



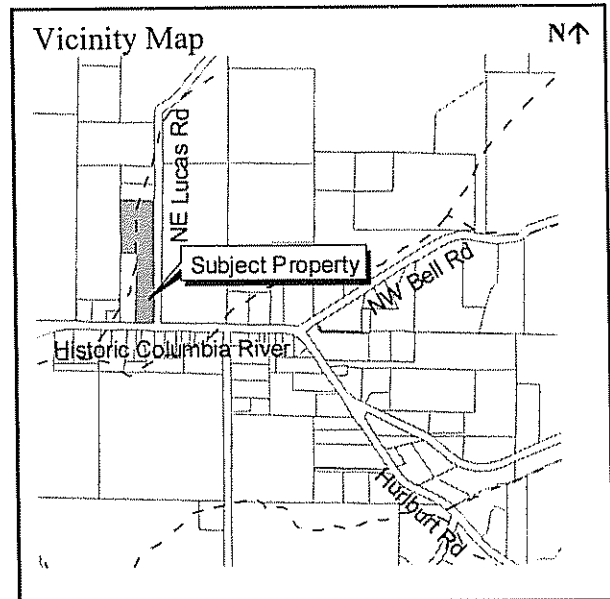
MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
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<http://www.co.multnomah.or.us/landuse>

Findings and Decision

Multnomah County Hearings Officer

Conditional Use Permit and Design Review for a Heating and Cooling Business and a Replacement Dwelling

Case File: T3-07-005



Location: 31935 E. Historic Columbia River Highway
TL 1000, Section 32D, 1N 4E
R#94432-0120

Applicant: Lonny and Sherri Hutchinson
400 NE Lucas Road
Troutdale, OR 97060

Owner: Jeff Smith and David Grey
PO Box 193
Corbett, OR 97019

Summary: Application request for a Conditional Use and Design Review permit for a heating and cooling business in the RC zoning District. The request also includes the addition to an existing structure and replacement of the existing dwelling on the property.

Zoning: Rural Center (RC)/Exclusive Farm Use (EFU)

Site Size: 4.00 Acres

Applicable Approval Criteria: Multnomah County Code (MCC): MCC.35.2620(L) – Replacement Dwellings; MCC 35.2675 – Lot of Record; MCC 35.0005 – Lot of Record Definition ; MCC 35.2675 EFU Lot of Record; MCC 35.2690 – Access; MCC 35.3355 – Dimensional Requirements; MCC 35.3370 – RC Lot of Record; MCC 35.3385 – Access; MCC 35.6315 – Conditional Use Approval Criteria; 35.7000 et. Seq. Design Review; MCC 35.4100 et Seq. Off-Street Parking; - POLICY 7: RURAL CENTER ISLAND AREA; POLICY 27: COMMERCIAL LOCATION; POLICY 29: OFFICE LOCATION; POLICY 36: TRANSPORTATION SYSTEM DEVELOPMENT REQUIREMENTS; POLICY 37: UTILITIES; POLICY 38: FACILITIES; Oregon Administrative Rule (OAR) 660-22-0030(4) and (8); and OAR 660-022-0070(2).

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. Planning staff comments and analysis may follow applicant comments. The notation “Applicant” precedes the applicant’s comments, and the notation “Staff” precedes staff comments and analysis. The Hearings Officer’s analysis and conclusions may follow, preceded by the notation “Hearings Officer.” **Unless explicitly noted otherwise, the Hearings Officer adopts and incorporates Staff comments and analysis as findings supporting this decision.**

Hearing: A public hearing was held at the offices of the Multnomah County Land Use and Transportation Program on November 9, 2007. Hearings Officer Christine Cook announced the procedure for the hearing, explained the rules requiring that issues be raised before the record closed or they could not be bases for appeal or suit for damages at circuit court, and stated that the criteria were set forth in the Staff Report. Ms. Cook stated that she had had no ex parte contacts on the substance of the application, had not made a site visit, had no financial or other relationship with the applicant or the county that would affect her ability to render an unbiased decision based upon the criteria and the evidence. No person objected to her serving as hearings officer, or to the hearing going forward.

The following people testified: Don Keinholz, Planner, on behalf of Multnomah County; Martha Sharp, Kell Alterman, attorney on behalf of the applicants; Nevalin Scott, Springdale property owner and resident, supporting the applicants; Lonny Hutchinson, applicant.

Mr. Keinholz described the subject property, the application and the applicant’s business. The current application arises in the context of an enforcement action against the applicant, and the applicant is working to correct the violation at issue in that action. He stated that the Staff Report recommended denial of this application for two reasons, but that the applicant could potentially meet the criteria that had not been satisfied.

First, the applicants have now demonstrated that they have access to the subject site from the Columbia River Highway, and Mr. Keinholz submitted a letter to the record from the Oregon Department of Transportation that documented the approved access. Exhibit H.3.

The remaining issues relate to demonstrating satisfaction of the criterion set forth in OAR 660-022-0030(4), that the county’s plan and regulations could authorize only certain new commercial uses in unincorporated communities. The primary question was whether the use was intended to serve the community and surrounding rural area, OAR 660-022-0030(4)(c), and the applicants’ submittal to date had not adequately answered that question.

In addition, three minor issues remained: (1) One parking space proposed on the site plan was shown as too close to the Columbia River Highway. That parking space could be moved within the given parking lot, and Mr. Keinholz wondered whether the applicants would be amenable to doing so. (2) An addition to a building is proposed to be build within the setback to the county road. Either the addition could be made smaller, or the applicant could apply for an adjustment to the setback criteria, and nothing on its face would preclude approval of the adjustment. (3) The sign for the business cannot be approved where it exists, but the applicants could, if they wish strike the sign from the site plan.

Applicant Lonny Hutchinson next testified. He stated that the sign would be stricken from the site plan; that the parking space would be moved; that the applicants would apply for an adjustment to the setback criteria; and he then addressed OAR 660-022-0030(4). He submitted new evidence into the re cord, including photos, a chart, notes titled "Business Volume," and other materials, as Exhibit H.4 He noted that the regulation in question does not clearly define a rural area, or state how to view a business. He said that the business attracts customers from a 20-mile radius, who would be largely rural, that 30-40% of clients are from rural areas, that 45-55% of the business revenue comes from rural customers, and that 50-60% of the business personnel-hours are spent on rural customers. This would be the only heating and cooling business located in the area. Many of the technologies in which it specializes are particularly suited to rural uses. It will have a retail store for local customers. He believes that the use serves the community when viewed in any of these ways.

