



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

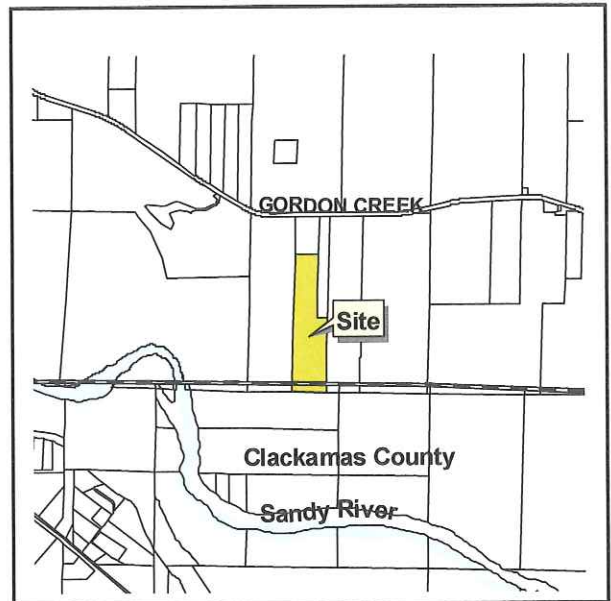
BEFORE THE HEARINGS OFFICER FOR MULTNOMAH COUNTY, OREGON FINAL ORDER

This Decision consists of Conditions, Findings of Fact and Conclusion

Case File: T3-08-003

Location: 39420 SE Gordon Creek Rd, Corbett
TL 600, Sec 24D, T 1S, R 4E, W.M.
Tax Account #R99424-0170

Applicant/ Heinrich Fruehauf
Owner: Sheron Fruehauf



Summary: Applicant is requesting a Type B Home Occupation approval to operate a Chinese medical clinic within an existing single family dwelling. A type B Home Occupation requires the approval of a conditional use permit in the Commercial Forest Use – 4 zone

Zoning & Overlay Commercial Forest Use – 4 (CFU-4)
Hillside Development & Erosion Control (HD)

Site Size: 19.2 Acres

Decision The Conditional Use Permit is Approved with Conditions

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any *ex parte* contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Jurisdictional Issues

At the commencement of the hearing, I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the Applicant.

STANDARDS, CRITERIA, ANALYSIS AND FINDINGS OF FACT

1. Project Description

Applicant Heiner Fruehauf, Ph.D. has been working in the field of Chinese culture and civilization for 30 years, with a particular specialization in Chinese medicine. In this capacity, he founded the School of Classical Chinese Medicine at National College of Natural Medicine in Portland in 1992, where he has been employed as a full time professor ever since. Since he received his acupuncture license in the state of Oregon in 1995, he has also been seeing about 20-25 patients per week in his private Chinese medicine practice in Portland. Since purchasing the 19.2 acre piece of property in Corbett in 1999 on which the residence in question is located, the Fruehaufs have been contemplating integrating Dr. Fruehauf's existing natural medicine practice into their newly built home. They are now seeking conditional use approval to operate a Chinese medical clinic within their existing single family dwelling.

2. Site Characteristics

The subject property is occupied by two accessory structures (one is the former house) used as art studios and a barn on the northern portion of the property and a newer single family dwelling 1,162 ft south of the front property line and 1,700 ft south of Gordon Creek Road. The newer single family dwelling was constructed in 2002. The 19.2 acre

property is heavily forested and has areas with 25% or greater slopes (Exhibit B.4). The driveway travels through these steeper areas to gain access to the dwelling and proposed medical clinic.

3. **Testimony and Evidence Presented**

A. At the hearing on October 9, 2009, 16 exhibits were received and are listed on the Exhibit List, which is attached hereto as Exhibit 2, to this order.

B. Planner, Lisa Estrin, testified for the County, summarized the staff report and recommended approval of the conditional use permit subject to the recommended conditions of approval.

C. Heiner Fruehauf testified in support of the application and raised concerns about the recommended condition of approval which would require the applicants to pave and widen the drive leading from Gordon Creek Road to the the proposed parking lot.

D. There was no testimony or evidence submitted in opposition to the application.

STANDARDS AND CRITERIA, ANALYSIS AND FINDINGS OF FACT

The staff report is detailed and with one exception references evidence which supports approval of the application. Staff did not have enough information from the applicants to be able to determine what the grade adjacent to the house was in order to determine the distance in feet for the primary fire safety zone to evaluate if Policy 38 was met. The issue raised by staff in section 6.10 of the staff report and the concerns the applicants had regarding the recommended condition for the driveway improvement will be the reviewed herein.

1 Policy 38

It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:

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.**

Police Protection

**D. The proposal can receive adequate local Police protection in
accordance with the standards of the jurisdiction providing police
protection.**

Staff: The Corbett Fire District has had the opportunity to review and comment on the proposed home occupation (Exhibit A.10). The Fire Chief specifies that the dwelling needs to have a fire retardant roof and a proper fire safety zone around the structure. The roof on the existing dwelling is metal; a fire retardant material. The size of the

primary fire safety zone is dependent on the grade within 30 ft of the dwelling. If the grade adjacent to the house is less than 10%, the primary fire safety zone would be only 30 ft around the dwelling. On the downslope grade, the primary fire safety zone increases in size when slopes are over 10%. The following chart shows the extension required for steeper slopes:

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

The applicant will need to clarify the slopes adjacent to the dwelling so that the hearings officer can determine compliance with the Fire Department's comments.

Multnomah County Sheriff has indicated that there is adequate service available (Exhibit B.2). *At present, the proposal's compliance with this policy is still outstanding.*

Hearings Officer Analysis: At the hearing, Heiner Fruehauf testified that the area within 30 feet of the house was level and the grade was less than 10%. There were photos submitted in evidence which showed the area around the house and which supported the testimony that the area was relatively level. I find that the slope is less than 10% within the 30 foot area around the house and that the primary fire safety zone does not need to increase in size because of slope issues.

- The Applicants have requested that the staff recommended condition of approval number 6 in the staff report not be imposed or that the applicants receive some kind of waiver or variance from the MCC criteria which mandates the condition.**

Hearings Officer Analysis: The Applicants have many valid concerns about the condition. They compared building the road to putting a freeway through the forest. There are two bridges that would need to be installed or widened. They estimate that 100 trees or more would need to be cut down. Because of the length of the road and the challenges related to the construction, the expense of constructing the driveway/road is cost prohibitive.

This Application is subject to both the Development Standards for Dwellings and Structures (MCC 35.2261) and the Off-Street Parking and Loading Standards (MCC 35.4100 et.seq).

It is the Access provision in the Off-Street Parking and Loading Standards which mandates that the drive be paved:

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 35.770 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.

Since the proposed parking area for the conditional use does not abut directly on a public street or private street approved under MCC 35.7700, this section applies.

The Off-Street Parking Requirements Standards allow limited exceptions (staff Administered) from required Off-Street Parking or Loading Spaces (MCC 35.4215), but the section does not address the standard set forth in the Access provision in MCC 35.4170.

I did not find any other provisions in the Multnomah County Code that would allow me to grant an exception or variance (nor was a variance applied for).

