

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

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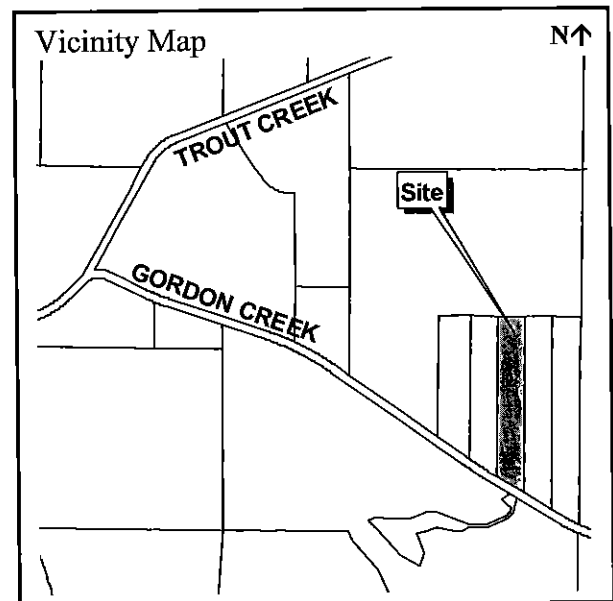
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## Decision of Hearings Officer

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### Application for an Accessory Use Determination, Variances & Exceptions to the Secondary Fire Safety Zone

**Case File:** T3-08-001**Hearing Date:** Friday, July 10, 2009**Hearings Officer:** Liz Fancher

**Location:** 38941 SE Gordon Creek Rd  
TL 500, Sec 24B, T 1S, R 4E, W.M.  
Tax Account #R99424-0110

**Applicant:** Mark Sorensen      **Property Owners:** Mark & Joyce Sorensen

**Summary:** Applicant is requesting the following:

1. A Variance to reduce the Forest Practice Setbacks from 130 feet to 31 feet in order to construct a storage building;
2. A Variance to reduce the Forest Practice Setbacks from 130 feet to 52 feet in order to legalize an existing horse barn and riding arena;
3. Exception to the Secondary Fire Safety Zone for both buildings; and
4. An Accessory Use Determination for both buildings in the Commercial Forest Use – 4 zone.

**Zoning:** Commercial Forest Use – 4 (CFU-4)

**Overlay Zone:** Hillside Development & Erosion Control (HD)

**Site Size:** 5.58 acres

**Applicable Approval Criteria:** Multnomah County Code (MCC):

**CFU-4 Zone District:** MCC 35.2225 Review Uses, (L) Structures or uses customarily accessory..., MCC 35.2250 Building Height Requirements, MCC 35.2261 Development Standards for Dwellings and Structures, MCC 35.2275 Lot of Record, MCC 35.2310 Exceptions to Secondary Fire Safety Zones.

**Variances:** MCC 35.7601 Purpose, MCC 35.7606 Scope, MCC 35.7616: Variance Approval Criteria

**Hearings Officer Decision:**

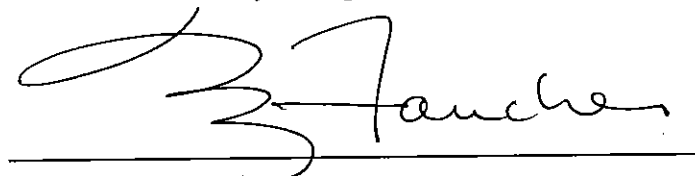
The Hearings Officer has approved the variances and exception subject to compliance with conditions of approval. The uses of the two structures that are the subject of this application are accessory uses allowed as review uses in the CFU-4 zone.

**Conditions of Approval:**

1. Approval of this application 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 or within subsequent land use permits. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. This land use decision expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided in MCC 37.0690.
3. Prior to land use sign off for the building permit, the property owners shall record a copy of this decision in the records of the Multnomah County Recorder and submit a copy of the recorded copy to the Land Use Planning section. [MCC 37.0670]
4. Within 60 days of this final decision, the property owners shall demolish or remove from the property the existing roof structure (all components) over the area identified as Open Storage for Equipment. [MCC 37.0560]
5. Prior to land use sign-off of the building permit, the property owners shall record a document (Exhibit B.9) binding the landowners, and the landowners' successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. [MCC 35.7616(D)]
6. Prior to land use sign-off of the building permit for either building, the property owners shall add the correct sized primary fire safety zone and the reduced secondary fire safety zone to the site plan.
  - a. Within 60 days of issuance of the building permit for the horse barn and riding arena, the required Primary and Secondary Fire Safety Zones shall be established for the structure within the subject tract.
  - b. Prior to use of the proposed storage building or the building permit being final by the building inspector, the required Primary and Secondary Fire Safety Zones shall be established for the structure within the subject tract. [MCC 35.2256(D)]
7. The property owner shall maintain a primary and a secondary fire safety zone on the subject tract as outlined below and show the fire safety zones on the building permit site plan [MCC 35.2256]:
  - a. A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

- b. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone on the subject property. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Maintenance of the secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the property owner.
8. Within 90 days of this final decision, the property owners shall obtain a building permit for the horse barn and riding arena. Any and all improvements required to bring the building into compliance with applicable building codes and the current addition of the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction standards shall be completed within 90 days of issuance of the building permit (Exhibit B.11). [MCC 37.0560 & MCC 35.2310(B)(1)]
9. Prior to construction of the storage building, the property owners shall obtain a building permit for the structure. Prior to occupancy of the storage building, it shall comply with applicable building codes and the current addition of the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 1 Ignition Resistant Construction standards (Exhibit B.10). [MCC 35.2310(B)(2)]
10. If any chimney is installed on the horse barn and riding arena and/or the proposed storage building a spark arrester shall be installed. [MCC 35.2261(C)(4)]
11. Within 90 days of final approval, the existing fences within 12 feet of the horse barn and riding arena shall be modified so that no combustible materials (wood, plastic, composite materials) are utilized. [MCC 35.2310(B)(3)]
12. Prior to land use approval of the building permit for the storage building, any existing fence within 12 feet of the storage building shall be modified so that no combustible materials (wood, plastic, composite materials) are utilized. All fencing installed within 12 ft of the horse barn and riding arena or storage building shall be composed of non-combustible materials. [MCC 35.2310(B)(3)]
13. Within 120 days of this final decision, a central monitored alarm system shall be installed within the horse barn & riding arena. The monitoring of this alarm shall be maintained for as long as the building exists on the property. [MCC 35.2310(B)(6)]
14. Prior to occupancy of the storage building, a central monitored alarm system shall be installed. The monitoring of this alarm shall be maintained for as long as the building exists on the property. [MCC 35.2310(B)(6)]

Dated this 23rd day of September, 2009.



Liz Fancher, Hearings Officer

### **Findings of Fact**

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

*italic.* The Hearings Officer accepts the staff findings contained in this report, unless noted otherwise or unless inconsistent with the findings prepared by the hearings officer. Findings prepared by the hearings officer are preceded by the label '**Hearings Officer:**'.

### **Burden of Proof**

The applicant bears the burden of proving compliance with the law and of establishing relevant facts.

#### **1.00 Project Description:**

**Staff:** The proposed application is a request for an accessory use determination, variance and exception to the secondary fire safety zone to legalize an existing horse barn & riding arena and to permit a proposed storage building.

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

**Staff:** The subject property is a narrow rectangular shaped parcel adjacent to Gordon Creek Road. It is 200 feet wide and is over 1157 feet long (5.58 acres). The parcel is one of five narrow parcels created in the early 1970s by metes and bounds description/subdivision. At present, the property contains a single family dwelling log home, a small well house, a 1,699 sq feet detached garage, the non-permitted horse barn and riding arena, and a non-permitted roof structure for vehicle, trailer and equipment storage. In 2007, Multnomah County code compliance opened a file for a non-permitted addition to the detached accessory structure. During the County's initial investigation it became apparent that other non-permitted structures existed on the site.

