

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

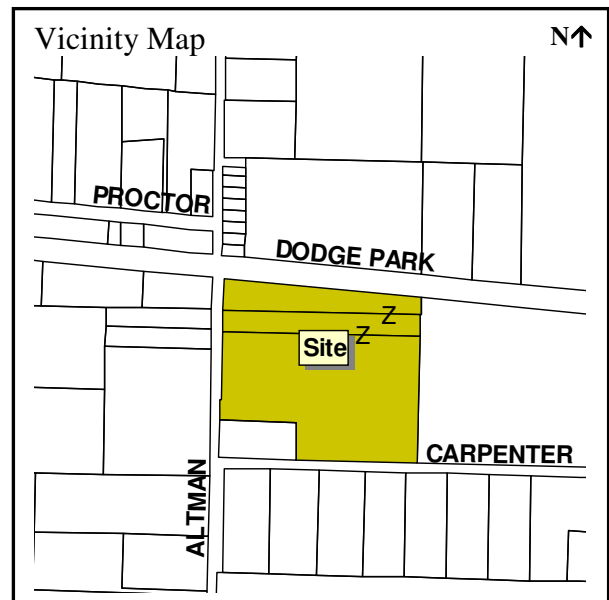
PH: 503-988-3043 FAX: 503-988-3389

<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

Case File: T2-2011-1521
Permit: Alteration of Nonconforming Use
Location: 7510 SE Altman Road
Tax Lot 200, Section 21CA,
Township 1 South, Range 4 East, W.M.
Tax Account # R994210520
Applicant: King Bredenkamp
Owner: Maridean Eisele
Scenic Fruit Co.
Base Zone: Multiple Use Agriculture-20 (MUA-20)



Summary: The applicant seeks a second story addition to the existing office building at the Scenic Fruit Company.

Decision: Approved with Conditions.

Unless appealed, this decision is effective Thursday, July 14, 2011, at 4:00 PM.

Issued by:

By: _____
Kevin Cook, Planner

For: Karen Schilling- Planning Director

Date: Thursday, July 30, 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 Kevin Cook, Staff Planner at 503-988-3043, ext. 26782.

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 Thursday, July 14, 2011 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): *Multiple Use Agriculture – 20 (MUA-20)* - MCC 36.2855 Dimensional Standards and Development Requirements

Nonconforming Uses - MCC 36.7200 Nonconforming Uses, MCC 36.7210 Alteration, Expansion or Replacement of Nonconforming Uses, MCC 36.7215 Verification of Nonconforming Use Status,

Multnomah County Road Rules (MCRR): MCRR 1.000 – 18.000

Copies of the referenced Multnomah County Code (MCC) 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>
<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 pursuant to MCC 37.0690(B) as applicable. The property owner may request to extend the time frame 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.

1. Prior to building plan sign-off the applicant shall submit a completed storm-water certificate (Exhibit B.2) for the new impervious surface for the second floor office addition. Stormwater shall be handled on-site for a 10-year, 24 hour storm event. The property owner shall provide documentation that the existing drainage pond can handle the additional water or that a new stormwater system will be created. [§ 36.7050(A)(6)]

2. The property owners shall adhere to the Grading and Erosion Control measures of Chapter 29 for a minimal impact project.
3. Prior to final inspection of the second floor addition, the property owner shall obtain right of way permits for any non permitted access and/or work in the right of way. Contact Alan Young, Right of Way Specialist at 503-988-5050 ext. 83582.

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, Kevin Cook, at (503) 988-3043 ext. 26782, 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.

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 criteria and Comprehensive Plan Policies are in **bold font**. Staff comments and analysis are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

Staff: The proposal is for a second story addition to the existing office building at the Scenic Fruit Company. The existing office building is a single story, 2,400 square foot building. The second floor addition will add an additional 2,400 square feet of office space, a conference room and an additional restroom. The applicant indicates that the addition will make better use of existing office space but there is no proposal for additional employees or customers visiting the site. The property includes several buildings utilized for cold storage and freezing of agricultural products. The use of the property was verified to be a non-conforming use through file T2-08-029 and an additional freezer building was authorized through the same permit. Because the proposal would change an existing non-conforming use an application for an Alteration of a Non-conforming use is required.

