 12, 2011 Applicant Narrative
A.12*	1	January 12, 2011 Site Plan Showing Existing/Proposed Access Points
A.13	3	Applicant Photos Showing Existing Access Points
A.14	1	Applicant Photos Showing Addition to Barn

A.15	1	February 24, 2011 Applicant Supplemental Narrative
A.16	1	Applicant's Response To Incomplete Letter
A.17	1	Traffic Analysis
'B'	#	Staff Exhibits
B.1	1	A&T Property Information
B.2	1	A&T Tax Map with Property Highlighted
B.3	1	Multnomah County Assessment and Taxation Property Improvement Information
B.4	3	February 7, 2011 Incomplete Letter
B.5	1	March 7, 2011 Complete Letter
B.6	8	Opportunity to Comment
B.7	1	1977 Air Photo of Property
B.8	1	1962 Zoning Map Showing Tax Lots
B.9	2	January 28, 2011 Email From Joanna Valencia, Transportation Specialist, Requesting Additional Information for Road Rules Variance
B.10	1	February 25, 2011 Email From Joanna Valencia, Transportation Specialist, Noting Road Rules Variance Request is Complete
B.11	4	Staff Site Photos
B.12	1	1974 F-2 Zoning Code
B.13	6	December 1975 F-2 Zoning Code with Setback Requirements