I find that the recommended condition number 6 contained in the staff report is consistent with the MCC requirements and will be imposed. I have modified the condition to also include a reference to MCC 35.2261.

3 Adoption of Staff Report By Reference

Except as modified herein, the staff report, attached hereto as Exhibit 1, is adopted and is incorporated by this reference herein as though fully set forth.

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; the parking lot and driveway improvements are not completed; the building department has not finalized any necessary permits to change the occupancy rating of the rooms used for the business; and the clinic is not in operation. 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 (if required) and operation of the business, the property owners shall record a copy of this decision through the conditions of approval 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. Prior to land use sign-off of the building permit (if required) and operation of the business, the property owners shall record a document (Exhibit B.5) 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 or demonstrate that Exhibit B.5 has been recorded in the past. [MCC 35.7616(D)]
5. Prior to operation of the medical clinic from the property, all physical improvements including the road and parking area shall be completed. [MCC 35.4135 Improvements Required]

6. Prior to any improvements being completed, the property owners or their representative shall provide plans to Land Use Planning demonstrating compliance with the following:
 - a. The drive leading from Gordon Creek Road to the proposed parking lot shall be widened to 20 ft and paved. (MCC 35.2261 (E) and MCC 35.4135). The widening of the drive shall be designed by a licensed engineer to meet the following:
 - i. Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;
 - ii. Provide an all-weather surface of at least 20 feet in width;
 - iii. Provide minimum curve radii of 48 feet or greater;
 - iv. Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
 - v. Shall show the location of traffic directions arrows; and
 - vi. Shall meet the road grade standards of MCC 35.2261(E)(5). [MCC 35.4170(A) & MCC 35.2261(E)]
 - b. The parking lot shall be designed to meet the standards of MCC 35.4170 through 35.4200.
 - c. The stormwater created from all newly created impervious areas shall be handled on-site via a stormwater drainage control system. The system shall be designed by an Oregon Licensed Professional Engineer and shall handle the rate of storm water runoff attributed to the development during a 10-year/24-hour storm event. The engineer shall stamp the plans and certify that the stormwater runoff will be no greater than that which existed prior to development as measured from the property line or from the point of discharge into a watercourse. [MCC 29.333(C) & Policy 37]
7. No sale of medicines, herbs, or other materials may be made from the premise or property. [MCC 35.2230(C)(1)]
8. All acupuncture and other type of needles used as a part of the Chinese medical clinic home occupation shall be properly disposed of at an authorized needle collection disposal facility. [MCC 35.6315(A)(6)]
9. The Chinese medical clinic home occupation shall occur only within the rooms designated on Exhibit A.12 & A.13. No patients (customers) may use the subject site outside of the dwelling for any use other than for off-street parking within the parking lot area. No more than three (3) patients may be on the property, parked within the parking lot or within the medical clinic rooms at any one time.
 - a. No portion of the accessory buildings on the property shall be used for any aspect of the Chinese medical clinic home occupation.
 - b. No medical retreats, over-night stays or group meetings are allowed as part of this home occupation.
 - c. No more than 5 employees are allowed as part of the Chinese medical clinic. Pursuant to MCC 35.6650(A), practitioner Heinrich Fruehauf is employee number one (1). The Chinese medical clinic home occupation may employ only four additional full or part-time employees. The clinic may not operate with a substitute practitioner.
 - d. The Chinese medical clinic may not serve patients before 8:30 am (08:30) or after 5:30 pm (17:30) Monday through Friday. Business operations on Saturdays or Sundays are allowed in special circumstances or emergencies. [MCC 35.6650(A), MCC 35.6660(B) & (J)]

CONCLUSION

The application for a conditional use permit to operate a Chinese medical clinic as a home occupation is approved subject to the conditions of approval listed above.

IT IS SO ORDERED, this 16th day of November, 2009



JOAN M. CHAMBERS, Hearings Officer



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

Staff Report

Conditional Use Permit for a Type B Home Occupation

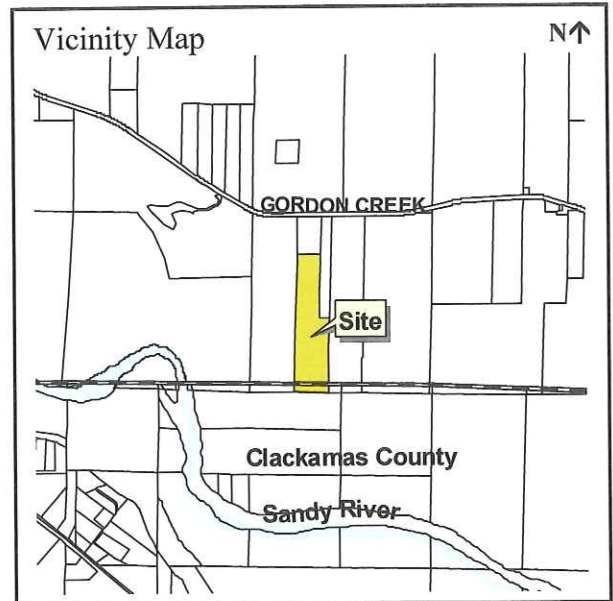
Case File: T3-08-003

Scheduled Before one of the following County
Hearings Officer's:

Joan Chambers
Liz Fancher
Bruce White

Hearing Date, Time, & Place:

Friday, October 9, 2009, at 10:30 am or soon
thereafter, in Room 103 at the Land Use Planning
Division office located at 1600 SE 190th Avenue,
Portland, OR 97233



Location: 39420 SE Gordon Creek Rd, Corbett
TL 600, Sec 24D, T 1S, R 4E, W.M.
Tax Account #R99424-0170

Applicants/Property Owners: Heinrich & Sheron Fruehauf

Summary: Applicant is requesting to operate a Type B Home Occupation for a Chinese medical clinic within the existing single family dwelling. A Type B Home Occupation requires the approval of a conditional use permit in the Commercial Forest Use – 4 zone.

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

Overlay Zone: Hillside Development & Erosion Control (HD)

Site Size: 19.2 acres

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 35.0005 Definitions - Home Occupation;

Commercial Forest Use – 4 - MCC 35.2230(C) Type B Home Occupation..., MCC 35.2245 Use Compatibility Standards;

Off-Street Parking and Loading - MCC 35.4100 through MCC 35.4215;

Home Occupations - MCC 35.6650 Definitions, MCC 35.6655 Purposes, MCC 35.6660 Criteria for Approval MCC 35.6315 Conditional Use Approval Criteria

Recommended Hearing Officer Decision:

Staff recommends that the Hearings Officer approve, subject to the conditions of approval, the conditional use permit for the Type B home occupation use for a Chinese medical clinic on the subject property.