Martha Sharp, the applicants' attorney stated that the regulation allows new commercial uses if they are authorized under Goals 3 or 4, if they are small-scale or low-impact uses. This is a commercial use where the building does not exceed 8,000 square feet. It therefore is small-scale and low-impact. She stated that the county's interpretation that a majority of business must come from the rural community to serve it is arbitrary, capricious, vague, unintelligible and ambiguous. No one knows what the "rural community" is. But this business does focus on the rural community in which it has a presence.

Nevalin Scott stated that the application is a perfect fit for the community. The business has improved the property. The business supports the local community and the community supports it.

Don Keinholz stated that the state regulation is not set forth in the county rules because the local plan and ordinance for that zone was adopted prior to adoption of the OAR. Hence the OAR applies directly, and the county leaves it up to the applicant to define the rural area and how the business serves the community.

1. **Project Description**

Applicant: We are a heating and air conditioning company that manufactures some of our own ducting and miscellaneous fittings. We store materials such as ducting, thermostats and registers used in the installation and repair of heating and cooling systems. We fit in three different locations of the code 35.330 (B) (3) (E) (G). Not only do we fit the zoning, but we fit the community.

My children attend the local school, my employee's support the local businesses, our office people live in the community, the local farmers help us manage the land, we are involved in most community functions, we sponsor and advertise at the local sports fields, must I go on and on and on?! Perfect Climate is a small business based in rural Springdale and supporting numerous rural communities. Our customer base is mainly comprised of higher end HVAC systems &

energy alternative options such as Geothermal, wood, solar, etc. which means that we end up mainly in rural areas. We also service and sell woodstoves, gas stoves, and other niche products.

Our installers arrive to load in the morning for an hour or two, after that only office staff and shop foreman will be onsite. We are big into recycling; our office is paperless, all of our metal, cardboard, and garbage are separated appropriately and recycled weekly.

Our hours of operation and flow are as follows.

- 6:00 Shop manager shows up to manage job flow and delivery (1 employee)
- 6:30 Delivery Driver from local wholesaler
- 6:30 Office (dispatch) (1 employee)
- 6:45 Installers arrive to load van and drive to jobsites (3 vehicles, 3 Employee's)
- 7:00 Office (Sales, Owners,) (1 employee)
- 7:30 Installers arrive to load van and drive to jobsites (2 vehicles, 3 employee's)

This is our heaviest load of the day. We now have approximately 9 employee's, 5 vans loaded and ready to head to their respective job sites, 1 sales staff and 2 owners.

We have anywhere from 12-20 employees varying from year to year and season to season.

No all employees drive to the shop daily.

- 8:30 Delivery truck left at about 7am, Installers have left the shop and are on their way to their jobsites.
- Office (AP/AR) arriving (1 employee)
- Office (Owner) arriving
- Office (supporting) arriving (1 employee)
- 9-5:00 Approximately 6 people will be onsite during this time frame.
- Mostly office staff

We have little to no clients come to our facility. We currently do not have a showroom.

We currently have 9 parking spaces and 1 handicap, in addition to 4 loading bays.

Staff: The applicant has proposed to establish a heating and cooling business on the site of the Crown Point Towing Company at the intersection of E. Historic Columbia River Highway and NE Lucas Road in the Springdale community. The proposal includes the demolition of a 20x40 existing building used for the towing business and an addition onto a second existing building used for the previous business to replace the removed building. The property is split zoned as seen on the County's zoning map. The existing dwelling on the RC portion of the property is proposed to be decommissioned and converted to a showroom for the business' products. The dwelling is proposed to be replaced on the EFU portion of the property as allowed under state law and in the EFU code [MCC 35.2620(L)(2)]. Approval of the replacement dwelling is a Type 1 ministerial approval that is done at the planning counter and is not apart of this application.

Staff of the business is proposed at between 12 and 20 with roughly six employees on site the majority of the time – the rest go off site for installation. The business will be open from 8am to 5pm to the public with off hour operations described by the applicant to include delivery, loading

of products and miscellaneous prep work.

2. **Site Vicinity and Characteristics**

Staff: The subject property is located in the unincorporated community of Springdale in the East of the Sandy River Rural Plan Area located roughly 2.5 miles to the southwest of Corbett. The immediate area is zoned Rural Center and contains small businesses such as a tavern, a bakery, a community market, apartments, triplexes and single-family dwellings, a school and a County road maintenance depot and office. Surrounding the rural center is mostly farm land with small areas in the Commercial Forest Use – 4 (CFU-4) zone and Multiple Use Agriculture zone (MUA-20).

3. **Proof Of Ownership**

MCC 37.0550 Initiation of Action

Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser.

Staff: County Assessment and Taxation records show Jeff Smith and David Grey as owners of the property. However, the applicants (Lonny and Sherri Hutchinson) have submitted a sales agreement between the owners and the applicants to purchase the property. With a sales agreement in place (Exhibit 1), the Hutchinson's are eligible to file for an action on the property.

Hearings Officer: Criterion met

4. **Code Compliance**

MCC 37.0560

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; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property

Staff: A zoning violation complaint (UR 01-103) is currently associated with the property alleging the previous towing company had roughly 100 wrecked cars on the property along with spilt oil and other waste associated with an auto oriented business. Approval of this proposal will result in the property coming into full compliance since the heating and cooling business would need such materials removed from the site in order to open.

Hearings Officer: The applicants have evidenced their plans to bring the property into code compliance. This permit and design review approval may be authorized pursuant to MCC 37.0560(A).

5. **TYPE III CASE PROCEDURES, PUBLIC NOTICE**

MCC 37.0620: At least 20 days prior to the hearing, the county shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any county-recognized neighborhood association or identified agency whose territory includes the subject property. The county shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The county shall also publish the notice in a newspaper of general circulation within the county at least 20 days prior to the hearing.

Staff: Notice was provided to all properties within 750 feet of the subject tract and recognized neighborhood organizations on October 19, 2007, more than 20 days in advance of the hearing. The notice was posted in the Oregonian on Friday, October 19, 2007.