1.00 ***Multiple Use Agriculture -20 Criteria***

1.01 **§ 36.2855 DIMENSIONAL STANDARDS AND DEVELOPMENT REQUIREMENTS.**

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient 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 proposed second floor addition will be for an existing building that currently meets the setbacks in the MUA-20 zone. The existing office building is located approximately 90 feet from the nearest property line to the north (Exhibit A.2). The building footprint will increase 6.5 feet to the north and east with the addition of extended eaves. The required setbacks will continue to be met after the addition. The height of the building will be 25 feet. *These criteria have been met.*

1.02 **(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.**

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The Sanitarian has determined that the septic system is adequate to handle the second story addition (Exhibit A.3). The increased footprint of the building will result in approximately

815 square feet in new impervious surface (Exhibit A.2). A storm-water certificate (Exhibit B.2) is required prior to building permits (Condition 1). *As conditioned, these criteria are met.*

- 1.03 **(G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

Staff: The proposal is for a second story addition. The extended eaves will be supported by posts resulting minor ground disturbance. Condition 2 requires that the applicant adhere to the Grading and Erosion standards of Chapter 29 and obtain any required permits and/or inspections prior to building permits.

1.04 **§ 36.2870 LOT OF RECORD.**

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**
- (6) May 16, 2002, Lot of Record section amended, Ord. 982.**

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 36.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 36.2860, 36.2875, and 36.4300 through 36.4360, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be 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) An area of land created by court decree.**

(E) Issuance of building permit as verification of a Lot of Record.

- (1) The issuance of a building permit described in this subsection for new development on a lot or parcel is considered verification of compliance with applicable zoning and land division regulations for the creation of a lawful lot or parcel. The lot or parcel described in the building permit is considered a Lot of Record if the building permit was issued prior to July 1, 1986 (date of intergovernmental agreement contracting for building permit services with other**

jurisdictions) and complies with all of the following:

(a) There is a copy of the building permit in the Multnomah County or City of Portland permit records and the building permit indicates that the proposed development complied with zoning and land division requirements; and

(b) The building permit was for a new principle use, such as a new dwelling, commercial, industrial, community service, or conditional use; and

(c) There is a clear property description on the permit for the property for which the building or placement permit was issued. The description may be con-firmed by tax lot references, tax lot maps, site plans, or deeds recorded at the time.

(2) A request for verification that a lot or parcel is a Lot of Record under the provisions of this section (E) may be submitted to the Planning Director. A decision by the Planning Director is a ministerial action based upon the evidence described in this section. An appeal of the director's decision for verification of a Lot of Record shall be submitted under the provisions of MCC 37.0740.

Staff: T1-08-044, an application for a Lot Consolidation was completed in 2008. *The resulting consolidated lot is a Lot of Record.*

1.05 § 36.2885 ACCESS.

All lots and parcels in this district shall abut a street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles, except as provided for Lots of Record at MCC 36.2870(B).

Staff: The subject property fronts onto SE Altman Road and SE Dodge Park Boulevard. No modifications to the existing right of way or driveway access points are proposed. There are no access permits on record for the SE Dodge Park Boulevard access point. Condition 3 requires a Right of Way permit from the Right of Way office. *This criterion has been met.*

2.00 *Nonconforming Use Criteria*

2.01 § 36.0005 DEFINITIONS

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

Nonconforming Use - A legally established use, structure or physical improvement in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the use regulations of the zoning district in which it is located.

Staff: Case T2-08-029 determined that Scenic Fruit is a nonconforming use.

2.02 § 36.7200 - NONCONFORMING USES.

(B) Nonconforming uses shall be allowed to continue without additional permission, except that such uses may be replaced, altered or expanded only as provided in MCC 36.7205 or 36.7210

Staff: Scenic Fruit is proposing to add a second story addition to the existing on-site office building to the subject property and has applied for an Alteration of Nonconforming Use permit pursuant to MCC 36.7210 & 36.7215.

2.03 **§ 36.7215 VERIFICATION OF NONCONFORMING USE STATUS.**

(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:

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

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

Staff: Case T2-08-029 verified the Scenic Fruit operation is a Nonconforming use in 2008. There is no evidence of an interruption to the operation of Scenic Fruit for over a two year period. See under Section 3.11 for staff discussion of discontinued physical improvement.

2.04 **(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) Description of the use;

Staff: Case file T2-08-029 found that Scenic Fruit, a commercial processor of agricultural products, became nonconforming in 1977. Fruit processed includes strawberries, red raspberries, black raspberries, marion blackberries, boysenberries, loganberries and blueberries from local farms.

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

Staff: Case file T2-08-029 found that in 1977, Scenic Fruit purchased and processed strawberries, red raspberries, black raspberries, marion blackberries, boysenberries, loganberries and blueberries from local farms for processing. The volume of fruit purchased was 7,600,000 lbs.