The Sorensens submitted this application for a variance, exception to the secondary fire safety zone, and a verification and alteration of nonconforming use permit in an attempt to rectify the identified compliance issues. The nonconforming use application was withdrawn by the Sorensens and submitted separately as application T2-08-048. The Nonconforming Use permit was issued in October 2008. The detached garage is now in compliance with land use and building code requirements. The remaining land use issues are the two non-permitted accessory buildings. The applicant has decided to remove the existing roof structure and replace it with a new building as proposed on the revised site plan (Exhibit A.15).

#### **3.00 Code Compliance**

##### **MCC 37.0560 Code Compliance And Applications.**

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

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

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

**(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.**

**Staff:** In April 2008, the Sorensens submitted this land use application to correct code compliance issues caused by the construction of buildings on the property without required land use approvals.

#### **4.00 Commercial Forest Use – 4 Criteria**

##### **4.01 § 35.2225 REVIEW USES**

**The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:**

**(L) Structures or uses customarily accessory or incidental to any use permitted or approved in this district, which do not meet the “accessory structures” standard in MCC 35.2220 Allowed Uses.**

**Staff:** The proposed 24 feet by 60 feet (1,440 sq. feet.) three-sided storage building will house the farm equipment and a recreational vehicle. The 78 feet by 72 feet (5,616 sq. feet) horse barn & riding arena with a 12 feet by 48 feet (576 sq. feet) feeder lean-to (6,192 sq. feet total) houses the property owners horses, hay and other horse related equipment and allows for personal recreational use of the property (Exhibit A.11 & A.15). The housing of horses is a customarily accessory use to the dwelling and property in the CFU-4 zone. The proposed storage building is a garage-type structure and is also customarily accessory to the single family dwelling. Since the property currently has a legal, 1,699 sq. feet accessory building and 5 feet-7 inch by 7 feet-7 inch well house near the dwelling, the two new structures will exceed the 2,500 sq. feet of combined footprint allowed outright in MCC 35.2220(T). The issues associated with the legalization of these structures are due to their encroachment into the Forest Practice Setbacks and the Secondary Fire Safety Zone. Their size in respect to single family dwelling is not an issue. *This criterion has been met.*

**Hearings Officer:** The applicant claims that the proposed horse barn and arena is a “building in conjunction with farm uses as defined in ORS 215.203” that is allowed without County review. While the label of the use indicates that it is allowed without review, all buildings must comply with County setbacks. As the buildings being reviewed do not meet the CFU-4 zone setbacks, the applicant must obtain approval of a variance and exception to the secondary fire zone requirements of the County code. To obtain approval of a variance and exception, the applicant’s development must come under a County review.

ORS 215.203, in relevant part, provides that farm use means:

*“current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. “Farm use” includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on*

*such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. \* \* \* "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).*

The evidence presented by the applicant regarding use of the horse barn/arena building fails to prove that the use meets the ORS 215.203 definition of farm use. Joyce Sorensen stables her horses in the building. She participates in horse drill team competitions and shows and practices with her horses in many locations in the Pacific Northwest. She uses the arena to practice for competitions. The Sorensens donate the use of their barn for 4-H Club use and to others for drill team practice.

The Sorensen's tax records show significant losses in every tax year. The amount of gross income is extremely low. The expenses related to the use are very high compared to gross income as shown by the following table:

<b>Year</b>	<b>Gross Income</b>	<b>Expenses</b>	<b>Expenses vs. Gross Income</b>
1998	No income	\$7,685	
1999	\$240	\$14,968	62.36 times greater
2000	\$450	\$11,252	25.00 times greater
2001	\$300	\$11,343	37.81 times greater
2002	\$377	\$12,400	32.89 times greater
2003	\$300	\$11,927	39.75 times greater
2004	\$600	\$11,336	18.89 times greater
2005	\$125	\$8,437	67.49 times greater
2006	\$1650	\$5,962	3.61 times greater

The only year in which the Sorensens sold livestock was 2006. This indicates that the Sorensens are not in the business of raising horses for sale as what appears to be one sale in nine years is insufficient to prove an intention to make a profit breeding, raising and selling horses.

The large disparity between farm income and farm expense in all tax years other than 2006 make it very clear that the Sorensens' horses are not a farm use. The fact that no livestock or farm products were sold in any year other than 2006 is also telling. The fact that the arena is not rented but is donated for use by others also supports the conclusion that the Sorensen's use of their arena and forest property is not a farm use.

On this record, I cannot find that the Sorensens have the primary purpose of obtaining a profit in money from horses and the arena. The amount of gross income is much too low to merit the large expenditures made by the Sorensens if they were seeking to make a profit from their arena and horses. Absent an explanation of how this money loser could ever be profitable, the evidence shows that this is not a farm use as defined by ORS 215.203.

MCC 35.2220 (T)(h) categorizes shelters for horses as accessory structures unless they are shown to be farm uses. The Sorensen's arena and barn are accessory structures. As the Sorensens have more than 2500 square feet of accessory structures on their property, the structures must be shown to be structures customarily accessory or incidental to any use permitted or approved in the CFU-4 zoning district. The code section identified as applicable by County staff for the review of the Sorensen's use is, therefore, the correct section. The hearings officer agrees that both structures are accessory to the single-family residential and forestry use of the property.

#### 4.02 § 35.2250 BUILDING HEIGHT REQUIREMENTS

##### (A) Maximum structure height – 35 feet.

**Staff:** The horse barn from finished grade to top of gable is 27 feet tall. The storage building is a total of 18 feet high. Both buildings meet the maximum structure height (Exhibit A.11 & A.12). *This criterion has been met.*

#### 4.03 § 35.2256 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Accessory structures within 100 feet. of dwelling	N/A	30	30	Primary required
Other Accessory structures	N/A	30	130	Primary & Secondary required

(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.

(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 35.2310 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

**(C) The minimum forest practices setback requirement shall be increased where the setback 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 setback requirements in consultation with the Road Official.**

**Staff:** The property owners have applied for variances to reduce the 130-foot side forest practice setbacks from the west and east property lines for an existing horse barn & riding arena and a proposed storage building. The existing horse barn & riding arena is 52 feet (60% reduction) from the west property line and 70 feet (53.8% reduction) from the east property line (Exhibit A.15). For the proposed 24 feet wide by 60 feet long storage building, is 31 feet (76.2% reduction) from the east property line and 145 feet from the west property line (Exhibit A.15). No reduction has been requested for the front or rear forest practice setbacks. The minimum front and rear forest practice setback has been provided for all existing and proposed buildings. In addition to the requested variances, the property owners have requested a reduction of the secondary fire safety zone for both of the proposed accessory structures via the exception process. *Provided the variances and exceptions are granted, these criteria have been met.*

**4.04 (D) Fire Safety Zones on the Subject Tract**

**(1) Primary Fire Safety Zone**

**(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**

**Staff:** A 30 feet primary fire safety zone can be provided around the proposed storage building and horse barn. While the site plan does not show the primary fire safety zone, the space is available to establish the required zone. *This criterion can be met.*

**4.05 (b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

**(c) The building site must have a slope less than 40 percent.**

**Staff:** The contour information available to the County indicates that the topography falls from south to the north (Exhibit B.7). This information shows that the slopes on the downslope side of the proposed storage building and horse barn is approximately 16%. The



primary fire safety zone would need to be extended on the northern side of these structures from 30 feet to 80 feet. The applicant has indicated that the slope ranges from 2 to 6 percent. Based on the revised site plan (Exhibit A.15), there appears to be adequate area available if necessary to extend the primary fire safety zone. Staff recommends the hearings officer condition this application if approved to provide surveyed contour information to establish the correct primary fire safety zone to the north of the proposed storage building and horse barn. *As conditioned, this criterion has been met.*

4.06

**(2) Secondary Fire Safety Zone**

**A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of 35.2310.**

**(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and**

**(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.**

**(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).**

**Staff:** The applicant has proposed to reduce the secondary fire safety zone for the proposed storage building and the horse barn. The property owners only own 1 parcel. No other land is part of the subject 5.58 acre tract. An exception to the secondary fire safety zone has been applied for to reduce the secondary fire safety zone for the horse barn & riding arena to 22 feet between the west property line and the building. The requested exception to the secondary fire safety zone for the proposed storage building will reduce the secondary to one foot between the east property line and the building. See additional findings under Section 5.00 below.