Planning staff recommends the following 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; the parking lot and driveway improvements are not completed; the building department has not finalized any necessary permits to change the occupancy rating of the rooms used for the business; and the clinic is not in operation. 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 (if required) and operation of the business, the property owners shall record a copy of this decision through the conditions of approval 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. Prior to land use sign-off of the building permit (if required) and operation of the business, the property owners shall record a document (Exhibit B.5) 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 or demonstrate that Exhibit B.5 has been recorded in the past. [MCC 35.7616(D)]
5. Prior to operation of the medical clinic from the property, all physical improvements including the road and parking area shall be completed. [MCC 35.4135 Improvements Required]
6. Prior to any improvements being completed, the property owners or their representative shall provide plans to Land Use Planning demonstrating compliance with the following:
 - a. The drive leading from Gordon Creek Road to the proposed parking lot shall be widened to 20 ft and paved. The widening of the drive shall be designed by licensed engineer to meet the following:
 - i. Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;
 - ii. Provide an all-weather surface of at least 20 feet in width;
 - iii. Provide minimum curve radii of 48 feet or greater;
 - iv. Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
 - v. Shall show the location of traffic direction arrows; and
 - vi. Shall meet the road grade standards of MCC 35.2261(E)(5). [MCC 35.4170(A) & MCC 35.2261(E)]
 - b. The parking lot shall be designed to meet the standards of MCC 35.4170 through 35.4200.
 - c. The stormwater created from all newly created impervious areas shall be handled on-site via a stormwater drainage control system. The system shall be designed by an Oregon Licensed

Professional Engineer and shall handle the rate of storm water runoff attributed to the development during a 10-year/24-hour storm event. The engineer shall stamp the plans and certify that the stormwater runoff will be no greater than that which existed prior to development as measured from the property line or from the point of discharge into a watercourse. [MCC 29.333(C) & Policy 37]

7. No sale of medicines, herbs, or other materials may be made from the premise or property. [MCC 35.2230(C)(1)]
8. All acupuncture and other type of needles used as a part of the Chinese medical clinic home occupation shall be properly disposed of at an authorized needle collection disposal facility. [MCC 35.6315(A)(6)]
9. The Chinese medical clinic home occupation shall occur only within the rooms designated on Exhibit A.12 & A.13. No patients (customers) may use the subject site outside of the dwelling for any use other than for off-street parking within the parking lot area. No more than three (3) patients may be on the property, parked within the parking lot or within the medical clinic rooms at any one time.
 - a. No portion of the accessory buildings on the property shall be used for any aspect of the Chinese medical clinic home occupation.
 - b. No medical retreats, over-night stays or group meetings are allowed as part of this home occupation.
 - c. No more than 5 employees are allowed as part of the Chinese medical clinic. Pursuant to MCC 35.6650(A), practitioner Heinrich Fruehauf is employee number one (1). The Chinese medical clinic home occupation may employ only four additional full or part-time employees. The clinic may not operate with a substitute practitioner.
 - d. The Chinese medical clinic may not serve patients before 8:30 am (08:30) or after 5:30 pm (17:30) Monday through Friday. Business operations on Saturdays or Sundays are allowed in special circumstances or emergencies. [MCC 35.6650(A), MCC 35.6660(B) & (J)]

Findings of Fact

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

1.00 Project Description:

Applicant: The proprietor of the proposed business (Heiner Fruehauf, Ph.D.) has been working in the field of Chinese culture and civilization for 30 years, with a particular specialization in Chinese medicine. In this capacity, he founded the School of Classical Chinese Medicine at National College of Natural Medicine in Portland in 1992, where he has been employed as a full time professor ever since. Since he received his acupuncture license in the state of Oregon in 1995, he has also been seeing about 20-25 patients per week in his private Chinese medicine practice in Portland. Ever since he bought the 19.2 acre piece of property in Corbett in 1999 on which the residence in question is located, the Fruehaufs have been contemplating integrating his existing natural medicine practice into their newly built home. In the architectural plans that were submitted for the original building permit in 2002, they reflected this intention by marking several rooms in the front of the residence as "treatment rooms".

Mission of business: It is the primary purpose of the proposed business to bring convenient and effective natural medicine care and lifestyle counseling to people in the Corbett and Sandy area. The founder of the proposed clinic is an internationally renowned scholar and expert in the field of treating chronic and difficult diseases with Chinese medicine. Naturally, he would like to let his local neighbors,

friends, and the rest of the community benefit from his expertise. The Corbett area houses mainly two types of residents: descendants of pioneers from the days of the Oregon Trail, who originally claimed the land for purposes of farming, logging, and animal husbandry, and urban professionals with an interest in natural countryside living. Both of these types, for different reasons, have a traditional interest in natural healthcare. Since the philosophy of natural healthcare includes the concept of utilization of local resources, and is strongly opposed to any unnecessary burdening of the natural environment, the Clinic intends to build its client foundation by serving the needs of local residents. The Fruehaufs have been living in Corbett for almost five years now, and have been very active in community activities (primarily through Corbett Grammar, Middle, and High School where all of their three children go). They therefore have strong network ties to the local community, which would enable them to carry out this aspect of the business plan.

Structural scope of business: the proposed business would be located in three rooms in the front of the Fruehauf residence. One room would be used for consultation and diagnosis; a second room would be used for acupuncture and massage; and a third room would be used for answering the telephone, storage of client files, and computer equipment; a small entrance area (right behind the designated clinic entrance) would serve as a waiting and check-out room; a storage closet would be used to contain medicinal substances used for research purposes (the proprietors are aware that a Type B Home Occupation permit would not allow them to operate as a retail store). No clients of the Hai Shan Clinic would be allowed to stay on the premises overnight.

Nature of treatments performed: clients would be diagnosed by traditional Chinese methods (questioning, inspection of tongue and pulse), and then prescribed a regimen of dietary modifications, herbs, supplements, homeopathic remedies, and acupuncture/massage. While clients would be referred to medicinaries in the Portland area to ship prescriptions that they potentially received, all other treatments (acupuncture/ massage) would be performed on site. A new client appointment would last 1.5 hrs., a return patient appointment would last 45 minutes. Most patients would get two sessions in succession, i.e. a diagnostic intake and dietary advice first, followed by an acupuncture treatment. An average client, therefore, would spend 105 minutes on the premises (45 minute intake, 45 minute acupuncture, 15 minute check-out).

Employees: The proposed business intends to employ the following types and numbers of employees working on the premises: one Chinese medicine practitioner (primarily the proprietor/resident himself), who diagnoses and designs the treatment plan; two acupuncturists/massage therapist, who administer physical therapy (these would not work at the clinic simultaneously, but could cover for each other in times of vacation/sickness); one front desk person, who answers the telephone; one front desk assistant, who checks people out and carries out filing and book-keeping tasks. Please note that only one of these employees will be considered full-time (front desk person), all others would be working part-time.

Description of appointment scheduling: During a typical day, I am planning to see patients from 9 am – 12 noon, and again from 1:30 – 5:15. Appointments will be spaced every 1.5 hrs. (new patients) or 45 min. (returning patients). Only one patient can be seen by me at a time. I am estimating that 30-50% of clients will opt to receive an additional acupuncture treatment (from the acupuncturist/massage therapist employee) after they have completed their consultation with me. This means that 1-2 clients will be in the building at a time during a typical business day.

Floor Plan for dwelling/office area: Please note that the total square footage of the proposed home business area is less than 800 square feet. The entire residence has a size of 5,900 sq. ft. the approximate measurements for specific areas to be utilized in the home business are:

1st Floor:

- Reception area: 135 sq. ft.
- Office (main consultation room): 144 sq. ft.
- Staff office: 108 sq. ft.
- Hallway, bathroom, and storage: 144 sq. ft.