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

Staff: Case file T2-08-029 found that in 1977, Scenic Fruit operated 24 hours a day during the months of June, July and August. Production schedules varied with the harvesting of the crops. Scenic Fruit employed 12 full time employees and 500 production workers (average of 166 workers per shift) total during a 24 hour period. Volume of fruit processed was 7.6 million pounds. All product produced was frozen in the form of puree, individual quick frozen and straight pack. The current proposal is for additional office space, however the applicant does not propose additional office staff.

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

Staff: The proposal is for a second floor addition to the existing main office building on the site (Exhibit A.2).

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

Staff: The subject property consists of approximately 13.5 acres. The current proposal is for a

second story addition. The addition would increase the overall footprint of the building by 815 square feet (Exhibit A.2).

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

Staff: No other factors have been considered.

- 2.10 **(7) A reduction of scope or intensity of any part of the use as determined under MCC 36.7215 (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: Scenic Fruit has been in continuous operation for at least 34 years. Since its inception, Scenic Fruits activities have only expanded; therefore, the right of use at and above current levels is secure.

- 2.11 **(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: Staff has discussed the operation and physical improvements at the time the use became nonconforming use in 1977 and the permitted improvements authorized in 1985, 1990, 1996, and 2008.

- 2.12 **(D) Except for nonconforming uses considered under MCC 36.7210 (B), the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification.**

Staff: No conditions of approval have been included regarding the verification section of the nonconforming use application.

- 2.13 **(E) Any decision on verification of nonconforming use status shall be processed as a Type II permit as described in MCC Chapter 37.**

Staff: This application has been processed through the Type II application process.

- 2.14 **(F) An applicant may prove the existence, continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application.**
(G) 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 proceeding the date of application.

Staff: Applicant has provided information from 1977 through present for the use.

3.00 **§ 36.7210 ALTERATION, EXPANSION OR REPLACEMENT OF NONCONFORMING USES.**

(A) Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements.

(B) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 36.7215, the Planning Director shall authorize alteration of a nonconforming use when it is demonstrated that:

(1) The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements, or

(2) The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity.

Staff: The proposed expansion of an existing building is not required to comply with any State or County health or safety requirements. The proposal qualifies under C below.

3.01 **(C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 36.7215, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider all of the criteria listed below. Adverse impacts to one of the criterion may, but shall not automatically, constitute greater adverse impact on the neighborhood.**

(1) The character and history of the use and of development in the surrounding area;

Staff: The operation was found to not result in a substantial adverse impact to the surrounding neighborhood in T2-08-029. The addition of second floor office space to the existing office building located interior of the site is negligible.

3.02 **(2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;**

Staff: The second story office addition will not result in additional noise, vibration, dust, odor, fumes, glare or smoke because office buildings do not typically contribute to these types of nuisances.

3.03 **(3) The comparative numbers and kinds of vehicular trips to the site;**

Staff: The second story office addition is not meant to accommodate additional employees. *No adverse impact has been identified.*

3.04 **(4) The comparative amount and nature of outside storage, loading and parking;**

Staff: The second story office addition is not meant to accommodate additional employees. *No adverse impact has been identified.*

3.05 **(5) The comparative visual appearance;**

Staff: The proposed office addition will match the existing materials and colors of the existing building.

3.06 **(6) The comparative hours of operation;**

Staff: No change in the hours of operation is proposed.

3.07 **(7) The comparative effect on existing flora;**

Staff: Vegetation on the site is mainly grass. No trees or shrubs will be removed as part of the project. *No adverse impacts have been identified.*

3.08 **(8) The comparative effect on water drainage or quality; and**

Staff: The addition of 815 square feet of impervious surface requires a Storm-water certificate (Condition 1).

3.09 **(9) Other factors which impact the character or needs of the neighborhood.**

Staff: No other factors have been identified.

3.10 **(D) Any decision on alteration, expansion or replacement of a nonconforming use shall be processed as a Type II permit as described in MCC Chapter 37.**

Staff: This land use permit was processed via the Type II application process as specified in MCC Chapter 37.

4.00 **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Alteration of a Nonconforming Use in the Multiple Use Agriculture – 20 zone. This approval is subject to the conditions of approval established in this report.

5.00 **Exhibits**

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	03/18/2011
A.2	1	Site Plans	03/18/2011
A.3	4	Certificate of On-Site Sewage Disposal	04/26/2011
A.4	4	Fire District Review	04/26/2011
‘B’		Staff Exhibits	Date
B.1	2	A&T Property Information	03/18/2011
B.2	1	Storm Water Certificate (to be completed)	6/30/2011
B.3	2	Transportation Memo	05/05/2011
‘C’		Administration & Procedures	Date
C.1	1	Complete Letter	04/14/2011
C.2	3	Opportunity to Comment	05/04/2011