4.07    **§ 35.2261 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES**

**All dwellings and structures shall comply with the approval criteria in (B) through (E) below except as provided in (A):**

**(A) For the uses listed in this subsection, the applicable development standards are limited as follows:**

**(3) Accessory buildings.**

**(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 35.2261(C);**

**(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 35.2261(B) & (C);**

**Staff:** The horse barn is approximately 152 feet north of the existing dwelling. The proposed storage building is approximately 224 feet from the dwelling. The accessory buildings must meet the development standards of (B) & (C) below.

**4.08 (B) New dwellings, replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from a dwelling shall meet the following standards in (1) and (3) or (2) and (3):**

**(1) The structure shall satisfy the following Option 1, Non-discretionary Type 1 Permit requirements:**

**(a) To meet the Forest Practices Setback, the structure shall be located a minimum of 30-feet from a front property line adjacent to a county maintained road and 130-feet from all other property lines;**

**(b) The structure shall be located in a cleared area of at least 10,000 square feet that meets the tree spacing standards of a primary fire safety zone;**

**(c) The entirety of the development site is less than 30,000 square feet in total cleared area, not including the driveway;**

**(d) The structure is sited within 300-feet of frontage on a public road and the driveway from the public road to the structure is a maximum of 500-feet in length;**

**(e) The local Fire Protection District verifies that their fire apparatus are able to reach the structure using the proposed driveway; or**

**Staff:** The horse barn is 52 feet from the west property line. The proposed storage building is 31 feet from the east property line. The two buildings do not meet the 130-foot Forest Practice Setbacks from the west and east property line. The horse barn & riding arena is approximately 315 feet from the front property line (Exhibit A.15). The proposed storage building is approximately 435 feet from the front property line. The buildings must meet the development standards of (2) and (3) below.

**4.09 (2) The structure shall satisfy the following Option 2, Discretionary Type 2 Permit requirements:**

**(a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 35.2256;**

**Staff:** The subject property is 200 feet wide. Provided the forest practice setback variances and the exceptions to the secondary fire safety zone are granted, the two buildings will satisfy the standards of MCC 35.2256. The adjacent properties are forest lands (Exhibit B.6). The properties to the east and west are in forest practices based on them being in forest deferral. The proposed placement of these two buildings clusters the development within 450 - 500 feet of the public roadway. Development on the property to the east (Levy property) is within 400 feet of Gordon Creek and is similar to the subject site. Forest practices on the Levy property occur on the northern 800 feet of the property. The property to the west has existing structures starting approximately 700 feet from Gordon Creek Rd. The lotting pattern of these properties is very narrow and long. Aerial spraying of chemicals associated with forest

practices would not be feasible on any of these sites due to the close proximity of residential buildings. All three properties are developed with residential uses and it appears forest practices are quite limited on them. No agricultural uses appear to be occurring on the adjoining parcels. The construction of these two accessory structures will not further limit available forest practices on either of the adjoining properties. *This criterion has been met.*

**4.10 (b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

**Staff:** The subject property is a mixture of residential, accessory and forest practice uses. The location of the proposed accessory structures allows for the clustering of paving, vehicle movements and buildings to minimize the area necessary for these uses. No adverse impacts have been identified due to the placement of these two buildings. *This criterion has been met.*

**4.11 (c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

**Staff:** The proposed storage building and horse barn are adjacent to the existing development of the house, detached garage, septic system and rear yard landscaping. The narrowness of the property does create some siting issues for the Forest Practice Setbacks & Fire Safety Zone provision. The existing dwelling is 123 feet into the property (Exhibit A.15). It appears feasible to cluster the proposed buildings closer to the dwelling and increase the amount of land available on the 5.58 acres. The buildings could fit between the County road and the dwelling, but the property owners do not find this feasible due the need to redesign the driveway and reduction of their front yard.

**Hearings Officer:** I have found, below, that the existing driveway and the drain field that separates the house from the horse barn/arena by over 110 feet are existing improvements that, in part, warrant approval of the requested variances. I find that the applicant's desire to keep the front yard driveway and turnaround area intact is reasonable and that the County variance code allows me to consider their desire to retain existing improvements, like the driveway and drain field, in deciding whether to approve the variance. The drain field's location requires that the horse arena/barn be placed approximately where located. I have also found, below, that fire safety and nuisance issues support placing the horse arena/barn at least 100 feet from the Sorensen residence. This issue is discussed in detail below. I believe that it is appropriate, under this criterion, to consider the location of all existing, lawfully established site improvements in deciding whether a new structure's location minimizes the amount of forest land used.

This code criterion implements one of the requirements of OAR 660-006-0029, a law that directs the County to balance a number of factors and to apply the fire siting standards of OAR 660-006-029 to determine the appropriate location for new structures on properties located on forest lands. OAR 660-006-0029(1) lists four factors which are, according to LUBA's decision in *Sisters Forest Planning Committee v. Deschutes County*, 48 Or LUBA 78 (2004) are balanced to select the correct location of a structure. These factors include the requirement that the County minimize the risks associated with wildfire in selecting the correct location for structures as shown in the language quoted below:

***660-006-0029 Siting Standards for Dwellings and Structures in Forest Zones***

***The following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agriculture/forest zones. These criteria***

*are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. A governing body shall consider the criteria in this rule together with the requirements OAR 660-0060-0035 to identify the building site:*

*(1) Dwellings and structures shall be sited on the parcel so that:*

*(a) They have the least impact on nearby or adjoining forest or agricultural lands;*

*(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*

*(c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and*

*(d) The risks associated with wildfire are minimized.*

I have been persuaded by the applicant's evidence regarding fire risks that the location chosen for the barn/arena reduces fire risk and that this reduction in risk is sufficient to warrant the approval of the proposed building locations. The evidence shows that a spacing distance of 100 feet or more between homes is the lowest fire risk category. It also indicates that leaving a distance of at least 100 feet between the two largest structures will create a defensible space between the home and arena/barn from which to fight a fire in either building. This will reduce the risk of a fire in one of these two buildings from spreading to the other structure and to the surrounding forest. By reducing the fire risk, the applicant's plan will help increase the odds that the forest lands in the rear of the subject property will grow to maturity and be able to be harvested rather than destroyed by fire.

I find that the proposed location for the storage building minimizes the amount of forest land used by sharing the paved loading area with the horse barn/arena. The staff findings show that a front yard location for this building would require alteration of the existing front yard driveway. I find, based on the record, that preserving the driveway with a turnaround area minimizes the risks of wildfire and, therefore, should be retained.

- 4.12 (d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and minimized. Provisions for reducing such risk shall include:**

**Staff:** The service corridor is 427 feet in length. *This criterion has been met.*

- 4.13 (3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

**(a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;**

**(b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the driveway standards of MCC 35.2261(E) with permanent signs posted along the access route to indicate the location of the emergency water source;**

**Staff:** The two buildings proposed are accessory structures and do not contain a dwelling. There are no perennial water sources on the property.