2nd Floor:

- Acupuncture/massage room: 225 sq. ft.

2.00 Property Description & History:

Staff: The subject property is occupied by two accessory structures (one is the former house) used as art studios and a barn on the northern portion of the property and a newer single family dwelling 1,162 ft south of the front property line and 1,700 ft south of Gordon Creek Road. The newer single family dwelling was constructed in 2002. The 19.2 acre property is heavily forested and has areas with 25% or greater slopes (Exhibit B.4). The driveway travels through these steeper areas to gain access to the dwelling and proposed medical clinic.

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: The Fruehaufs have been working with the County's Code Compliance Section to convert the former dwelling to an accessory use and to correct various other issues on the site. The Fruehaufs have entered in to a Voluntary Compliance Agreement to correct the outstanding issues. At present, the only remaining issue is the installation of a second septic system to serve the accessory structures which are approximately 1,100 feet to the north of the existing dwelling.

4.00 Commercial Forest Use – 4 Criteria

4.01 § 35.2230 CONDITIONAL USES

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

(C) Type B home occupation pursuant to all applicable approval criteria, including but not limited to MCC 35.6650 through 35.6660 and provided:

Staff: The Fruehaufs have applied for a Type B Home Occupation to operate a Chinese medical clinic from their home. The proposed home occupation application has met most of the approval criteria as describe below. There are a few criteria which will require additional information be provided by the applicant to demonstrate compliance with all of the applicable approval criteria. Planning staff believes that the applicant will be able to demonstrate compliance with the few criteria outstanding, hence our positive recommendation.

4.02 (1) That no sale of merchandise is made from the premise;

Applicant: The nature of the business consists of diagnosing, counseling, and treating visiting patients. There will be no retail store.

Staff: The dispensing of herbs or other medicines with a paid doctor's appointment would qualify as the sale of merchandise. The applicant has stated "...clients would be referred to medicinaries in the Portland area to ship prescriptions that they potentially received". Written prescriptions would allow the clinic to operate without the need for a retail component. Staff recommends that a condition of approval be included to remind the operator of the home occupation of this restriction. *As conditioned, this criterion is satisfied.*

4.03 (2) That noise, odor, smoke, gases, fallout, vibration, heat or glare resulting from the activity is not detectable at any property line;

Applicant: Stillness and purity of the natural environment are two important prerequisites for this business. No noise or pollution of any kind would be generated by this business.

Staff: The existing dwelling and proposed parking lot are located 1,700 ft. from Gordon Creek Road, 600+ ft. from the rear property line, 50 ft from the western side property line and 179 ft from the eastern side property line. A medical clinic within the existing dwelling will have no activity other than vehicles arriving and leaving the site that is detectable at the property line while entering and leaving the site. No activities associated with the business are proposed outside of the dwelling. No noise, odor, smoke, gases, fallout, vibration, heat or glare should be generated from the structure. *This criterion is satisfied.*

4.04 (3) That the home occupation is operated substantially in the dwelling or other buildings normally associated with uses permitted in the zoning district; and

Applicant: All of the business activities would take place in the front rooms of the residence.

Staff: Staff concurs. The applicant has indicated that no other building on the property is to be used as part of the medical clinic. Staff recommends a condition of approval highlighting this requirement. *This criterion is satisfied.*

4.05 (4) That the home occupation will not unreasonably interfere with other uses permitted in the CFU-4 zoning district.

Applicant: The home occupation would not interfere with any of the other permitted uses of CFU-4 land.

Staff: The two primary uses allowed in the zone are forest practices and farm uses. The proposed medical clinic will occur in the existing single family dwelling and will require the construction of parking lot that will be approximately 5,800 sq. ft. The drive leading to the parking lot will need to be increased in width to 20 ft wide and paved. The site is 19.2 acres and after these improvements approximately 18 acres will be available for farm and forest practices. Adjacent properties are in forest and residential uses. Since the home occupation will be contained within the existing dwelling, there should be no interference caused by the use. *This criterion is satisfied.*

4.06 § 35.2245 USE COMPATIBILITY STANDARDS

(A) Specified uses of MCC 35.2225 (C), (D), and (E) and MCC 35.2230 (A), (B), and (C) may be allowed upon a finding that the use will:

(1) Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands;

Staff: In sections 6.01, 6.03 & 6.04 of this report, the applicant has documented the properties currently in forest practices. A number of these properties are also in residential use (Exhibit A.11). The subject property is currently occupied by a dwelling on the southern portion of the property and accessory structures on the northern portion of the site. The parking lot area has been flattened out as demonstrated by the applicant's photo (Exhibit A.8). The home occupation will occur within the existing dwelling and should not cause any change or increase in cost to the surrounding accepted forestry or farming practices on adjacent properties. *This criterion is satisfied.*

4.07 (2) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and

Staff: The widening and paving of the drive to 20 ft wide will allow for two-way traffic the entire length of the drive. Fire suppression personnel will have better access to the site and not have to turnout or wait for vehicles on the drive. The medical clinic will not create sparks or use chemical catalysts that would increase the fire hazard on the site. *This criterion is satisfied.*

4.08 (3) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices.

Staff: Staff recommends a condition of approval be included requiring the property owners to demonstrate that the above statement has already been recorded during past land use actions or record the document. *As conditioned, this criterion is satisfied.*

5.00 Home Occupation Criteria

5.01 § 35.0005 DEFINITIONS

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

Home Occupation –

(a) A type A home occupation is one where the residents use their home as a place of work. Type A home occupations may have up to one non-resident employee or customer on the premises at any one time in addition to the resident participant. No new buildings or modifications to existing structures shall be allowed (constructed after March 14, 1998). No deliveries other than those normally associated with a single family dwelling and between the hours of 7 a.m. – 6 p.m. No outdoor storage or displays shall occur (including vehicle parking associated with the Home Occupation). No signage shall be allowed (including temporary signage and those exempted under MCC 35.7420 with the exception of those required under the current "Street Naming and Property Numbering" provisions of Multnomah County, and no noise above 50 dBA (decibels adjusted) at the property lines shall be permitted. No repair or assembly of any vehicles or motors can occur as part of a type A home occupation. A type A home occupation may not serve as headquarters or dispatch where employees come to the site. A type A home occupation must have direct access to a public road (no easements). Type A home occupations shall be filed on a form provided by the Planning Director. Type A Home Occupations must be in conformance with all other applicable state codes.

(b) Type B home occupation is one where the residents use their home site as a place of work but exceeds the standards of the type A home occupation. Type B home occupations shall be approved as per MCC 35.6300 through 35.6650.

§ 35.6650- DEFINITIONS

(A) Employee – one full or part time participant, resident or non-resident, in the business shall constitute one employee.

(B) Customers – Any person visiting the site that is not an employee who is associated with the home.

(C) Normal deliveries – The home occupation shall not involve the use, parking, storage or repair of any vehicle exceeding a gross vehicle weight of 11,000 pounds, except deliveries by parcel post, United Parcel Service, or similar in-town delivery service trucks. These deliveries or pick-ups of supplies or products, associated with business activities, are allowed at the home only between 7 a.m. and 6 p.m.

(D) Motor vehicles – Vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines).

