

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

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<http://www.multco.us/landuse>

Hearings Officer's Decision

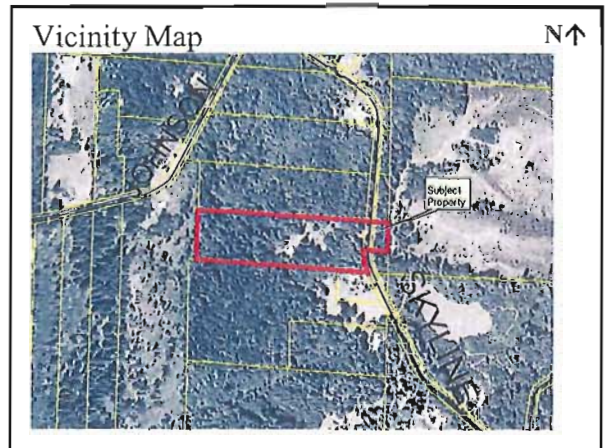
Conditional Use Permit

Case File: T3-2011-1907

Hearings Officer Liz Fancher

Hearing Date, Time, & Place:

Friday, July 13, at 1:00 p.m. in Room 103 at the Land Use Planning Division office located at 1600 SE 190th Avenue, Portland, OR 97233



Location: 18139 NW Skyline Blvd
Tax Lot 600, Sec 14C, T2N, R2W
Tax Account R972140140

Applicant(s): Robin and Matthew Schuckmann **Property Owner(s):** Robin and Matthew Schuckmann

Summary: Conditional Use Permit application to authorize an existing home-based business office in an existing accessory building located on the property. The property owners also seek an Administrative Decision by the Planning Director regarding the original establishment and continued use of the existing accessory (shop) building.

Base Zone: Commercial Forest Use – 2 (CFU-2)

Overlay Zones: Significant Environmental Concern for wildlife habitat (SEC-h), Significant Environmental Concern for streams (SEC-s), Significant Environmental Concern for scenic views (SEC-v), Hillside Development/Slope Hazard (HD).

Site Size: 8.85 Acres

Applicable Approval Criteria:

Multnomah County Code (MCC):

33.6650 through MCC 33.6660 Type B Home Occupation

33.6300 through 33.6350 Conditional Uses

33.2280 Lot Size for Conditional Uses

33.2200 through 33.2310 CFU-2 Zone

33.0005 Definitions

33.2245 Use Compatibility Standards

33.2273 Access

33.2285 Off-Street Parking and Loading (and 33.4100 through 33.4215)

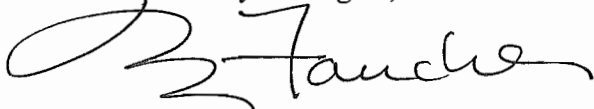
MCC 29 Building Code

MCC 37 Administration and Procedures

Hearings Officer's Decision:

The Hearings Officer approves, with conditions of approval, the application request for a Conditional Use Permit for a Type B Home Occupation for an office with up to five employees in an accessory building in the CFU-2 zone.

Dated this 17th day of August, 2012.



Liz Fancher, Hearings Officer

Conditions of Approval

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

1. Approval of these permits is based on the submitted written application materials, site plan and the description of the approved project and its conditions contained in the text of this decision. The parking plans approved are Options 1 and 2 of the applicant's July 24, 2012 plan. Option 2 may be reduced from three to two parking spaces. If the ADA requires a van loading area or requires the parking to be closer to the accessory building than proposed in Option 1, Option 2 shall be followed. No work shall occur under the authority of this permit unless described in the application

materials or this decision. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

2. This land use permit expires two (2) years from the date the decision is final pursuant to MCC 37.0690(C) unless the applicant has initiated the use and has complied with all conditions of approval. The property owner may request an extension of the two-year period, if needed, as provided under MCC 37.0695. The request for a permit extension must be submitted prior to the expiration of the approval period.
3. After the decision is final, the property owner shall record the Notice of Decision cover sheet through the conditions of approval with the County Recorder. Proof of recording shall be filed with the Land Use Planning office. Recording shall be at the applicant's expense. [MCC 37.0670].
4. If Option 2 is selected, the property owner shall maintain curbing at least four inches in height around the outer boundary of the parking and maneuvering areas excluding the front of the parking spaces where the building acts as a buffer. [MCC 33.4180(B)].
5. No parking of trucks equipment, materials, structures or signs or the conducting of any business activity shall be permitted on any required parking space (pickup trucks exempt). [MCC 33.4125(B)].
6. All areas used for parking and 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. [MCC 33.4180 (A)(1)] Within one year of this approval, evidence of the completed improvements shall be provided to the County Land Use Planning Office (in the form of a parking area site plan and photographs) that the parking area improvements have been placed in condition suitable for use. Alternatively, a Performance Bond in favor of Multnomah County equivalent to the cost of completing the parking area improvements may be filed with the Planning Director. [MCC 33.4135(A)]. Any such bond shall include the condition that if the improvement has not been completed within one year of this approval, the bond shall be forfeited. Any bond filed hereunder shall be subject to the approval of the Planning Director and the County Attorney. [MCC 33.4135(B)].
7. The property owner shall maintain the existing trees and vegetation located within the buffer areas shown on the Option 1 and 2 parking plans (Option 1 buffering if Option 1 selected; Option 2 buffering if Option 2 is selected). [MCC 33.7055(C)(5)]. In addition, if the applicant's select Option 1, the 10'-wide buffer area on Option 2 shall be maintained as described herein. The buffer areas shall contain the landscaping required by MCC 33.7055(C)(3)(c). Trees in the buffer areas shown on Exhibit B.18 around the parking area may only be removed or pruned back under either of the following circumstances: (1) to meet the primary fire break safety zone standard of a 15-foot space between crowns; or (2) to remove a dying or hazard tree, according to the following procedure: The property owner shall provide proof, such as photographs of the tree and documentary evidence, prior to removal of the tree, to the Land Use office that the tree is dying or threatens the safety of humans, structures or the health of other trees. The tree may not be removed unless removal is approved by the Land Use office. The burden of proving that the tree is dying or a hazard rests with the applicants. Any tree removed because it is a dying and/or hazard tree shall be replaced with another tree of similar species at least six feet in height at the time of planting, at the same location and as soon as possible during the planting season unless the county finds that the