**Hearings Officer:** The applicant has shown that the risk of fire is minimized by the locations selected – especially when compared to a location closer to the existing residence. The locations chosen are clustered about as close to the existing home as possible without being so close that fire danger and conflicts between uses (odor, flies) will arise.

**4.14 (C) The dwelling or structure shall:**

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**
- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**
- (3) Have a fire retardant roof; and**
- (4) Have a spark arrester on each chimney.**

**Staff:** The two proposed buildings must obtain building permits and comply with the applicable building codes. A condition of approval has been included requiring building permits for these buildings, neither of which are a mobile home. The horse barn and riding arena and proposed storage building are metal pole type buildings. Metal roofing is fire retardant. The elevations do not show any chimneys. A condition of approval is included to require spark arresters on any chimney installed on the buildings.

**4.15 § 35.2275 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. ...**

**Staff:** The subject parcel is 5.58 acres and the property owner does not currently and did not own any adjacent properties in 1990. In permit T2-08-048 (Exhibit B.8), the County found the property was a Lot of Record. The parcel was created in 1974 via a metes and bounds description. At the time the property was zoned F-2 with a minimum lot size of 2 acres. The parcel met the minimum lot size. *The subject property is a Lot of Record.*

**5.00 Exception to Secondary Fire Safety Zone**

**5.01 § 35.2310 EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES**

**(A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of 35.2310 (B) when:**

**(1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or**

**(2) The dwelling or structure is proposed to be located within 130 feet of the centerline of a public or private road serving two or more properties; or**

**(3) The proposed dwelling or structure is proposed to be clustered with a legally existing dwelling or structure.**

**Staff:** The subject tract is a single parcel. The parcel is 200 feet wide and qualifies for the review option of an Exception to the Secondary Fire Safety Zone under (1) above.

**5.02 (B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:**

**(1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban– Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or**

**(2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and**

**Staff:** The Horse Barn and Riding Arena is 52 feet from the west property line and 70 feet from the east property line. The building must meet the Class 2 Ignition Resistant Construction standards in order for the Exception to the Secondary Fire Safety Zone to be granted for this building.

The proposed storage building will be 31 from the east property line and 145 feet from the west property line. This storage building must meet the Class 1 Ignition Resistant Construction standards in order for the Exception to the Secondary Fire Safety Zone to be granted for this building.

**Hearings Officer:** Conditions of approval have been imposed to assure compliance with these standards.

**5.03 (3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and**

**Staff:** Fences exist within 12 feet of the existing horse barn and the proposed storage building. These fences are constructed of wire and wooden fence posts. In order to meet the above requirement, these fences within 12 feet of the building must be modified to comply with the above requirement. A condition of approval is recommended. *As conditioned, this criterion can be met.*

**Hearings Officer:** The condition of approval recommended by staff has been imposed to assure compliance with this code requirement.

**5.04 (4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of MCC 35.2310 (B) (1) are utilized, or**

**(5) A dwelling shall have a central station monitored 13D sprinkler system if**

**the secondary fire safety zone equivalents of MCC 35.2310 (B) (2) are utilized.**

**Exception: Expansions of existing single family dwellings as allowed by MCC 35.2225 (A) shall not be required to meet this standard, but shall satisfy the standard of MCC 35.2261(C)(3).**

**Staff:** No dwelling is proposed at this time. *These criteria are not applicable.*

- 5.05 (6) All accessory structures within the fire safety zone setbacks required by MCC 35.2256, and all accessory structures within 50 of a dwelling, shall have a central monitored alarm system.**

**Staff:** Both accessory buildings are within the secondary fire safety zone setbacks required by MCC 35.2256. Both buildings must have a central monitored alarm system installed. A condition of approval is recommended. *As conditioned, this criterion can be met.*

- 5.06 (7) All accessory structures within 50 feet of a building shall have exterior walls constructed with materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.**

**Staff:** The two proposed buildings are within 15 feet of each other. The elevations submitted for the horse barn & riding arena (Exhibit A.11) show the eastern elevation will have metal siding on the roof and many of the sides. The western elevation is open. Metal siding may need to be added to the building if the lumber used to support the roof does not qualify as heavy timbers. The proposed storage building will be sided and roofed with metal (Exhibit A.12) on three sides. The southern facing elevation is open. Metal is a noncombustible material. Staff is uncertain whether the southern elevation complies with the above criterion. The front of the building is within 15 feet of the northern elevation of the horse barn & riding arena. A metal roll-up garage door installed on this elevation would allow for adequate vehicle access but have noncombustible materials for fire resistive construction to protect adjacent uses to the building. A condition of approval is recommended to require a metal roll-up garage door be installed. *As conditioned, this criterion can be met.*

**Hearings Officer:** This code criterion requires that exterior walls be constructed of materials of a certain type. It does not impose a requirement that all sides of a building be enclosed. As a result, the hearings officer has not required that a metal roll-up garage door be provided on the storage building. If a roll-up door is needed for the building to comply with the applicable fire code, as required by another condition of approval, the door must be provided.

- 5.07 (8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban– Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication.**

**Exception:** The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour-rated fire-resistive construction or heavy-timber construction.

**Staff:** The property owner has indicated that the terrain on the descending slope surface is between 2 to 6 percent. County topographic information indicates a 16% slope. During the staff's site visit, the area did not appear to have that steep of slope. In order to determine the correct primary fire safety zone, additional information is needed to determine the correct primary fire safety zone. The existing horse barn and the proposed storage building will have metal siding to the ground on the downslope side of the structures. *This criterion can be met.*

## **6.00 Variance Criteria**

### **6.01 § 35.7601 PURPOSE**

**(A) The regulations of this Zoning Code Chapter are designed to implement the Policies of the Comprehensive Framework Plan and each Rural Area Plan. However, it is also recognized that because of the diversity of lands and properties found in the county there should be a zoning provision that permits justifiable departures from certain Zoning Code dimensional standards where literal application of the regulation would result in excessive difficulties or unnecessary hardship on the property owner.**

**(B) To address those situations, modification of the dimensional standards given in MCC 35.7606 may be permitted if the approval authority finds that the applicant has satisfactorily addressed and met the respective approval criteria in MCC 35.7611, Adjustments, or 35.7616, Variances. If an Adjustment or Variance request is approved, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.**

**(C) The Adjustment review process provides a mechanism by which certain dimensional standards may be modified no more than 40 percent if the proposed development continues to meet the intended purpose of the regulations. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the regulation.**

**(D) The Variance review process differs from the Adjustment review by providing a mechanism by which a greater variation from the standard than 40 percent may be approved for certain zoning dimensional requirements. The Variance approval criteria are based upon the traditional variance concepts that are directed towards consideration of circumstances or conditions on a subject property that do not apply generally to other properties in the same vicinity.**

**All proposed modification of the dimensional standards given in MCC 35.7606(A)(2) shall be reviewed under the Variance review process regardless of the proposed percentage modification.**

### **6.02 § 35.7606 SCOPE**

**(A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:**

**(1) Reduction of yards/setback/buffer requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG)**



**overlay districts and the Commercial Forest Use fire safety zone are not allowed under the Adjustment process; and**

**(2) Reduction of yards/setback/buffer requirements within the Hillside Development, Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and**

**(3) Minor modification of yards/setbacks/buffers in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.**

**(B) Dimensional standards that may be modified under a Variance review are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, height, sign height, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:**

**(1) Reduction of yards/setback/buffer requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts; and**

**(2) Modification of fire safety zone standards given in Commercial Forest Use districts; and**

**(3) Increase to any billboard height or any other dimensional sign standard.**

**(C) The dimensional standards listed in (A) and (B) above are the only standards eligible for Adjustment or Variance under these provisions. Adjustments and Variances are not allowed for any other standard including, but not limited to, minimum lot area, modification of a threshold of review (e.g. cubic yards for a Large Fill), modification of a definition (e.g. 30 inches of unobstructed open space in the definition of yard), modification of an allowed density in a Planned Development or houseboat moorage, or to allow a land use that is not allowed by the Zoning District.**

**Staff:** The two proposed accessory structures are over 100 feet from the existing dwelling. MCC 35.2256 specifies that the Forest Practice Setbacks for these structures are 30 feet from the front property line and 130 feet from all other property lines. The horse barn & riding arena is 52 feet from the west property line and 70 feet from the east property line. The property owner is proposing a reduction of the forest practice setback of 60% (52 feet) and 53% (70 feet) respectively for this building. The building meets the front and rear forest practice setbacks as proposed.