5.02 § 35.6655 PURPOSES

The purposes of the type B home occupation section are to address the need for home based business that are small scale businesses (not more than 5 employees) and that fit in with the characteristic of the neighborhood or the area. The regulations are designed to:

(A) Protect the individual characteristics of areas in unincorporated Multnomah County and maintain the quality of life for all residents of the communities.

(B) Join in an effort to reduce vehicle miles traveled, traffic congestion and air pollution in the State of Oregon.

5.03 § 35.6660 CRITERIA FOR APPROVAL

The approval authority shall find that the following standards are met:

(A) The standards found in MCC 35.6315.

Applicant: As noted below.

Staff: See sections 6.01 through 6.10 of this report for additional findings. As discussed in these sections, these standards have been met.

5.04 **(B) The home occupation does not employ more than 5 employees.**

Applicant: As noted above, the proposed occupation would not employ more than 5 employees.

Staff: The applicant has indicated that some of the employees will be part-time. MCC 35.6650(A) defines an “Employee” as “one full or part time participant, resident or non-resident, in the business shall constitute one employee.” As defined a part-time employee counts as one employee. With one 1 Practitioner, 2 Acupuncturists, 1 front desk person and 1 front desk assistant, the business has 5 employees. Under the applicant’s project description, a note modifies the practitioner position to read “...one Chinese medicine practitioner (primarily the proprietor/resident himself)....” The word “primarily” would seem to indicate a back-up practitioner. That would be a sixth employee even if the primary practitioner is on vacation. Planning staff recommends a condition of approval clarifying that only 5 individuals may work as part of this home occupation business. *As conditioned, this criterion is satisfied.*

5.05 **(C) The site has on-site parking as per MCC 35.4100 to accommodate the total number of employees and customers.**

Applicant: Without implementing any future plans for modifications/improvements (such as paving the gravel road), there are presently 12 parking spaces available in front of the residence. This is approximately 50% more parking capacity than needed to accommodate the total number of employees and customers, assuming that there is the potential for situations when 8 people may be at the home occupation at the same time (see attached photographs of parking area, demonstrating the parking capacity of the site.)

Staff: See the findings under sections 7.01 through 7.13 of this report for compliance with the Off-Street Parking and Loading ordinance.

5.06 **(D) No deliveries other than those normally associated with a single family dwelling and between the hours of 7 a.m. – 6 p.m.**

Applicant: There would be no deliveries outside of the noted hours, and none beyond those normally associated with a single family dwelling.

Staff: Staff cannot identify any deliveries that would be available for a small medical clinic with no retail sales of medications or products. *This criterion is satisfied.*

5.07 **(E) No outdoor storage or display.**

Applicant: The proposed home business would require no outside storage or display.

Staff: The medical clinic will occur within the single family dwelling. No use of the grounds is proposed other than the parking lot. *This criterion is satisfied.*

- 5.08 (F) No signage (including temporary signage and those exempted under MCC 35.7420) with the exception of those required under the applicable street naming and property numbering provisions in Multnomah County Code.**

Applicant: There would be no signage other than property numbering.

Staff: No signage has been proposed as part of this application. *This criterion is satisfied.*

- 5.09 (G) No noise above 50 dBA at the property lines.**

Applicant: No noise can be heard at the property line, as the quiet location of the site is an important part of this home occupation.

Staff: The proposed medical clinic will occur within the single family dwelling. Based on the applicant's description of the proposed use. No noise should be heard outside the structure. *This criterion is satisfied.*

- 5.10 (H) No repair or assembly of any motor vehicles or motors.**

Applicant: No repair or assembly of any motor vehicles or motors occurs as part of this home occupation.

Staff: As a medical clinic, no motor repair or assembly should be involved as part of the operation. *This criterion is satisfied.*

- 5.11 (I) The application has been noticed to and reviewed by the Small Business Section of the Department of Environmental Quality.**

Staff: The applicant has not provided documentation that the Small Business Section of DEQ has been notified. Land use planning mailed notice to DEQ Business Assistance Program as part of the public hearing process. This program appears to be the replacement for the Small Business Section in DEQ.

- 5.12 (J) Each approval issued by a hearings officer shall be specific for the particular home occupation and reference the number of employees allowed, the hours of operation, frequency and type of deliveries, the type of business and any other specific information for the particular application.**

Applicant: We ask that our home occupation be approved for the following:

Up to 5 employees

Hours of operation: 08-30 – 17:30

Normal deliveries during hours of operation

The type of business is a clinic of classical Chinese medicine, consisting of patient consultations and treatments including, but not limited to acupuncture and other natural treatments and prescriptions.

Staff: The subject application does not indicate whether the home occupation will operate seven days a week or only Monday through Friday. Planning staff contacted the applicant and he indicated that the primary days of operation are Monday through Friday, but that he would like the option of operating on a limited basis on the weekends for special circumstances. As the home occupation is a medical clinic, staff finds that limited operation of the business on weeks should be allowed in emergency and special circumstances. Operation of the business

seven days a week from 8:30 am to 5:30 pm at a full staffing level seems to be reaching a level of operation that exceeds a home occupation and belongs in a commercial zone. Planning staff has crafted a condition including the specific information supplied by the applicant for the hearings officer. See Condition No. 10.

5.13 (K) No structure is proposed to be constructed that would not otherwise be allowed in the zoning district.

Applicant: No new structure is proposed as a part of this home occupation.

Staff: The dwelling currently exists on the site. Staff understands that no revision to the floor plans is proposed. *This criterion is satisfied.*

6.00 General Conditional Use Criteria

6.01 § 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:

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

Applicant: The area around the home in question is virtually all forest. There are some open fields within one mile, mostly used for hay production. The area south of our property is BLM land associated with the Sandy River Gorge. At the bottom of the Gorge that the residence overlooks are 400 acres of land that are part of the Nature Conservancy land trust.

It is important to the Fruehaufs that the proposed home occupation is not only consistent with the character of the area, but promotes the appreciation and conservation of natural forest and wilderness habitat in Oregon. In fact, this home business intends to use the tranquility of the natural forest setting as part of the overall treatment experience.

Residential use in the properties adjacent to 39420 SE Gordon Creek Road (within ¼ mile of the property , please see attached aerial photograph map) is as follows:

Property ID #R342671: Vacant land (Metro)

Property ID #R342670: Residential use (1 dwelling); residents hold home occupation business license for mobile equipment repair business

Property ID #R342680: Residential use (1 dwelling)

Property ID #R342669: Residential use (1 dwelling); property owned by applicants

Property ID #R342668: Residential use (1 dwelling)

Property ID #R342676: Vacant Land (Nature Conservancy)

Property ID #R342677: Vacant Land (BLM)

Property ID #R342666: Residential use (1 dwelling)

Property ID #R342683: Residential use (1 dwelling)

Property ID #R342682: Residential use (1 dwelling)

Property ID #R342679: Residential use (1 dwelling)

Property ID #C226024: Vacant land (Clackamas County)

Property ID #C226028: Vacant land (Clackamas County)

Property ID #C226025: Vacant land (Clackamas County)