Hearings Officer: Criterion met.

6. **The Proposed Use Is A Conditional Use In The RC Zoning District**

A. **MCC 35.3315 Uses.**

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC 35.3320 through 35.3330 when found to comply with MCC 35.3355 through 35.3385.

* * *

MCC 35.3330 Conditional Uses.

The following uses may be permitted when found by the approval authority to satisfy the applicable ordinance standards:

(B) The following Conditional Uses pursuant to the provisions of MCC 35.6300 through 35.6660:

(3) The following Light Manufacturing Uses conducted within an enclosed building which require the daily employment of twenty or fewer persons;

(g) Building, building maintenance, plumbing, electrical, heating, roofing, glass, landscaping, painting or similar contractor's office, shop, warehouse, equipment sales or maintenance;

Staff: The applicants run a HVAC heating and cooling company that contains a showroom, office, and shipping/separating area for a light manufacturing use as described above. As indicated in their written narrative, the business will employ between 12 and 20 employees at any given time within the enclosed buildings.

Hearings Officer: Criterion met.

B. MCC 35.2620 Allowed Uses

(L) Alteration, restoration or replacement of a lawfully established *habitable dwelling*.

(2) A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The County Planning Director or the Director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph.

Staff: The applicant is proposing to decommission the dwelling on the RC portion of the property and replace it on the EFU portion (northern portion of the property). Replacement can occur as a Type 1 over the counter signoff.

At the time of decommissioning and building permit sign-off for the dwelling, the requirements of this section shall be followed.

Hearings Officer: Criterion met.

7. The Proposed Use Meets The RC Dimensional Standards

MCC 35.3355 DIMENSIONAL REQUIREMENTS

- A. **(A) Except as provided in MCC 35.3360, 35.3370, 35.3375 and 35.4300 through 35.4360, the minimum lot size for new parcels or lots shall be one acre for those RC zoned lands in-side the boundary of an “acknowledged unincorporated community”. For RC zoned properties outside an “acknowledged unincorporated community” the minimum lot size is two acres except for those properties within one mile of the Urban Growth Boundary and then the minimum lot size shall be as currently required in the Oregon Administrative Rules Chapter 660, Division 004 (20 acre minimum as of October 4, 2000).**

Staff: No new lots are proposed as part of the application.

Hearings Officer: Criterion met.

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

Staff: No new lots are proposed therefore there is no need to calculate the area of the lot.

Hearings Officer: Criterion met.

- C. **(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.

Staff: As seen on the submitted site plans (Exhibit 2), the existing structures meet the required setbacks. The new addition is shown as 20-feet from the side street yard, which is less than the required 30-foot setback. However, the addition could be shortened or the applicant could apply for an adjustment to meet the standards. This proposal is mainly for the feasibility of locating the business on the property and for all intents and purposes, the business can meet the setbacks, albeit with some modification to the application for an adjustment if the conditional use is approved.

The current proposal does not meet this requirement. However, it is possible this criterion can be met with condition of approval.

Hearings Officer: Mr. Hutchinson expressed his intention to apply for an adjustment to the setback criterion, and Mr. Keinholtz states that adjustment criteria can be met in this instance. Condition of Approval 2 requires either that the applicant obtain an adjustment to the setback requirement or that the applicant take other steps so that the setback

requirement is met. Either alternative could feasibly be accomplished. As conditioned, this requirement is met.

- D. **(D) The minimum yard requirement shall be in-creased 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: Both Crown Point Highway and Lucas Road have 60-feet of right-of-way, which meets the County Standards.

Hearings Officer: Criterion met.

8. **The Subject Lot Is A Lot Of Record**

MCC 35.0005

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 35.7785. 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 Recording 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.

MCC 35.2675 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 35.0005, 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.

MCC 35.3370 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 35.0005, 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 and R zones 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, RC zone applied, Ord. 148 & 149;

(5) October 13, 1983, zone change to RC for some properties, Ord. 395;

(6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004 applied a minimum 2 acre lot size to RC zoned areas outside “acknowledged unincorporated communities” except where properties are within one mile of the Urban Growth Boundary the minimum is 20 acres;

(7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

(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 35.3385, 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 35.3360, 35.3375, and 35.4300 through 35.4360, 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.

Staff: Deed records show the parcel was created in 1966 with the recording of the deed instrument Book 537, Page 1080. However, the document is very difficult to read due to how it was archived. A representative from Multnomah County Assessment and Taxation has confirmed that the original on file was recorded in 1966 and describes the subject property.

Since the parcel was created in 1966, the property was split zoned F-2 for the northern portion, and R-10 for the southern portion. The parcel had access to both Lucas Road and the Columbia River Highway meaning the access standards of the districts were met. The 4-acre property would have met the minimum lot size for both zones, which were 2-acres in the F-2 and 10,000 square feet in the R-10. Prior to October 19, 1978 there were no requirements to partition property if three or fewer parcels were created. As such, the parcel met both zoning and land division rules in place at the time.

Currently, the property is split zoned Exclusive Farm Use (EFU) for the northern portion of the property and Rural Center (RC) for the southern portion. The RC portion has no additional requirements other than meeting zoning and land division requirements at the time of creation. The EFU zone does have additional Lot of Record Requirements. The property qualifies as a lot of Record under MCC 35.2675(A)(1). The property is below 19-acres and was not contiguous to another parcel under common ownership on February 20, 1990 according to Multnomah County Assessment and Taxation microfiche files. Therefore, the EFU Lot of Record standards are satisfied.

Hearings Officer: Based upon Staff analysis above, the parcel is a Lot of Record.

9. **The Subject Lot Has Parking and Access**

MCC 35.3380 Off Street Parking and Loading

Staff: Off Street parking and loading is addressed in Finding #14.

MCC 35.3385 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 passenger and emergency vehicles, except as provided for Lots of Record at MCC 35.3370(B).

Staff: The property has access to both NE Lucas Road and the Historic Columbia River Highway. The Transportation Specialist has noted in her September 19, 2007 memo that the property may need a variance to the County Road rules to get a second access onto a County road for the replacement dwelling. The variance can be processed separately from this application.