The proposed storage building is proposed to be 31 feet from the east property line. This is a 77% reduction in the forest practice setback of 130 feet. The building meets the forest practice setbacks for the western (145 feet), southern (435 feet) and northern (729 feet) property line.

#### **6.03 § 35.7616 VARIANCE APPROVAL CRITERIA**

**The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 35.7606 upon finding that all the following standards in (A) through (F) are met:**

**(A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to:**

**Staff:** Staff is uncertain that a circumstance or condition exists on this property that does not apply to other properties in the vicinity (Exhibit B.6). Due to the Forest Practice Setback options depending on building location in relation to the dwelling, the 30 feet Forest Practice Setback could be met if the two buildings were proposed within 100 feet of the dwelling. The circumstance arises when the buildings are moved further than 100 feet from the dwelling. The narrowness of the property prevents the 130 feet Forest Practice Setback from being provided to the east and west property lines because the parcel is only 200 feet wide. Unfortunately for the property owners, this is not the only narrow parcel in the CFU-4 zone. Four adjacent properties created at the same time as the subject property are also narrow and would have similar restrictions on constructing accessory structures.

**Hearings Officer:** This variance criterion asks an applicant to show that a condition or circumstance that does not apply generally to other property in the same vicinity or zoning district justifies approval of a variance. The code lists examples of conditions that may provide a basis for approval. In this case, I find that the following conditions and circumstances, together, create a condition or circumstance that does not apply generally to other property in the same vicinity or zoning district:

First, the size of the subject property is substantially smaller than required by the minimum lot size of CFU 4 zoning district. The minimum lot size is 80 acres. At 5.58 acres, the lot is one of the smaller lots found in the CFU 4 zoning district. According to the zoning map and Assessor's maps in the record, it appears this condition applies to a number of other lots in the district but most are larger.

Second, the subject property is very narrow and very deep. A number of smaller lots in the CFU 4 zoning district are narrow and deep but the majority of lots are wider. This may have been the result of a desire to provide a home location in the front of the lot and a wood lot in the rear of the property.

Third, the applicant has obtained evidence that shows that the risk of forest fire increases if homes are sited closer than 100 feet apart. As both the barn/arena has a larger footprint than the home, it seems logical to conclude that it should also be spaced at least 100 feet from the home to reduce the risk of fire. The applicant has also shown that this spacing provides defensible space for fire fighting around each structure. Horse arenas are found in the CFU-4 zone but are not common.

Fourth, the applicant has shown that barns should be at least 100 feet away from a residence to avoid negative impacts from odors and flies.

Fifth, the applicant has shown that the horse barn/riding arena cannot be located within 100 feet of and to the rear of the existing home because there is an existing septic drain field between the home and horse barn/riding arena that extends out a distance of 110 feet to the rear of the house. In addition, an area of 10 feet must, according to the applicant's engineer, be provided between the drain field and any structure.

Sixth, the horse barn and riding arena would need to be located less than 100 feet from the log home if it were placed in the front yard in a location that complied with the front yard setback of 30 feet due to the location of the existing home.

Seventh, the evidence shows that horse arenas have special needs compared to other area uses. They are large and need to be a certain size to allow for indoor horseback riding. While it would have been possible for the Sorensens to have built a narrow and long building, that building would still require approval of a setback variance. While such a change would reduce the amount of setback variance required, it would extend the length of the barn into the rear of the property. A setback variance would, in that case, be required in an area where one is not now required.

Eighth, hay is stored in the barn and the arena/barn is a large structure. This means the arena/barn has a higher risk of fire than other structures and that a fire in the structure will be larger and more likely to spread than a fire in a smaller building. This makes it important to keep the arena/barn away from the residence in order to reduce the risk that a fire in the barn will spread to the nearby home.

Ninth, the front of the subject property has been developed with a paved driveway. The driveway is designed in a loop. That design allows emergency vehicles to turn around on the property and for good vehicle circulation in the event of a fire. The construction of the arena buildings in front of the house would require removal of this driveway area.

Tenth, an area of separation of at least ten feet is needed between the horse arena/barn and the septic drain field. A distance of about 41 feet is provided between the drain field and barn so an extra 31 feet of spacing over the minimum is provided. I have considered requiring the arena/barn to be moved to this location but find that the location chosen by the Sorensen's is not be significantly different from that location in terms of impacts on forest practices but is superior in terms of separating the two buildings that present the highest risk of fire to the area's forest.

These facts indicate that the horse barn/riding arena should be at least 100 feet from the home where a variance approval is needed to site the home. The fire siting rules and considerations call for the horse barn/arena to have a location that is centered or close to being centered between the side lot lines. The existing location is close to being centered on the property.

Once the riding arena and barn is placed in the proposed location, the parking and access needs for the barn and fire fighters make the location chosen for the storage building the best location. It is located within 100 feet of the barn and can share the asphalt pavement area with the horse barn/riding arena. While the storage building might be able to fit in the front yard, such a location is an odd location for this type of building. To function correctly and to allow vehicles to access the building given the existing development of the property (excluding the illegally constructed structure) without creating a second driveway access on Gordon Creek Road, the building needs to be oriented east to west so that the door faces the existing driveway. A minimum setback of 30 feet to the side lot line is the minimum possible setback that can be approved with a variance. This would mean that the existing driveway would need to be removed or rebuilt as indicated in staff findings. I find that I can rely on the location of the driveway to justify the approval of the storage building where proposed. I have looked at other potential locations to the rear of the property (including a location between the drain field and house and behind the horse arena/barn) but find that none functions as well as the one proposed. The record shows that County staff helped the applicant select this location for the building. I conclude that this means that staff believes that this is the best location for the structure other than in a location in the front yard.

Where the building is proposed, it will not require the removal of the front yard driveway and turnaround. Also, in either a front yard or rear yard location that is within 100 feet of the

Seventh, the evidence shows that horse arenas have special needs compared to other area uses. They are large and need to be a certain size to allow for indoor horseback riding. While it is possible to build a long narrow barn and arena building by placing the arena and barn end to end that building would still require approval of a setback variance. The combined distance from the sides of the building to the side yards would be greater. This change creates a much longer building, however, so the length of the side yard along which a variance is needed is significantly longer.

Eighth, hay is stored in the barn and the arena/barn is a large structure. This means the arena/barn has a higher risk of fire than other structures and that a fire in the structure will be larger and more likely to spread than a fire in a smaller building. This makes it important to keep the arena/barn away from the residence in order to reduce the risk that a fire in the barn will spread to the nearby home.

Ninth, the front of the subject property has been developed with a paved driveway. The driveway is designed in a loop. That design allows emergency vehicles to turn around on the property and for good vehicle circulation in the event of a fire. The construction of the arena buildings in front of the house would require removal of this driveway area.