screening provided by the landscaped buffer is not substantially harmed by the removal of the tree or that other landscaping is more appropriate for the given location.

8. If parking lot improvements result in the addition of more than 500 square feet of impervious surfaces, a completed Storm-Water Certificate shall be submitted to the Land-Use Planning office prior to building permits. Any required storm-water system shall be installed at the time of parking area improvements.
9. The statement, in Exhibit B.19 shall be recorded with County Records within 60 days of final approval. This statement confirms 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. [MCC 33.2307].
10. Merchandise may not be sold from the premises. [MCC 32.2230(C)(1)].
11. The applicants shall provide a minimum of two parking spaces for employees and shall maintain the approved parking area as shown on the approved optional site plans filed on July 24, 2012 as required by MCC 34.4115. Parking shall be provided for employees without charge as required by MCC 34.4125(A). The parking spaces shall comply with the dimensional standards of MCC 33.4175 and shall be marked as required by MCC 34.4180(C).
12. The noise, odor, smoke, gases, fallout, vibration, heat or glare resulting from the approved office must not be detectable at any property line. [MCC 32.2230(C)(2)].
13. The office use is limited to no more than 5 employees, including resident and non-resident full-time or part-time employees. [MCC 33.6660(B)].
14. No deliveries other than those normally associated with a single-family dwelling and made between the hours of 7 a.m. and 6 p.m. are allowed for the office.
15. No outdoor storage or display is allowed. [MCC 33.6660(E)].
16. No signs other than street naming and property numbering signs are allowed. [MCC 33.6660(F)].
17. No noise above 50 dba at the property lines is allowed. [MCC 33.6660(G)].
18. No repair or assembly of any motor vehicles or motors is allowed. [MCC 33.6660(H)].
19. Within one year of final approval of this permit, the applicants shall obtain building permits for the entire accessory building including the necessary permits for occupancy as an office with employees. Necessary permits shall include, but are not limited to any required sanitation, plumbing, electrical, and mechanical permits.
20. The applicant shall record the covenant in Exhibit B.20 indicating that the accessory building shall not be used as an independent dwelling unit.
21. Prior to building permits the property owners shall obtain an access permit for the existing access onto NW Skyline Blvd.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font.

1.00 Project Description:

The applicants propose to use their existing, accessory building as a home-based business office with up to two non-resident employees. The home occupation is a business referral business that operates out of an office in an accessory building located west of and on the same parcel as the dwelling. While the business serves clients, no clients visit the site. The use is proposed as a Type B Home Occupation. A Type B approval is required because the home occupation will occur in an accessory building. Some code changes have occurred since the applicant first filed the application in October 2011. In order to avoid the possibility of changing goal posts, this decision is based on the code in effect in October 2011 (Exhibit B.21). The application is in response to a Code Compliance case regarding the unpermitted use of an accessory building for a home business. This application was filed in response to the code compliance case.

2.00 Property Description:

The 8.85-acre property is zoned Commercial Forest Use – 2 (CFU-2) by Multnomah County. The property contains a single-family dwelling built in 1991 and an accessory building. The property has access off of NW Skyline Blvd. Adjacent properties are also zoned CFU.

3.00 Commercial Forest Use Criteria:

3.01 MCC 33.2215 USES

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC 33.2220 through 33.2240 when found to comply with MCC 33.2245 through 33.2310.

Hearings Officer: The scope of the proposed use does not include new development or structures. The provisions of the CFU-2 zone district that require findings of compliance for this use include that the use is allowable as a Conditional Use, and that it meet the additional standards in 33.2245 Use Compatibility, 33.2275 Lot of Record, and 33.2285 Off-Street Parking. The other review standards are made applicable to the request through standards associated with the conditional use.

A home-based office in an accessory building is allowable as a Type B home occupation in the CFU-2 zone district if it meets the standards for such uses in 33.2230 (C) below.