The Oregon Department of Transportation has been notified of the application and sent notice. However, no comment or approval of the access to the Historic Columbia River Highway has been received. Approval by the State is required for the County to approve the project. Approval could still be obtained and will need to be in order for the County to approve the application. This can be a condition of approval.

Hearings Officer: The applicants have provided a letter from ODOT dated 11-08-2007 stating that no new ODOT approach permit is required at this time. The criterion is presently satisfied, and no condition need be imposed.

10. **Conditional Use Approval Criteria**

MCC 35.6315 Conditional Use Approval Criteria.

(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

A. (1) Is consistent with the character of the area;

Staff: The proposed heating and cooling business is proposed on a site previously occupied by Crown Point Towing – a business that involved routine traffic in and out of the site, some auto wrecking, some repair activities, and customers coming and going. The hamlet and community of Springdale, in which the subject property is located contains several other businesses, a local school, and duplexes and triplexes. With

existing uses that generate traffic and provide goods and services to the local rural area already present, staff believes the addition of a heating and cooling business with 12-20 employees as described by the applicant, would be a similar and congruent use. Traffic generation as described by the applicant would be similar to the scale and scope of the previous business on site and those in the immediate area. With most employees off site the majority of the day, the traffic impact may even decrease from the previous use.

The purpose of the RC zoning is to provide business and service opportunities for the local rural community. As such, a heating and cooling company would fit into the purpose and existing character of the local area.

Hearings Officer: Criterion met.

B. (2) Will not adversely affect natural resources;

Staff: No water courses are located on or near the RC portion of the property. As described by the applicant, no hazardous materials are involved with the proposed business that could harm natural resources. A grading and Erosion Control permit or a Minimal Impact project will be required to evaluate construction to protect water quality prior to building permit sign-off.

Hearings Officer: Criterion met.

C. (3) Will not conflict with farm or forest uses in the area:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Staff: There are no forest lands adjacent to the subject property and therefore forest practices will not be impacted. The north portion of the subject property as well as other properties to the north of the RC zoning boundary are zoned Exclusive Farm Use. The applicant is proposing to use the northern portion of property that is zoned Exclusive Farm Use to raise and train horses. The applicant has provided documentation on the proposed farm use that includes classes, training, breeding and selling, coaching and show support, which are consistent with the State definition of *Farm Use*. Locating the proposed business on the RC portion of the property will not require any changes in the operation of the local farm uses in the area. The proposed equine use will keep the property in farm use.

Hearings Officer: Criterion met.

D. (4) Will not require public services other than those existing or programmed for the area;

Staff: The subject property current has an existing septic system, public water, and fire protection. No additional public services are required for the business to be operational.

Hearings Officer: Criterion met.

- E. **(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

Staff: County maps do not show the subject site or area as in an identified Big Game wildlife habitat area as defined by the State.

Hearings Officer: Criterion met.

- F. **(6) Will not create hazardous conditions; and**

Staff: As proposed, the business does not appear to create any hazardous conditions. The most relevant issue to the business would be a traffic impact. However, the applicant demonstrated that the entrance as proposed to the business from NE Lucas, and the existing exit from the property on the Historic Columbia River Highway, both have over 200-feet of straight line of sight in both directions. This can be seen in the County's air photos. Additionally, having an entrance only access on NE Lucas and an Exit only access on Historic Columbia River Highway reduces normal traffic conflicts at each respective access point. As such, staff does not foresee any hazardous conditions associated with the proposed use.

Hearings Officer: Criterion met.

- G. **(7) Will satisfy the applicable policies of the Comprehensive Plan.**

Staff: Comprehensive Plan policies are addressed in Finding #12.

Hearings Officer: Criterion met.

- H. **Oregon Administrative Rule 660-022-0030**

Staff: Because the County has not yet updated the comprehensive plan for the East of Sandy River Rural Plan Area, those administrative rules which have not yet been codified must be applied directly. Below are the OARs that are to be applied directly by the County.

Planning and Zoning of Unincorporated Communities

1. **OAR 660-022-0030(4) County plans and land use regulations may authorize only the following new commercial uses in unincorporated communities:**

(c) Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.

Staff: The business is currently located in the Corbett/Springdale community. The applicants submitted a description of their business and services provided which include high end HVAC systems, alternative energy options such as geothermal, wood, solar etc. They also service wood stoves, gas stoves and other 'niche' products. They also note that their products and services are provided to the rural homes as well as local nurseries and local schools.

The applicant has submitted a graph (Exhibit 3) depicting rural customers and their share of the overall business as well as an exhaustive database of clients. Time constraints and the sheer volume of the data base prevented Staff from determining which customers were or were not rural customers. It appeared the customer base was throughout the metro area with a high concentration on the eastern portion of the tri-county area – with Gresham, Troutdale, Corbett, Boring, Sandy, and Clackamas appearing on a regular basis. The graph indicated there was a cumulative rural customer base of 62.54%. However, the application did not indicate what the 'rural area' was, nor how it was defined. Additionally, the graph seemed to add the numbers of the two previous years together to come to the 62.54% rural customers. After submission, the applicants noted during a meeting on October 18, 2007 that the graph that was submitted was incorrect, but no additional information has been submitted into the record to support the proposed business is intended to serve the community and surrounding rural area.

With the record incomplete, staff cannot recommend approval because this standard has not been met. However, staff believes that it is possible the applicants could furnish information that would meet the criteria.

NOTE: An updated customer graph (Exhibit 4) was submitted but too late to be included in the staff report.

Hearings Officer: The applicants and their attorney expressed frustration and legal objection to the county's application of this rule, but ultimately presented the required evidence and argument sufficient for a determination that the criterion has been satisfied. As the applicant notes, there is no clear definition of a rural area in the rule, or any advice on how precisely to analyze a business and determine whether it serves that area. Based on the following evidence, I conclude that the use is intended to serve the community of Springdale and the surrounding rural area, and that the application complies with OAR 660-022-0030(4)(c):

1. The business specializes in technologies that are suited to the rural area.
2. The business attracts customers from a 20-mile radius, who would be largely rural.
3. 30-40% of clients are from rural areas, 45-55% of the business revenue comes from rural customers, and 50-60% of the business personnel-hours are spent on rural customers.
4. This would be the only heating and cooling business located in the area.
5. It will have a retail store for local customers.

6. The business has an active civic presence in the community.

This criterion is met.