Tenth, an area of separation of at least ten feet is needed between the horse arena/barn and the septic drain field. A distance of about 41 feet is provided between the drain field and barn so an extra 31 feet of spacing over the minimum is provided. I have considered requiring the arena/barn to be moved to this location but find that the location chosen by the Sorensen's is not be significantly different from that location in terms of impacts on forest practices but is superior in terms of separating the two buildings that present the highest risk of fire to the area's forest.

These facts indicate that the horse barn/riding arena should be at least 100 feet from the home where a variance approval is needed to site the home. The fire siting rules and considerations call for the horse barn/arena to have a location that is centered or close to being centered between the side lot lines. The existing location is close to being centered on the property.

Once the riding arena and barn is placed in the proposed location, the parking and access needs for the barn and fire fighters make the location chosen for the storage building the best location. It is located within 100 feet of the barn and can share the asphalt pavement area with the horse barn/riding arena. While the storage building might be able to fit in the front yard, such a location is an odd location for this type of building. To function correctly and to allow vehicles to access the building given the existing development of the property (excluding the illegally constructed structure) without creating a second driveway access on Gordon Creek Road, the building needs to be oriented east to west so that the door faces the existing driveway. A minimum setback of 30 feet to the side lot line is the minimum possible setback that can be approved with a variance. This would mean that the existing driveway would need to be removed or rebuilt as indicated in staff findings. I find that I can rely on the location of the driveway to justify the approval of the storage building where proposed. I have looked at other potential locations to the rear of the property (including a location between the drain field and house and behind the horse arena/barn) but find that none functions as well as the one proposed. The record shows that County staff helped the applicant select this location for the building. I conclude that this means that staff believes that this is the best location for the structure other than in a location in the front yard.

Where the building is proposed, it will not require the removal of the front yard driveway and turnaround. Also, in either a front yard or rear yard location that is within 100 feet of the

house, the only workable locations for the storage building would still be just 30-feet from a side lot line so the only benefit of those alternative locations is that they are clustered closer to the house. A similar benefit is achieved, however, because the building will be clustered in an area with the arena/barn.

These variances have been approved, in large part, based on findings related to reduced fire risk. It is expected that the applicant will fully and completely comply with all fire code requirements that have been imposed as conditions of approval. As variances were approved to setbacks that are designed to protect neighboring properties and the forest from fire, full compliance is needed to achieve that goal. In the event that compliance with conditions of approval is not achieved or maintained as required, the County may seek to revoke this approval.

#### **6.04 (1) The size, shape, natural features and topography of the property, or**

**Staff:** The subject property is 200 feet wide by 1,224.5 feet long. The subject property is one of five long and narrow parcels (Exhibit B.6) created in the early 70's. The property owners have not identified any natural features other than trees that would prevent construction of the buildings in compliance with the regulations. The County's contour information shows that the terrain is flat for the first 425 feet of the property (Exhibit B.6) and then increases to approximately 17% slope towards the rear of the property. In the area, properties range from 2.5 to 78.90 acres (Exhibit B.6). The forest practice setbacks vary depending on whether an accessory structure is within 100 feet of the dwelling. If the building is within 100 feet of the dwelling, the forest practice setbacks are 30 feet from all property lines. If the building is further than 100 feet from the dwelling the side and rear forest practice setbacks increase to 130 feet. While the subject property is only 200 feet wide, it would be feasible to meet the 30 foot forest practice setback on the subject property (Exhibit B.12). Since the property owner wishes to place the proposed storage building and legalize the existing horse barn & riding arena further than 100 feet from the existing dwelling, the forest practice setbacks are increased from 30 feet to 130 feet. With the requirement of a 130 foot setback on both the east and west of the buildings, it is not feasible to meet the larger forest practice setbacks on the subject property. The shape of the property is a circumstance or condition that limits the placement of buildings farther than 100 feet from the existing dwelling. This circumstance is not unique and does affect adjacent properties to the east and west (Exhibit B.6).

**Hearings Officer:** While the shape of the subject property is not unique, it imposes significant restraints on the development of the property. It makes it impossible for the applicant to meet the forest setbacks and to develop the property in a way that will minimize fire hazards and provide a sufficient separation between the residence and horse barn/arena to prevent adverse impacts on residents due to nuisances associated with the horse barn use. The applicant has proven that a separation of 100 feet is the minimum separation that should be provided between the residence and barn for fire safety and nuisance issues.

#### **6.05 (2) The location or size of existing physical improvements on the site, or**

**Staff:** The existing single family dwelling is 123 feet from the front property line with a large circular driveway between the dwelling and the road right of way. Immediately north of the dwelling is the on-site sewage disposal system including the 110 feet long drainfield. A large detached garage is 125 feet to 130 feet from the front property line and 25 feet to the east property line. It is technically feasible to place the horse barn & riding arena within 100 feet of the dwelling. This would reduce the Forest Practice Setbacks to 30 feet from all

property lines in order to provide the Primary Fire Safety Zones (Exhibit B.12). Slight modifications to existing improvements may be necessary to locate the buildings within 100 feet. The existing driveway access would need to be shifted to the east. Another option would be to modify the drainfield or the shape of the buildings.

**Hearings Officer:** This criterion allows an applicant to rely on the location or size of existing improvements on the site to justify the approval of a variance. This means that the applicant is not required to relocate the drain field as it is an existing physical improvement. That improvement makes it impossible to site the horse barn/arena within 100 feet of the home. As a result, the 130-foot side yard setback requirement applies and cannot be met for any location behind the existing log home. The location of the existing home makes it difficult and impractical to place the barn/arena in the front yard. Any front yard location would place the barn/arena in close proximity to the home where it would create an increased fire hazard and would block light and access to the existing home.

**6.06 (3) The nature of the use compared to surrounding uses, or**

**Staff:** An indoor arena typically requires a large building in order to have an adequate area to exercise horses. The existing horse barn and riding arena has a 48-foot wide by 72-foot long arena area. A 30-foot wide by 72-foot long equipment room, 2 stalls and a tack room are attached to the eastern edge of the arena. In addition, a 12-foot wide by 48-foot long feeder area is attached to the northern end of the arena area. The overall ground coverage is 6,192 sq. feet.

The proposed 24 foot by 60 foot storage building will house the property owner's recreational vehicles, trailers and farm equipment. The building is 1,440 sq. feet.

Planning staff reviewed properties within the immediate vicinity (Exhibit B.5) to compare what accessory structures exist in the neighborhood. The largest building found was at the Trout Creek Bible Camp and is 3,000 sq. feet. Looking at the cumulative square footage for the accessory structures on the three Bible Camp properties, a total 4,600 sq. feet exists. Typically, the total square footage for accessory structures on the smaller residential Commercial Forest Use properties range from 512 square feet to 1,238 square feet. None of these buildings appear to have a riding arena.

**Hearings Officer:** Riding arenas are large buildings. They need to have sufficient width and length to allow for indoor horse back riding. The evidence shows that the applicant's arena is small compared to many other arenas. Mrs. Sorenson's drill team practices at one of these larger arenas.

**6.07 (4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district, or**

**Staff:** The subject property is one of five identically zoned narrow properties in a row. It is feasible to place the two buildings and their related uses on the subject property by placing the buildings within 100 feet of the existing dwelling. The forest practice setback would then be reduced to 30 feet from all property lines. The horse barn and riding arena could fit between the road and the existing dwelling. The proposed storage building could be placed south of the well house, but would require a small shift in the access point to the roadway. Another option would be to place it immediately north of the existing detached garage. A number of large trees would need to be removed for this option. Another option would be to redesign the horse barn & riding arena so that it is only 44 feet wide by 156 feet long. That

would allow the building to remain further than 100 feet from the existing dwelling and only need an Adjustment. The Forest Practice Setbacks apply to all properties in the area and does not restrict this property to a greater degree than it restricts the other properties to the east or west of the subject site.