Staff: The applicant's submitted aerial photo has been labeled Exhibit A.11. The land use in the area is chiefly a mixture of forest lands and residential uses. The proposed home

occupation will occur within the existing single family dwelling. The dwelling is located approximately 1,700 feet from Gordon Creek Road. The adjacent residential uses are located within 100 to 300 feet from Gordon Creek Road. Once a vehicle enters the site and travels 400 to 500 feet along the driveway, it will be past the adjacent residential uses. Patients entering the home office area will not be readily viewable from the adjacent properties. Other than the increased vehicle trips to and from the site, the property will continue to appear as a forested residential property. *This criterion is satisfied.*

6.02 (2) Will not adversely affect natural resources;

Applicant: The home occupation does not adversely affect the area's natural resources. In fact, in architectural and natural builder cycles, the Fruehauf Residence has become known as a showcase piece for natural construction techniques, bringing together three characteristics of natural building: 1) 100% use of recyclable and non-toxic building materials, many of them directly from the building site (cedar trees, clay); 2) traditional timberframe and woodchip-clay wall construction, creating a breathable enclosure; 3) sacred geometry architecture. Three articles have been written in local newspapers and magazines about the "green" properties of this residence, and there are few natural builder conventions that do not feature this building in their slide shows. The building itself, therefore, has already promoted the sustainable use of natural resources during the last five years. The proposed home business will only add to this endeavor.

There are two small creeks running through the property, both of which are the habitat of wild trout. The property owners hold the water rights to both creeks. One of the creeks is located in the front of the property, approximately ¼ mile away from the home and proposed home business. The other creek is located approximately 200+ feet away from the home and the proposed home business, which includes a flat and graveled area in front of the home which is the designated space for home and business use parking (12 potential parking spaces, see attached photograph). When the home was built, this area was fortified/assessed for erosion control purposes, and will not influence the purity of the river and its natural resources in any way.

Staff: It appears that the property owners considered the proposed home occupation when designing their single family dwelling and its related improvements. A large parking pad was graded to the west of the home and the dwelling's floor plan includes an entrance from the parking area. The only question planning staff has is the width of the driveway leading from Gordon Creek Road. MCC 35.4170 requires a 20-foot drive from the parking area to Gordon Creek Road. If the driveway needs to be widened, grading may be necessary adjacent to the creeks located onsite. Any grading within 200 feet of a watercourse requires a Grading and Erosion Control (disturbance in areas with less than 25% slopes) or Hillside Development (disturbance in areas over 25% slopes) permit prior to any ground disturbing activities. In addition, the driveway and parking area is required to be paved [MCC 35.4180(A)(1)]. Depending on the type of pavement used (pervious vs. impervious), a stormwater system may need to be designed to handle the stormwater run-off from these new paved areas. With the implementation of effective sediment & erosion control measures and the proper design of a stormwater system these improvements can occur without impacting the onsite creeks. *This criterion is satisfied as conditioned.*

6.03 (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

Applicant: The home occupation does not conflict with the farm and/or forest uses in the area. Most of the surrounding properties are zoned CFU-4. The home occupation would not force or effect any changes to existing practices in the area.

Staff: The proposed home occupation will occur within an existing single family dwelling. If any impacts exist they would have been created by the establishment of the dwelling 1,700 feet from Gordon Creek Road. At present, staff has not identified any significant changes that would be necessary to surrounding forest practices on adjacent parcels due to the addition of the home occupation to the site. These changes would have occurred during the home construction process as the required separation between a use and chemicals would not be increased due to the additional use. *This criterion is satisfied.*

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

Applicant: The home occupation would not at all increase the cost of existing practices in the area.

Farm/forest use in the properties adjacent to 39420 SE Gordon Creek Road (within ¼ mile of the property, please see attached aerial photograph map is as follows:

Property ID #R342671: Deferred Forestry
Property ID #R342670: Deferred Forestry
Property ID #R342680: Deferred Forestry; partial logging occurred in 2003
Property ID #R342669: Deferred Forestry
Property ID #R342668: Deferred Forestry
Property ID #R342676: Nature Conservancy Land Trust
Property ID #R342677: Deferred Forestry (BLM)
Property ID #R342666: Deferred Forestry
Property ID #R342683: Deferred Forestry
Property ID #R342682: Deferred Forestry
Property ID #R342679: Deferred Forestry
Property ID #C226024: Deferred Forestry (BLM, Clackamas Cty)
Property ID #C226028: Deferred Forestry (BLM, Clackamas Cty)
Property ID #C226025: Deferred Forestry (BLM, Clackamas Cty)

39420 SE Gordon Creek Road and all adjacent properties listed above are zoned for forest use. Most neighbors practice deferred forestry, with only one neighbor harvesting timber during the last 5 years. None of these forestry practices will be detrimentally impacted by the proposed home business.

Staff: Forest practices involve the growing of trees, harvesting of timber and other forest products, weed control, planting, etc. Logging is only one element in the many steps of raising trees for timber. With that said, the addition of a home occupation to the existing single family dwelling will not change the activities of forest practices occurring on adjacent parcels. Any changes to forest practices occurring on adjacent properties would have occurred during the construction of the dwelling at its present location 1,700 feet from Gordon Creek Road. *This criterion is satisfied.*

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

Applicant: The town of Corbett presently has fire, police, and public school services.

Electricity, telephone wiring, and internet access are provided in the area by local providers. Access, turn-around and parking for fire trucks and other emergency vehicles has been approved for the location of the home business (see attached Fire permit). No other public services would be required for the proposed home business. The home has a 2,000 gallon septic tank that has recently been inspected and approved by the relevant agency for this particular expansion of the use of the home (see attached septic permit).

Staff: The Fire Permit has been labeled by Planning staff as Exhibit A.10. The On-Site Sewage Disposal certification is labeled as Exhibit A.9. All public services needed for the home occupation typically are needed for the single family dwelling. The only possible service needed that may not be needed in the majority of single family homes would be needle disposal. The applicant has identified a location in his application that will accept the acupuncture needles. In addition, Metro's transfer station also accepts properly stored needles. *This criterion is satisfied.*

6.06 (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;

Applicant: The home occupation is located outside big game winter habitats.

Staff: Staff concurs. Section 24, Township 1 South, Range 4 East is not designated as Big Game Winter Habitat (Exhibit B.3)

6.07 (6) Will not create hazardous conditions; and

Applicant: The home occupation would not create any hazardous conditions. Should there be any snow on local roads in winter time, the clinic will be closed. The acupuncture needles used in the clinic will be disposed of in specially designed biohazard sharps containers (the clinic would produce an estimated volume of 2 gallons per year), which will be properly disposed of via Fred Meyer's Pharmacy in Clackamas. This facility is set up to receive and recycle sharps containers from diabetics and small businesses like ours. No other types of hazardous liquids or solids will be disposed of by the clinic.

Staff: To mitigate the hazards, the applicant has indicated that during snow days the clinic will be closed. Planning staff has not recommended a condition of approval to the hearings officer on this point as of the discretionary nature of the weather. Is one inch ok? Are a few flakes enough to shut the business? What about sleet? Planning staff feels that it is the responsibility of the business operator to evaluate the road conditions and determine if travel to and from the dwelling on the driveway is safe. The second possible hazard is the improper disposal of the acupuncture needles. The applicant has designated a needle drop off site to mitigate the possible hazard. Staff has recommended a condition of approval to ensure compliance. *As conditioned, this criterion is satisfied.*

6.08 (7) Will satisfy the applicable policies of the Comprehensive Plan.