2. **OAR 660-022-030(8) Zoning applied to lands within unincorporated communities shall ensure that the cumulative development:**

(A) Will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations; and

(B) Will not exceed the carrying capacity of the soil or of existing water supply resources and sewer services.

Staff: No known public health hazards or adverse environmental impacts are known to be associated with the proposed use. The closest watercourse is on the northern portion of the property and over 100-feet away. It is not near the proposed business and would not be adversely effected as a result of an approval. The City of Portland sanitarian has signed the On-Site Sewage Disposal certification form (Exhibit 5) indicating the property can handle the required carrying capacity generated by the new use. A letter from the Corbett Water District (Exhibit 6) also notes in a letter that they can serve the proposed use. The local fire district has also signed off on the Fire Flow and Fire Access service provider forms (Exhibit 7 and 8).

Hearings Officer: Criterion met.

11. **Multnomah County Comprehensive Plan Policies**

A. **Policy 7**

The County's policy is to establish and maintain rural centers which are intended primarily for commercial and community services needed by the residents of the rural areas of the County, and to provide some tourist services. Rural centers are or may be established on the basis of existing center development, on local area needs, on an evaluation of probable impacts on adjacent natural resource areas, on the demand for land to serve the primary purposes in a compact pattern, and on the capacity and condition of existing support services.

The County shall encourage the location of suitable uses within a rural center by:

- 1. Measuring the need for a use based upon the primary intent of the center.**
- 2. Determining that sufficient land exists within a center to accommodate the needed uses and maintaining a measurement of absorption rate of vacant lands,**

- A. The dedication of additional right-of-way appropriate to the functional classification of the street given in Policy 34 and chapter 11.60.
- B. The number of ingress and egress points be consolidated through joint use agreements,
- C. Vehicular and truck off-street parking and loading areas,
- D. Off-street bus loading areas and shelters for riders,
- E. Street trees to be planted,
- F. A pedestrian circulation system as given in the sidewalk provisions, chapter 11.60,
- G. Implementation of the bicycle corridor capital improvements program,
- H. Bicycle parking facilities at bicycle and public transportation sections in new commercial, industrial and business developments, and
- I. New streets improved to County standards in unincorporated County may be designated public access roads and maintained by the County until annexed into a city, as stated in ordinance 313.

Staff: No additional County right-of-way is required as part of the development according to the Transportation Specialist in her September 19, 2007 memo (Exhibit 9). However, the Design Review standards do require landscaping, off-street parking, loading areas, and appropriate traffic flow. As such, this comprehensive plan policy is satisfied.

Hearings Officer: Policy met.

D. **Policy 37 - Utilities**

Water and Disposal Systems

- A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or
- B. Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or
- C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
- D. Shall have an adequate private water system, and a public sewer with adequate capacity.

Drainage

- E. Shall have adequate capacity in the storm water system to handle the run-off; or**
- F. The water run-off shall be handled on the site or adequate provisions shall be made; and**
- G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.**

Staff: The Sanitarian has determined the property can adequately be served by a septic system (exhibit 5). Additionally, the local water district has indicated they can provide service to the business (Exhibit 6). The applicant has submitted a Drainage Certificate (Exhibit 10) signed by a professional engineer that stormwater generated on the property will be handled on site up to a 10-year/24-hour storm event.

Hearings Officer: Policy met.

E. Policy 38 - Facilities

Fire Protection

- B. There is adequate water pressure and flow for fire fighting purposes; and**
- C. The appropriate fire district has had an opportunity to review and comments on the proposal.**

Staff: Tom Layton of Multnomah County Rural Fire Protection District 14 has signed the fire access and fire flow forms indicating that there is appropriate fire protection to the site.

Hearings Officer: Policy met.

12. Design Review Content

MCC 35.7030 DESIGN REVIEW PLAN CONTENTS

(A) Any preliminary or final design review plan shall be filed on forms provided by the Planning Director and shall be accompanied by such drawings, sketches and descriptions as are necessary to describe the proposed development.

A. (B) Contents:

- (1) Preliminary Site Development Plan;**
- (2) Preliminary Site Analysis Diagram;**
- (3) Preliminary Architectural Drawings, indicating floor plans and elevations;**
- (4) Preliminary Landscape Plan;**

**(5) Proposed minor exceptions from yard, parking, and sign requirements;
and**

**(6) Design Review Application Fee, as required under the applicable fee
schedule in effect at time of application;**

Staff: The applicant has included the required elements.

Hearings Officer: Criteria met.

**B. (C) A preliminary site analysis diagram may be in freehand form and shall
generally indicate the following characteristics:**

(1) Relation to adjacent lands;

**(2) Location and species of trees greater than six inches in diameter at five
feet;**

(3) Topography;

(4) Natural drainage;

(5) Significant wildlife habitat;

**(6) Information about significant climatic variables, including but not limited
to, solar potential, wind direction and velocity; and**

**(7) Natural features and structures having a visual or other significant
relationship with the site.**

Staff: The applicant has included the required mapping elements.

Hearings Officer: Criteria met.

**C. (D) A preliminary site development plan may be in freehand form and shall
generally indicate the following as appropriate to the nature of the use:**

(1) Access to site from adjacent rights-of-way, streets, and arterials;

(2) Parking and circulation areas;

(3) Location and design of buildings and signs;

(4) Orientation of windows and doors;

(5) Entrances and exits;

- (6) Private and shared outdoor recreation spaces;
- (7) Pedestrian circulation;
- (8) Outdoor play areas;
- (9) Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;
- (10) Areas to be landscaped;
- (11) Exterior lighting;
- (12) Special provisions for handicapped persons; and
- (13) Other site elements and spaces which will assist in the evaluation of site development.

Staff: The application has shown the required access, parking, loading, building entry/exists, landscaping, etc as required for the Design Review on the submitted site plan.

Hearings Officer: Criteria met.

D. (E) The preliminary landscape plan shall indicate:

- (1) The size, species, and approximate locations of plant materials to be retained or placed on the site; and
- (2) Proposed site contouring.

Staff: The property contains a significant amount of existing lawn and vegetation materials that qualify for the landscaping requirements.

Hearings Officer: Criteria met.