**Hearings Officer:** The setback requirement substantially restricts the use of the subject property by requiring the horse arena and all accessory buildings to be located within 100 feet of the home that is located on the property. That location is not feasible due to existing development and fire safety concerns. The 130-foot setback affects the subject property and other nearby properties to a greater degree than it restricts other properties in the zoning district. The evidence shows that some other properties are as narrow as the subject property but that most properties in the CFU-4 zone are wider. This fact is one of the conditions that supports approval of the variance requested for the barn/arena.

**6.08 (5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.**

**Staff:** During the recent Forest Practice Setback update of 2006, staff considered the problem with narrow parcels and the 130 feet setback. The reduced 30 feet Forest Practice Setback for accessory buildings within 100 feet of the dwelling was to allow accessory buildings on narrow parcels or when a dwelling does not meet the current setbacks and the placement of a detached garage would be shifted over 100 plus feet from the dwelling due to the 130 feet Forest Practice Setbacks.

**6.09 (6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.**

**Hearings Officer:** The conditions that merit relief through approval of a variance have been discussed above.

**6.10 (B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.**

**Staff:** The subject property and its related shape were created by a prior owner in 1974. While this circumstance is not of the property owners' making, the construction of the horse barn and riding arena without land use approval is. On the proposed storage building, it is the property owners' personal preference not to locate the building towards the front of the property or locate within 100 feet of the dwelling due to existing trees.

**Hearings Officer:** The barn's existing location is not one of the circumstances that support approval of this variance. The factors that support approval of the variances are not of the applicant's making and are not the result of the personal circumstances of the applicant. Instead, they arise from the needs and use characteristics of the accessory use of the subject property and the narrowness of the property. The forest setbacks were adopted after 1974.

**6.11 (C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.**

**Hearings Officer:** There is a practical difficulty in meeting the County's setbacks for the barn/arena because the existing septic drain field location prevents the applicant from siting the barn within 100 feet of the house without removing and relocating the drainfield. There is

a practical difficulty in siting the storage building in the front yard because such a functional location for the structure in the front yard would require the removal and reconstruction of part of the front yard driveway and turnaround area.

**6.12 (D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zoning district in which the property is located, or adversely affects the appropriate development of adjoining properties.**

**Staff:** The possible injury to adjacent or nearby properties can be mitigated by requiring the property owners to record a document binding the landowner, and the landowner's successors in interest, and prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937 (Exhibit B.9).

**Hearings Officer:** Neighbors testified in favor of approval of the variances and exception. The only properties impacted by approval of this application are the properties that adjoin the east and west sides of the subject property. It is evident from a review of the aerial photographs that the front yards of adjacent properties are used for residential purposes rather than forestry. The main areas that are suited for forestry are located to the rear of the homes on each lot. The required waiver will assure that approval of the variances will not be materially detrimental to property in the vicinity.

**6.13 (E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.**

**Staff:** If the horse barn and riding arena had different dimensions the need for such a large variance would be reduced (Exhibit B.12). Had the riding arena (48 feet wide by 84 feet long = 4,032 sq. feet.) been attached to the equipment room & stalls (30 feet by 72 feet = 2,160 sq. feet.) in a linear fashion the same square footage could have been provided and the setbacks to the west & east property line could have been increased to 76 feet. The proposed storage building could be shifted to various locations as discussed above. In addition, the building could be shifted to within 5 feet of the horse barn & riding arena to increase the setback from the east property line from 31 feet to 41 feet. At present, it does not appear that the variance requested is the minimum necessary from the Forest Practice Setbacks to alleviate the difficulty.

**Hearings Officer:** Mrs. Sorensen has demonstrated that her arena is the minimum size needed for her to practice for drill team events. While the arena and barn could be placed end-to-end and the depth of the side yard setbacks increased, that design would increase the length of the building and the length of the area that would require approval of a setback variance. Also, the design of the barn keeps it toward the front of the property and minimizes its impact on timber harvesting operations that may occur at the rear of the property. The barn is placed almost as close to the drain field as is possible. When all of these factors are considered, I believe that the variance requested is the minimum necessary variation from the Code requirement to alleviate the difficulty. In both cases, I assessed this question assuming that the barn and arena could be demolished and relocated on the property or partially demolished and remodeled. I did not consider this expense a hardship that warrants approval of the variances. Instead, I reviewed the applicant's site plan to determine if I found any location that would better meet the intent of the law without causing the applicant to relocate the septic drain field and front yard driveway.

**6.14 (F) Any impacts resulting from the variance are mitigated to the extent practical.**



**That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.**

**Staff:** Staff has not identified any impacts to adjoining properties for adequate light or privacy. There may be impacts to forest practices occurring on adjoining properties, but due to the limited information in the record, staff is not able to ascertain these impacts at this time. If at the public hearing, the Hearings Officer identifies an impact, appropriate mitigation measures may be able to be conditioned if the application is approved. At present, no mitigation measures have been proposed by the applicant.

**Hearings Officer:** All of the neighbors who participated in this hearing supported approval of the requested variances and exception. No request to mitigate was presented by any impacted property owner. I find no facts in the record that indicate that mitigation is needed if the conditions of approval imposed, above, are followed.

## 7.00 Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	4/15/08
A.2	1	Plot Plan	4/15/08
A.3	1	Open Storage Building Elevation	4/15/08
A.4	1	Horse Barn / Riding Arena Building Elevation	4/15/08
A.5	1	Accessory Building Addition Elevation	4/15/08
A.6	1	Storm Water Certificate	4/15/08
A.7	2	Certification of Water Service	4/15/08
A.8	5	Fire District Review – Fire Flow Requirements	4/15/08
A.9	3	Certification of On-Site Sewage Disposal	4/15/08
A.10	1	Amended Plot Plan – Dated 1/16/08	5/12/09
A.11	1	Floor Plans & Elevations for Horse Barn & Riding Arena – Dated 2/15/08	5/12/09
A.12	1	Elevations for Storage Building – Dated 5/1/09	5/12/09
A.13	1	Withdrawal of Nonconforming Use Portion of the Initial Application	7/30/08
A.14	1	Email with Questions to Mark Sorensen with Answers regarding the Application	6/3/09
A.15	1	Revised Plot Plan	6/3/09

'B'		Staff Exhibits	Date of Document
B.1	7	Voluntary Compliance Agreement	11/16/07
B.2	1	Receipt of Signed Voluntary Compliance Letter	11/19/07
B.3	2	A&T Property Record for TL 500, 1S4E24B	4/15/08
B.4	1	Accessory Building Analysis	6/15/09
B.5	1	Map of Surrounding Properties Analyzed	6/15/09
B.6	60	A&T Property & Physical Improvement Information for Properties in the Immediate Area	6/15/09, 6/19/09 & 6/29/09
B.7	1	Contour Map of Property	
B.8	12	T2-08-048 decision	10/31/2008
B.9	1	Forest Covenant	No Date
B.10		Class 1 Ignition-Resistant	No Date
B.11		Class 2 Ignition-Resistant	No Date
B.12	1	Various Building Location Options	No Date
'C'		Administration & Procedures	Date
C.1	4	Incomplete Letter	5/14/08
C.2	1	Acknowledgement of 180 Days to Get Application Complete	7/11/08
C.3	1	Complete Letter (Day 1 - June 3, 2009)	6/18/09
C.4	2	Notice of Public Hearing	6/19/09
C.5	1	Affidavit of Publication from the Oregonian	6/19/09
'H'	#	Exhibits Submitted at Hearing	Date
H.1	22	Response to Staff Report and Recommendation	8/7/09
H.2	1	Oversized Zoning Map	8/7/09
H.3	1	Aerial of Site	8/7/09
H.4	1	Adjacent Properties	8/7/09
H.5	1	Surrounding Properties	8/7/09
H.6	1	Sign-In Sheet	8/7/09