Staff: Planning staff identified the Comprehensive Plan Policies 37 & 38 as being applicable to the proposed home occupation. Please see additional findings in Sections 6.09 & 6.10 below.

6.09 Policy 37

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.

Energy and Communications

- H. There shall be an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and
- I. Communications facilities are available.

Furthermore, the County's Policy is to continue cooperation with the Department of Environmental Quality, for the development and implementation of a groundwater quality plan to meet the needs of the County.

Staff: The County's DEQ agent has reviewed the proposed home occupation use and has indicated that the existing subsurface sewage disposal system is adequate to serve the proposal (Exhibit A.9). The existing single family dwelling is served by a power provider and has communication devices such as phone and internet available. No additional energy or communication facilities will be needed to serve the proposed home occupation. Depending on the type of paving utilized, a stormwater system may be needed. If the parking lot and driveway is paved with pervious asphalt or pervious concrete, the stormwater will be handled in place as the water can soak through where it falls. If impervious paving is used, a stormwater system will be needed for the parking lot and driveway area. The design of the stormwater system would likely need to use soakage trenches or ponds not connected to the two existing creeks. The direct application of the water to these streams cannot be authorized as it would affect the water quality in the streams by adding chemical pollutants from the vehicles. In addition, the additional water can cause bank erosion or down cutting of the channel and would affect water quality. The applicant needs to indicate whether pervious asphalt or concrete will be used or provide a preliminary design to demonstrate that the drainage from the parking lot and driveway can be handled on site to allow a condition of approval. *At present, the proposal's compliance with this policy is still outstanding.*

6.10 Policy 38

It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:

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.

Police Protection

D. The proposal can receive adequate local Police protection in accordance with the standards of the jurisdiction providing police protection.

Staff: The Corbett Fire District has had the opportunity to review and comment on the proposed home occupation (Exhibit A.10). The Fire Chief specifies that the dwelling needs to have a fire retardant roof and a proper fire safety zone around the structure. The roof on the existing dwelling is metal; a fire retardant material. The size of the primary fire safety zone is dependent on the grade within 30 ft of the dwelling. If the grade adjacent to the house is less than 10%, the primary fire safety zone would be only 30 ft around the dwelling. On the downslope grade, the primary fire safety zone increases in size when slopes are over 10%. The following chart shows the extension required for steeper slopes:

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

The applicant will need to clarify the slopes adjacent to the dwelling so that the hearings officer can determine compliance with the Fire Department's comments.

Multnomah County Sheriff has indicated that there is adequate service available (Exhibit B.2). *At present, the proposal's compliance with this policy is still outstanding.*

7.00 Off-Street Parking & Loading Criteria

7.01 § 35.4105 GENERAL PROVISIONS

In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section. For nonconforming uses, the objectives of this section shall be evaluated under the criteria for the Alteration, Modification, and Expansion of Nonconforming Uses.

Staff: The property owner is proposing to convert approximately 800 sq. ft. of the existing single family dwelling to a medical clinic. The proposed parking area must be reviewed pursuant to MCC 35.4100 et al.

7.02 § 35.4130 LOCATION OF PARKING AND LOADING SPACES

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

Staff: The property owner is proposing to construct a parking area to the west of the dwelling. *This criterion is satisfied.*

7.03 § 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.

Staff: A condition of approval is recommended requiring the construction of improvements prior to operation of the business. *As conditioned, this criterion is satisfied.*

7.04 § 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.

Staff: The proposed parking lot area does not abut directly onto Gordon Creek Road and is approximately 1700 sq. ft. from the public right-of-way. The plans for the construction of the dwelling shows a 12-13 ft wide driveway with wider turnouts spaced at approximately every 300 to 400 ft along its length. The driveway will need to be widened from its 12-13 ft to 20 ft wide and paved its entire length. Widening of the driveway needs to occur on the subject property and may not trespass on property not owned by the Fruehaufs or under easement. The traffic directions must be plainly marked. A condition of approval is recommended to ensure compliance with this criterion. *As conditioned, this criterion is satisfied.*

7.05 § 35.4175 DIMENSIONAL STANDARDS

(A) Parking spaces shall meet the following requirements:

- (1) At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.**
- (2) Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.**
- (3) For parallel parking, the length of the parking space shall be 23 feet.**
- (4) Space dimensions shall be exclusive of access drives, aisles, ramps or columns.**

(B) Aisle width shall be not less than:

- (1) 25 feet for 90 degree parking,**
- (2) 20 feet for less than 90 degree parking, and**
- (3) 12 feet for parallel parking.**
- (4) Angle measurements shall be between the center line of the parking space and the center line of the aisle.**

Staff: The applicant has provided a parking space detail (Exhibit A.14) showing where the parking lot is proposed to the west of the dwelling. No parking spaces are identified on the drawing. The applicant has indicated that the area can handle 12 parking spaces. The applicant's parking lot photograph (Exhibit A.8) shows 90-degree parking. On the parking space detail plan (Exhibit A.14), the parking lot is shown as 39 ft wide by 135 ft long. A standard parking space is 9 ft wide by 18 ft long. Along its length, 15 parking spaces can be provided. If these spaces are 90-degree parking, a 25-ft drive aisle would need to be provided. The 39-ft width of the parking area would be 4-ft short as 18 ft plus 25 ft equals 43 ft. The number of parallel parking spaces that could be provided in this area is ten. Staff recommends a condition of approval be included requiring a parking lot plan be developed in compliance

with MCC 35.4175(A) & (B). *As conditioned, this criterion is satisfied.*

7.06 § 35.4180 IMPROVEMENTS

(A) Surfacing

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

Staff: The applicant has not specified the type of materials to be used in the parking lot. Gravel is not a dustless surface. Staff recommends a condition of approval be included requiring a parking lot plan be developed in compliance with MCC 35.4180(A). *As conditioned, this criterion is satisfied.*

7.07 (B) Curbs and Bumper Rails

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

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

Staff: The parking lot will need to have an outer boundary of curbing or bumper rails. None are shown. The drive leading from the parking lot to Gordon Creek Road has landscaping on both sides of it for most of its length. The northern 230-ft of the drive is adjacent to the western property line. No landscape area is shown along this length. To prevent vehicles from leaving the site and trespassing onto adjacent properties, a permanent barrier or landscape planter is needed. A permanent barrier whether it is landscaping or curbing is required along this 230-ft length of paved drive. Staff recommends a condition of approval be included requiring the parking lot plan be developed in compliance with MCC 35.4180(B) and that a physical barrier be added on the site plan. *As conditioned, this criterion is satisfied.*

7.08 (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: Staff recommends a condition of approval be included requiring the parking lot plan be developed in compliance with MCC 35.4180(C). *As conditioned, this criterion is satisfied.*

7.09 (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: Staff recommends a condition of approval be included requiring a parking lot plan be developed in compliance with MCC 35.4180(D). Depending on the use of pervious asphalt or concrete, a stormwater system may not be required as the surface water can penetrate the pavement. If impervious pavement is used, the surface water will need to be managed on site. *As conditioned, this criterion is satisfied.*

7.10 § 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: No artificial lighting is proposed. Staff recommends a condition of approval requiring compliance with this criterion if added to the parking lot or drive in the future. *As conditioned, this criterion is satisfied.*

7.11 § 35.4195 DESIGN STANDARDS: SETBACKS

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

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

Staff: The parking lot is approximately 1,700 feet from Gordon Creek Road. Only the 20 ft wide access point and drive aisle travels across the required front yard setback. No walkways are proposed within the front yard. Only one driveway access point is proposed for the business. *As conditioned, this criterion is satisfied.*

7.12 § 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).