13. Design Review Approval Criteria

A. MCC 35.7050 DESIGN REVIEW CRITERIA

(A) Approval of a final design review plan shall be based on the following criteria:

1. (1) Relation of Design Review Plan Elements to Environment.

(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.

(b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.

(c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter related, and shall provide spatial variety and order.

Staff: Much of the property currently meets this code from when Crown Point Towing occupied the site. The parking and paved areas are already existing and relate to the flow of traffic from the entrance on NE Lucas to the exit on East Crown Point Highway. The vegetative rows as shown on the site plan will help diffuse noise generated on site.

Hearings Officer: Criteria met.

2. **(2) Safety and Privacy – The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.**

Staff: The proposed traffic flow and proposed limited access and exit points increases safety by reducing potential conflicts of automobiles. A clearly defined pedestrian path will also limit possible conflicts between automobiles and pedestrians. The trees along the property lines denotes a change from public to private space.

Hearings Officer: Criterion met.

3. **(3) Special Needs of Handicapped – Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheel-chairs and braille signs.**

Staff: The proposed plan provides one handicap parking space close to the showroom and the office as shown on the submitted site plan.

Hearings Officer: Criterion met.

4. **(4) Preservation of Natural Landscape – The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.**

Staff: No alterations are proposed to the existing landscaping. The proposed lawn area and plantings will remain and be preserved as part of the proposal.

Hearings Officer: Criterion met.

5. **(5) Pedestrian and Vehicular circulation and Parking – The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.**

Staff: The parking spaces are located in harmony with the traffic flow from NE Lucas Road (entrance only) to East Crown Point Highway (Exit only). A pedestrian strip signifies pedestrians are in the area and to slow down while also taking pedestrians on the most direct route to the showroom and office.

Hearings Officer: Criterion met.

6. **(6) Drainage – Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.**

Staff: The applicant has submitted a proposed drainage plan that has been reviewed and stamped by a professional engineer as adequately handling a 10-year/24-hour storm even on site (Exhibit 10).

Hearings Officer: Criterion met.

7. **(7) Buffering and Screening – Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.**

Staff: The loading area for the vehicles associated with the business is located in the interior of the property and partially blocked from view from off site by the rows of trees along the property lines and the existing buildings. Additionally, the loading of the vehicles takes place in the morning so the vehicles can leave the site and make house calls, thus minimizing their impact to the community and adjacent area.

Hearings Officer: Criterion met.

8. **(8) Utilities – All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.**

Staff: The property is already served by utilities such as phone and electrical service. The addition to the existing structure should not require any additional above ground services.

Hearings Officer: Criterion met.

9. **(9) Signs and Graphics – The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.**

Staff: A small sign has been proposed in the southwest corner of the property but no information has been provided on its design. A condition of approval shall require the applicant to apply for and receive a sign permit if they elect to erect a sign at a later date. The main purpose of this application is to determine the plausibility of locating the heating and cooling business on the proposed site. The sign code will adequately address the needs of this criterion if a sign is erected.

Hearings Officer: The applicant has stated his intention to remove the proposed sign from the southwest corner. In any event, Condition of Approval 3 requires that the applicant obtain a sign permit prior to placement of a sign. As conditioned, the criterion is met.

B. **MCC 35.7055 REQUIRED MINIMUM STANDARDS**

1. **(A) Private and Shared Outdoor Recreation Areas in Residential Developments:**

(1) Private Areas – Each ground level living unit in a residential development subject to design review plan approval shall have an accessible outdoor private space of not less than 48 square feet in area. The area shall be enclosed, screened or otherwise designed to provide privacy for unit residents and their guests.

(2) Shared Areas – Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development, as follows:

(a) One or two-bedroom units: 200 square feet per unit.

(b) Three or more bed-room units: 300 square feet per unit.

Staff: There are no private or shared recreational areas included in the proposal.

Hearings Officer: Criterion met.

- 2 **(B) Storage**

Residential Developments – Convenient areas shall be provided in residential developments for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc. These areas shall be entirely enclosed.

Staff: While a single-family dwelling is on site and shall be replaced on a different area of the site, the proposal does not call for apartments or other such residential units that would require individual storage.

Hearings Officer: Criterion met.

3. **(C) Required Landscape Areas**

The following landscape requirements are established for developments subject to design re-view plan approval:

1. **(1) A minimum of 15% of the lot area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.**

Staff: The business is proposed on the RC portion of the parcel which occupies a 200x144 foot area (28,800 square feet). The site contains roughly 6000 square feet of landscaped area including grass, shrubs and trees. Therefore, nearly 21% if the site is landscaped.

Hearings Officer: Criterion met.

2. **(2) All areas subject to the final design review plan and not otherwise improved shall be landscaped.**

Staff: Areas not paved for parking or access are landscaped as show on the submitted site plan.

Hearings Officer: Criterion met.

- 3, **(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: There are 10 parking spaces which under this requirement would require 250 square feet of landscaping. The applicant has shown 6000 square feet of landscaped area.

The southern most parking space located on the west end of the property is within the 30-foot front setback, which is prohibited under the Off Street Parking Standards [MCC 35.4195(A)]. The parking space shall be relocated to the northern end of the parking spaces on the west property line. The southern most proposed parking space shall be abandoned, the asphalt removed, and planted as landscaping as a condition of approval.

Criterion can be met with a condition of approval.

Hearings Officer: The applicant has agreed to relocation of the parking space in accordance with Condition of Approval 6. As conditioned, the criterion is satisfied.

- 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: The site has an existing parking area along the western property line that was used for Crown Point Towing. No new parking or loading areas are proposed, only use of the existing asphalted area. As required under MCC 35.7055(C)(3)(a), the southern most parking space shall be removed and relocated. Additionally, the asphalt shall be removed and planted as landscaping. The western property line is separated from the parking spaces by a roughly 7 to 10 foot wide natural area with trees and vegetation. While the site plan shows large trees located on the adjacent property, the site visit revealed a substantial amount of small shrubs, plants and vegetation separating the parking area from the western side property line, surpassing the – foot requirement.

Hearings Officer: Criterion met.

- c. **(c) A landscaped strip separating a parking or loading area from a street shall contain:**

- 1. Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;**
- 2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and**
- 3. Vegetative ground cover.**

Staff: Existing parking areas are not adjacent to the street side property lines. No new parking areas are proposed. A 20x20 landscaped area separates parking on the west property line from the street containing grass and a sign.