'I'		Post Hearing Exhibits	Date
I.1	6	Response to Staff Report and Recommendation	8/21/09
I.2	22	<p>Appendix A: Legal Review Pages A1 – A21</p> <p>A-1 Memorandum to Peter Fry From Ty Wyman, Dunn Carney, Allen, Higgins &amp; Tongue LLP – Page 1</p> <p>A-2 Page 2 of Memo</p> <p>A-3 Page 3 of Memo</p> <p>A-4 1S4E13 &amp; Index Map</p> <p>A-5 1S4E13D</p> <p>A-6 1S4E14</p> <p>A-7 1S4E23 &amp; Index</p> <p>A-8 1S4E24 &amp; Index</p> <p>A-9 1S4E24A</p> <p>A-10 1S4E24B</p> <p>A-11 1S4E24D</p> <p>A-12 1S5E18D</p> <p>A-13 1S5E18C</p> <p>A-14 1S5E18A</p> <p>A-15 1S5E18 &amp; Index</p> <p>A-16 1S5E19 &amp; Index</p> <p>A-17 1S5E19A</p> <p>A-18 1S5E19B</p> <p>A-19 1S5E19C</p> <p>A-20 1S5E19D</p> <p>A-21 Multnomah County Base Zoning Designations East of Sandy, West of Sandy and Scenic Area Rural Plan Areas</p>	8/21/09
I.3	40	<p>Appendix B: Farm Use Pages B1 – B39</p> <p>B-1 Farm Use Response from Mark &amp; Joyce Sorensen</p> <p>B-2 Posting of Equine Inherent Risk Law ORS 30.687 – 30.697</p> <p>B-3 Profit or Loss From Farming – 1998</p> <p>B-4 Profit or Loss From Farming – 1999</p> <p>B-5 Profit or Loss From Farming – 2000</p> <p>B-6 Profit or Loss From Farming – 2001</p> <p>B-7 Profit or Loss From Farming – 2002</p> <p>B-8 Profit or Loss From Farming – 2003</p> <p>B-9 Profit or Loss From Farming – 2004</p> <p>B-10 Profit or Loss From Farming – 2005</p> <p>B-11 Profit or Loss From Farming – 2006</p> <p>B-12 2009 Season Tryouts</p> <p>B-13 2007 – 2008 Back to Back Short Program Team of 4 and Champions</p> <p>B-14 2008 Team of 4 Champs</p> <p>B-15 2007 Team of 4 Champs</p>	8/21/09

		B-16 Parade Drill – Eugene 2007 B-17 Individual Team Picture B-18 2008 Clark County Fair B-19 2008 Sulkam, WA Competition B-20 Sulkam, WA B-21 Team Posing for Practice Picture B-22 2007 Clark County Fair B-23 2007 Sulkam Competition B-24 2007 Short Program – Albany, OR B-25 2007 Freestyle Program – Albany, OR B-26 2006 Quicksilver Competition B-27 2006 Team of 4 B-28 2005 Team B-29 2005 Quicksilver Comp B-30 2005 Impromptu Drill – Albany, OR B-31 Walking our Program 2004 – Albany B-32 2004 – Riding – Albany B-33 2002 Sandy Mtn. Days Parade B-34 Pinto Show – 2009 – Albany B-35 Pinto Show – Albany B-36 Horse Show Photo B-37 2004 Canby Rodeo B-38 Ima Suntan Man – Stud Previously owned on Property B-39 Oregon Farm Bureau Membership Dues Invoice	
I.4	11	Appendix C: Fire District Expert Response Pages C1 – C10  C-1 Multnomah County Rural Fire Protection District #14 Letter C-2 Applicant Statement C-3 Gresham Fire Emergency Services Life Safety Division Living with Fire C-4 Other Considerations in Making Your Home Survivable C-5 Check Work Sheet C-6 Fire Risk Rating For Homes C-7 Acknowledgements C-8 Scoring C-9 Structural Fire Protection C-10 Definitions	8/21/09
I.5	19	Appendix D: Engineer Expert Response Pages D1 – D17  D-1 SFA Design Group, LLC D-2 City of Portland’s Application to Install an On-Site Sewage Disposal System or Alternative System D-3 Site Plan Instructions from the City of	8/21/09

		<p>Portland</p> <p>D-4 Standard Serial System with Drop Box</p> <p>D-5 Environmental Management Systems Page 1</p> <p>D-6 Environmental Management Systems Page 2</p> <p>D-7 Environmental Management Systems Page 3</p> <p>D-8 Cazadero Series Page 1</p> <p>D-9 Cazadero Series Page 2</p> <p>D-10 NRCS Web Soil Survey Map</p> <p>D-11 Soil Map Legend</p> <p>D-12 Map Unit Legend</p> <p>D-13 Environmental Soils Section Report of Subsurface Sewage Systems</p> <p>D-14 Map of Subsurface Sewage Systems</p> <p>D-15 Angle Design Location of Barn Versus System</p> <p>D-16 Oregon Department of Environmental Quality Page 1 &amp; 2</p> <p>D-17 Oregon Department of Environmental Quality Page 3</p>	
I.6		<p>Appendix E: Supporting Expert Comments Pages E1 – E20</p> <p>E-1 Barn Site Considerations</p> <p>E-2 Animal Sciences Horses – Page 1</p> <p>E-3 Animal Sciences Horses – Page 2</p> <p>E-4 Animal Sciences Horses – Page 3</p> <p>E-5 US Horse Biz – Page 1</p> <p>E-6 US Horse Biz – Page 2</p> <p>E-7 Western Horseman Book Roof &amp; Rails</p> <p>E-8 Building Type and Site – Page 1</p> <p>E-9 Page 11</p> <p>E-10 Page 12</p> <p>E-11 Page 13</p> <p>E-12 Page 14</p> <p>E-13 Page 15</p> <p>E-14 Page 16</p> <p>E-15 Page 17</p> <p>E-16 Page 18</p> <p>E-17 Page 19</p> <p>E-18 Back Cover of Book</p> <p>E-19 Janet &amp; Sid Erickson – Page 1</p> <p>E-20 Janet &amp; Sid Erickson – Page 2</p>	8/21/09
I.7	53	<p>Appendix F: CFU Zone Similar Properties</p> <p>F-1 Applicant Statement</p> <p>F-2 Subject Barn</p> <p>F-3 Historic Columbia River Highway Barn</p> <p>F-4 Historic Columbia River Highway Cover Statement</p> <p>F-5 HCRH Barn #2</p>	8/21/09

		F-6 Little Page Road Cover Letter	
		F-7 Little Page Road Barn	
		F-8 Little Page Road Barn Cover Letter 2	
		F-9 Little Page Road Barn 2	
		F-10 Howard Road Barns Cover Letter	
		F-11 Howard Road Barn 1	
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		F-15 Hurlburt Road Barn	
		F-16 Hurlburt & Little Page Barn Cover Letter	
		F-17 Hurlburt & Little Page Barn	
		F-18 Rickert Road Barn Cover Letter	
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		F-23 Gordon Creek Barn 2	
		F-24 Trout Creek Road Barn Cover Letter	
		F-25 Trout Creek Road Barn Picture 1	
		F-26 Trout Creek Road Barn Picture 2	
		F-27 Trout Creek Road Barn Picture 3	
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		F-36 Map with Numbers	
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		F-38 Sorensen Barn	
		F-39 41301 SE Gordon Creek Barn	
		F-40 38105 SE Gordon Creek Barn (Trout Creek Bible Camp)	
		F-41 38105 SE Gordon Creek Bible Camp Barn 2 (Trout Creek Bible Camp)	
		F-42 Approximately 41310 SE Trout Creek Road Barn	
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I.10	6	Final Argument	9/4/09