§ 35.7055 REQUIRED MINIMUM STANDARDS

(C) Required Landscape Areas

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

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

(a) A 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.

(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.

(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.

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

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

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

(5) Required landscaping shall be continuously maintained.

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

(7) Landscaped means the improvement of land by means such as contouring, planting, and the location of outdoor structures, furniture, walkways and similar features.

Staff: The parking lot is surrounded by native vegetation. Over 10 feet of native vegetation buffers the parking lot from the western property line. Seventeen hundred feet of vegetation exists between the parking lot and the front property line. *The above criteria are satisfied.*

7.13 § 35.4205 MINIMUM REQUIRED OFF-STREET PARKING SPACES

(C) Retail and Office Uses

(3) Bank or Office, including Medical and Dental – One space for each 300 square feet of gross floor area.

§ 35.4210 MINIMUM REQUIRED OFF-STREET LOADING SPACES

(A) Commercial, Office or Bank

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

Staff: The proposed medical clinic will utilize approximately 800 sq. ft. of the dwelling. The minimum number of spaces to be provided is 2.66 spaces, which is rounded up to 3 parking spaces. MCC 35.6660(C) requires that the site have enough on-site parking to accommodate the total number of employees and customers. Minus the property owner, there will be four employees and a possibility of 3 customers on the property at a time. The parking lot must have a minimum of 7 parking spaces in addition to the 2 required parking spaces for the single family residence. The dwelling's parking may be within a garage or within the parking lot. The property owner will need to clarify the location of the dwelling's spaces. The applicant has indicated that the proposed parking lot will have room for 12 parking spaces. No loading zone is required. Staff has recommended a condition of approval requiring a parking lot plan. Provided the plans shows at least seven spaces for the home occupation, the minimum required

off-street parking will be met. *As conditioned, this criterion is satisfied.*

8.00 Conclusion

Based on the findings and other information provided above, planning staff recommends that the Hearings Officer approve the proposed Type B Home Occupation for a Chinese medical clinic with a maximum number of employees of 5 (including the property owner involved) and three customers to be allowed on the site at any one time. To ensure compliance with the applicable approval criteria, planning staff has recommended a number of conditions.

9.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Applicant’s Exhibits	Date Received/ Submitted
A.1	1	General Application Form	11/28/08
A.2	1	Cover Letter	11/28/08
A.3	5	Narrative Statements	11/28/08
A.4	1	Topographic Map	11/28/08
A.5	1	Floor Plan – 1 st Floor	11/28/08
A.6	1	Floor Plan – 2 nd Floor	11/28/08
A.7	1	Property Sketch	11/28/08
A.8	1	Photo of Parking Area	11/28/08
A.9	3	Certification of On-Site Sewage Disposal	11/28/08
A.10	5	Fire District Review – Fire Flow Requirements	11/28/08
A.11	1	Legend for Surrounding Property Information	11/28/08
A.12	1	Fruehauf Residence – 1 st Floor Plan	5/18/09
A.13	1	Fruehauf Residence – 2 nd Floor Plan	5/18/09
A.14	1	Parking Space Detail	5/18/09
A.15	2	Additional Narrative	5/18/09
A.16	1	Extension Letter to October 2009 for Public Hearing	8/7/09
‘B’	#	Staff Exhibits	Date of Document
B.1	2	A&T Property Information for Township 1South, Range 4 East Section 24D - 00600	11/25/08

B.2	1	Police Services Review	9/16/09
B.3	1	Big Game Wildlife Habitat Map	9/16/09
B.4	1	2008 Air Photo of Property with Contour Information	
B.5	1	Farm & Forest Conditions & Restriction	
'C'	#	Administration & Procedures	Date
C.1	1	Incomplete Letter	12/22/08
C.2	1	Acknowledgement of 180 Days to Get Application Complete	1/8/09
C.3		Complete Letter (Day 1 - June 18, 2009)	8/7/09
C.4	2	Notice of Public Hearing	9/17/09
C.5	1	Affidavit of Publication from the Oregonian	9/18/09
C.6	22	Staff Report	9/24/09

T3-08-003 Exhibit List
Public Hearing: October 9, 2009
Day 50

Legend

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Applicant’s Exhibits	Date Received
A.1	1	General Application Form	11/28/08
A.2	1	Cover Letter	11/28/08
A.3	5	Narrative Statements	11/28/08
A.4	1	Topographic Map	11/28/08
A.5	1	Floor Plan – 1 st Floor	11/28/08
A.6	1	Floor Plan – 2 nd Floor	11/28/08
A.7	1	Property Sketch	11/28/08
A.8	1	Photo of Parking Area	11/28/08
A.9	3	Certification of On-Site Sewage Disposal	11/28/08
A.10	5	Fire District Review – Fire Flow Requirements	11/28/08
A.11	1	Legend for Surrounding Property Information	11/28/08
A.12	1	Fruehauf Residence – 1 st Floor Plan	5/18/09
A.13	1	Fruehauf Residence – 2 nd Floor Plan	5/18/09
A.14	1	Parking Space Detail	5/18/09
A.15	2	Additional Narrative	5/18/09
A.16	1	Extension Letter to October 2009 for Public Hearing	8/7/09
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information for Township 1South, Range 4 East Section 24D - 00600	11/25/08
B.2	1	Police Services Review	9/16/09
B.3	1	Big Game Wildlife Habitat Map	9/16/09
B.4	1	2008 Air Photo of Property with Contour Information	
B.5	1	Farm & Forest Conditions & Restriction	

'C'	#	Procedural Exhibits	Date
C.1	1	Incomplete Letter	12/22/08
C.2	1	Acknowledgement of 180 Days to Get Application Complete	1/8/09
C.3		Complete Letter (Day 1 - June 18, 2009)	8/7/09
C.4	2	Notice of Public Hearing	9/17/09
C.5	1	Affidavit of Publication from the Oregonian	9/18/09
C.6	22	Staff Report	9/24/09
'H'	#	Hearing Exhibits	Date
H.1	1	Sign-In Sheet for October 9, 2009 Hearing	10/9/09
H.2	1	Aerial Photo of 39420 SE Gordon Creek	10/9/09
H.3	1	Home Occupation Site Aerial Photo	10/9/09
H.4	1	Driveway Plan	10/9/09
H.5	2	Access Code Standards	10/9/09
H.6	1	Photo that Signage was posted on property	10/9/09
H.7 – H.15	9	Photographs of Driveway	10/9/09
H.16	4	CFU-4 Development Standards for Driveways	10/9/09