Hearings Officer: Criteria met.

- d. **(d) Landscaping in a parking or loading area shall be located in defined landscaped areas which distributed throughout the parking or loading area.**

Staff: The landscaped area is readily defined on the subject property as shown on the site plan.

Hearings Officer: Criterion met.

- e. **(e) A parking landscape area shall have a width of not less than 5 feet.**

Staff: Both landscaped areas on the site are at least 20-feet wide.

Hearings Officer: Criterion met.

4. **(4) Provision shall be made for watering planting areas where such care is required.**

Staff: If approved, the owner shall be required to maintain all landscaping.

Criterion can be met with a condition of approval.

Hearings Officer: Pursuant to Conditions of Approval 4 and 7, this criterion is satisfied.

5. **(5) Required landscaping shall be continuously maintained.**

Staff: This shall be met with a condition of approval.

Criterion can be met with a condition of approval.

Hearings Officer: Pursuant to Conditions of Approval 4 and 7, this criterion is satisfied.

6. **(6) Maximum height of tree species shall be considered when planting under overhead utility lines.**

Staff: The trees included in the landscaping are existing trees but shall be maintained.

Hearings Officer: Criterion met.

14. **Off Street Loading and Parking**

MCC 35.4100

The purposes of this subdistrict and these off-street parking and loading regulations are to reduce traffic congestion associated with residential, commercial, manufacturing, and other land uses; to protect the character of neighborhoods; to protect the public's investment in streets and arterials and to provide standards for the development and maintenance of off-street parking and loading areas.

A. MCC 35.4135 IMPROVEMENTS REQUIRED

(A) Required parking and loading areas shall be improved and placed in condition for use before the grant of a Certificate of Occupancy under MCC 35.0525, or a Performance Bond in favor of Multnomah County equivalent to the cost of completing such improvements shall be filed with the Planning Director.

(B) Any such bond shall include the condition that if the improvement has not been completed within one year after issuance of the Certificate of Occupancy, the bond shall be forfeited.

Any bond filed hereunder shall be subject to the approval of the Planning Director and the County Attorney.

Staff: A condition of approval shall require the improvements to be placed prior to final occupancy of the property.

Criterion can be met with a condition of approval.

Hearings Officer: Pursuant to Condition of Approval 7, this criterion is satisfied.

MCC 35.4150 EXISTING SPACES

Off-street parking or loading spaces existing prior to July 26, 1979 may be included in calculating the number of spaces necessary to meet these requirements in the event of subsequent enlargement of the structure or change of use to which such spaces are accessory. Such spaces shall meet the design and improvement standards of this Section.

MCC 35.4165 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.

B. MCC 35.4170 ACCESS

(A) Where a parking or loading area does not abut directly on a public street or private street approved under MCC 35.7700 et. seq., the Land Division Chapter, there shall be provided an unobstructed 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 has direct access to both the Historic Columbia River Highway and NE Lucas Road. Each access point is proposed to contain one way traffic – NE Lucas to be the entrance, and Historic Columbia River Highway the exit. The proposed parking and loading space is not in a public street.

Hearings Officer: Criteria met.

C. MCC 35.4175 DIMENSIONAL STANDARDS

(A) Parking spaces shall meet the following requirements:

1. **(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.

Staff: All proposed parking spaces are 9 feet by 20-feet with no overhang obstructing the vertical clearance.

Hearings Officer: Criteria met.

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

Staff: No parallel spaces are provided.

Hearings Officer: Criterion met.

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

Staff: Each parking space meets the required dimensions exclusive of access drives, aisled, ramps or columns.

Hearings Officer: Criterion met.

(B) Aisle width shall be not less than:

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

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

Staff: The parking aisle measures 35 feet wide for the angled parking.

Hearings Officer: Criterion met.

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

(1)	District	Minimum Width	Minimum Depth
	All	12 Feet	25 Feet

(2) Minimum vertical clearance shall be 13 feet.

Staff: The loading area measures 20x75-feet – although the western most 10-feet will not be used for loading since it is beyond the building-line. Regardless, the standard is met.

Hearings Officer: Criteria met.

D. MCC 35.4180 IMPROVEMENTS

1. (A) Surfacing

- a. (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.**

Staff: The property already contains the required blacktop.

Hearings Officer: Criterion met.

- b. (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: There are no intermittent uses proposed.

Hearings Officer: Criterion met.

2. (B) Curbs and Bumper Rails

1. **(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.**

Staff: The parking areas are separated from the public streets by landscaping as shown on the submitted site plans. The parking on the western side of the property is separated by the adjacent property by a roughly 6-8 foot strip of vegetation as seen during the staff site visit.

Hearings Officer: Criterion met.

- b. **(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: No curbing was evident on the site visit and shall be a condition of approval. This criterion can be met with a condition of approval.

Hearings Officer: Condition of Approval 8 requires installation of curbing. Pursuant to this condition, the criterion is satisfied.

3. **(C) Marking – All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 35.4120, and such marking shall be continually maintained.**

Staff: Markings shall be required and maintained as a condition of approval.

Hearings Officer: Pursuant to Condition of Approval 9, this criterion is 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: No new parking and maneuvering areas are proposed. The area used for parking and maneuvering already exists and was in use in association with the previous business (Crown Point Towing). A diversion strip is currently on the parking area diverting stormwater to the southwestern vegetated corridor.

Hearings Officer: Criterion met.

E. MCC 35.4185 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: Any new lighting shall be shielded or deflected away from adjoining dwelling units as a condition of approval.

Hearings Officer: Pursuant to Condition of Approval 11, this criterion is met.

F. MCC 35.4195 DESIGN STANDARDS: SETBACKS

1. **(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.**

Staff: Currently, the southern most parking space on the western side of the property is within 30-feet of the Columbia River Highway and therefore is in a required yard. It is reasonable for a condition of approval to require it be decommissioned (asphalt removed and planted as part of the landscaping) and relocated to the northern side of the parking line or other portion of the property that will not conflict with the parking code. Criterion can be met with a condition of approval.

Hearings Officer: Pursuant to Condition of Approval 6, this criterion is met.

2. **(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: Currently, the area adjacent to the southern property line is mostly paved and is used to access the Columbia River Highway. The applicant has shown on the submitted site plan (Exhibit 2) that they will remove much of the paving and provide a planting strip separating the parking area from the public street. This shall be required as a condition of approval. Criterion can be met with a condition of approval.

Hearings Officer: Pursuant to Conditions of Approval 6 and 7, this criterion is satisfied.

G. MCC 35.4200 LANDSCAPE AND SCREENING REQUIREMENTS

- (A) The landscaped areas requirements of MCC 35.7055 (C) (3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 35.4165 (A).**

Staff: The Design Review standards of MCC 35.7055(C)(3) to (7) have been addressed in Finding #13B.

Hearings Officer: Criterion met.

H. MCC 35.4205 MINIMUM REQUIRED OFF-STREET PARKING SPACES

(D) Manufacturing and Storage

(1) Manufacturing – One space for each two employee positions on the largest shift, or one space for each 800 square feet of non-storage gross floor area, whichever is greater.

(2) Storage – One space for each 5,000 square feet of storage area for the first 20,000 square feet, plus one additional space for each additional 50,000 square feet.

Staff: The use proposed most closely fits *Manufacturing* out of the listed uses. With 6300 square feet of ground cover proposed with the main building and the showroom, the code requires 8 parking spaces. However, the code requires one parking space for every two employees, and with 12-20 employees proposed, the property is required to have 10 parking spaces. The applicant has proposed 10 parking spaces, including one handicap space.

Hearings Officer: Criterion met.

I. MCC 35.4210 MINIMUM REQUIRED OFF-STREET LOADING SPACES

(C) Manufacturing, Wholesale, Storage

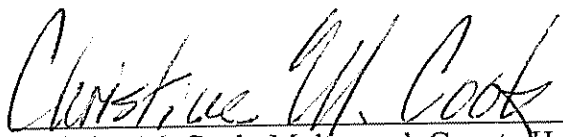
Square foot of Floor or Land Area	Minimum Loading Spaces Required
Under 5,000	0
5,000 - 39,999	1
40,000 - 99,999	2
100,000 - 159,999	3
160,000 - 239,999	4
240,000 - 319,999	5
320,000 - 399,999	6
400,000 - 489,999	7
490,000 - 579,999	8
580,000 - 699,999	9
670,000 - 759,999	10
760,000 - 849,999	11
850,000 - 939,999	12
940,000 - 1,029,999	13
Over 1,030,000	14

Staff: with 6300 square feet of ground cover proposed for the business, a total of 1 loading space is required. The applicant has 5 loading bays shown on the elevation plans (Exhibit 11) and therefore has more than the required spaces.

Hearings Officer: Criterion met.

Hearings Officer's Conclusion and Decision:

Based upon the evidence in the record, the applicable approval criteria, and the findings, analysis, and conclusions in this decision, and subject to the conditions of approval below, the Conditional Use Permit and Design Review for a Heating and Cooling Business and a Replacement Dwelling are approved.


Christine M. Cook, Multnomah County Hearings Officer

DATED: November 23, 2007

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 permit sign-off, the applicant/owner shall execute and record in the deed records for the County an irrevocable restriction prohibiting the siting of a dwelling on the Rural Center zoned portion of the parcel. A statement of release shall be included that must be signed by the county or its designee and state that the provisions of the code provisions of MCC 35.2620(L) have changed to allow the siting of another dwelling.
2. Prior to building permit sign-off, the owner/applicant shall apply for and be granted an adjustment/variance to the street-side yard setback required in MCC 35.3355(C). In the alternative, the applicant may increase the proposed setback from 20-feet to 30-feet to satisfy the dimensional requirements to the proposed addition.
3. Prior to the placement of a sign, the applicant shall apply for and obtain a sign permit [MCC 35.7050(A)(9) and MCC 35.7400 et. seq.]
4. The owner shall continuously maintain the vegetation and trees that comprise the landscaping as seen in Exhibit 12 [MCC 35.7055(C)(4) and (5)].
5. The number of employees shall be limited to 20 as proposed by the applicant.
6. The applicant/owner shall abandon the southern most parking space on the western side of the property and relocate it to the northern side of the parking spaces. The asphalt occupying the southernmost parking space shall be removed and converted into

landscaping consisting of lawn, shrubs and/or trees [MCC 35.7055(C)(3)(a) and MCC 35.4195(A)].

7. The parking and landscaping shall be put in place prior to a Certificate of Occupancy being issued by the City of Gresham Building department or, a performance bond in the favor of Multnomah County equivalent to the cost of completing such improvements shall be filed with the Planning Director [MCC 34.4135(A)].
8. The applicant/owner shall place a curb at least 4-inches in height separating the parking areas from the landscaped area. The curbing must be at least 3 feet from the lot line [MCC 35.4180(B)].
9. Parking markings shall be painted and maintained throughout the life of the business [MCC 35.4180(C)]
10. Any proposed lighting shall be shown on building plans and shielded and directed away from any adjacent dwelling unit [MCC 35.4185]
11. When the owner/applicant is ready to have building permits signed off, the applicant shall call Don Kienholz, Planner at (503)-988-3043 x29270, for an appointment for review and approval of the conditions and to sign the building permit plans. Multnomah County must review and sign off building permit applications before they are submitted to the City of Gresham. Four (4) sets of the site plan (one with erosion control measures shown and described) and three sets of building plans are needed for building permit sign off.

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.

Appeals to the Land Use Board of Appeals

The Hearings Officer Decision may be appealed to the Land Use Board of Appeals (LUBA) within twenty-one (21) days of when the Hearings Officer signed the decision.

Exhibits

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| 1. Sales Agreement For Applicants | H.1 Aerial photo of subject site and its surroundings. |
| 2. Site Plan | H.2 Hearing sign-in sheet. |
| 3. Original Customer Location Graph | H.3 Letter to Applicants from Oregon Dept. of Transportation |
| 4. Updated Customer Location Graph | H.4 Applicants' Hearing summittals |
| 5. On Site Sewage Certification Form | |
| 6. Water District Certification Form | |
| 7. Fire Flow Form | |
| 8. Fire Access Form | |
| 9. Transportation Memo | |
| 10. Drainage Certificate | |
| 11. Elevation Plans | |
| 12. Landscaping Plan | |