3.02 MCC 33.2230 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 33.6650 through 33.6660 and provided:

Hearings Officer: Section 4 of this decision addresses the Home Occupation approval criteria of MCC 33.6650 through MCC 33.6660.

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

Hearings Officer: The applicant states that no sale of merchandise from the premises is proposed (Exhibit A.2). *The criterion is met.*

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

Hearings Officer: The accessory building is located near the center of the subject property (over 100 feet from all property lines). The use of the structure as an office is not expected to result in noise, odor, smoke, gases, fallout, vibration, heat or glare. *The criterion is met.*

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

Hearings Officer: The accessory building is divided into an office area and a storage area. The building was approved as an agricultural building in 1984 prior to the construction of the current dwelling which was completed in 1992. The use of the accessory building is no longer agricultural. It now serves the dual purpose of an office space and storage area which is accessory to the dwelling. The change from agricultural to residential use requires retroactive building permits (Condition of Approval 18).

3.03.4 (4) That the home occupation will not unreasonably interfere with other uses permitted in the CFU-2 zoning district.

Hearings Officer: The CFU-2 zoning district is a resource zone. The primary purpose of the zone is forestry. The zone also allows the cultivation of crops and the raising of livestock. No farming or forestry activities are occurring on the subject property. The home occupation proposal involves the existing dwelling, parking area, and landscaping adjacent to the parking area. On July 24, 2012, the applicants submitted two alternative parking proposals. Option 1 provides two paved parking spaces in front of the garage for the main residence. Option 2 proposes parking in front of the doors to the storage part of the accessory building. The impact of implementing either option has been considered in this decision and findings. The owners of the subject property will continue to have the ability to harvest timber and/or farm the majority of the property. The existing accessory building on the property will not interfere with farming and forestry in the CFU-2 zone on adjacent properties because the accessory building is located at least 100 feet away from adjacent properties. The use of the accessory building as an office will not interfere with the permitted farming and forestry uses permitted in the CFU-2 zone. *The criterion is met.*

3.04 MCC 33.2245 USE COMPATIBILITY STANDARDS

Specified uses of MCC 33.2225(C), (D) and (E) and MCC 33.2230 (A), (B), and (C) may be allowed upon a finding that:

(A) 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;
- (2) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and
- (B) 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.

Hearings Officer: The proposed office use will occur within an existing accessory building on the property. As a result, it will not affect farming and forestry practices in the vicinity nor will it change the fire hazard over and above the hazard which exists for the existing dwelling. The finding under 3.03.4 above indicates that the ability to conduct farm and forest practices on surrounding properties will not be affected by the proposed use. Condition 19 requires the acknowledgement statement (Exhibit B.20) to be recorded with County Records within 30 days of final approval. *The criterion is met.*

3.05 MCC 33.2275 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 33.0005, 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:

* * *

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

* * *

MCC 33.0005 DEFINITIONS.

* * *

...Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 33.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

Hearings Officer: The 8.85 acre property was created on September 19, 1977 (Exhibit A.6) in compliance with the F-2 zone district in effect at the time (Exhibit B.15). The F-2 zone district had a minimum parcel size of two acres. No adjacent properties were in the same ownership on February 20, 1990 (Exhibits A.9 and B.4). *The subject property is a Lot of Record.*

3.06 MCC 33.2285 OFF-STREET PARKING AND LOADING

Off-street parking and loading permitted as an accessory use shall be provided as required by MCC 33.4100 through 33.4220.

Hearings Officer: The County's off-street parking requirements are addressed in Section 6 of this report. The findings in that section demonstrate that parking can be developed to meet the applicable standards.

4.00 Home Occupations

4.01 MCC 33.6650- 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.

Hearings Officer: The home occupation use will employ one resident and two non-resident, part-time employees. The business also employs one part-time employee approximately 8 hours per month. This brings the total number of employees to four. No customers visit the site. At the hearing, the applicants indicated that they would like the ability to have up to a maximum of five employees.

MCC 33.6660 Criteria for Approval

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

(A) The standards found in MCC 33.6315

Hearings Officer: The Standards in MCC 33.6315 are the conditional use approval criteria and are addressed in Section 5 of this report.

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

Hearings Officer: The property owner indicates that up to two non-resident employees may be present at the office during the workday (Exhibit A.2). *The criterion is met.*

4.03 (C) The site has on-site parking as per MCC 33.4100 to accommodate the total number of employees and customers.

Hearings Officer: MCC 33.4100 requires two spaces for a single-family dwelling and one space per 300 square feet for the office in the accessory building. The office is approximately 400 square feet in size and, therefore, requires two parking spaces. The applicant has proposed to provide parking in one of two alternative locations on the property. In Option 1, the parking will adjoin the garage of the main residence. In Option 2, the parking for the office will be located adjacent to the accessory building. In Option 1, there are at least four parking spaces available to serve the single-family dwelling – two inside of the garage and two to three in front of the accessory building. In Option 2, the four spaces provided for the single-family home use include two spaces in the garage and two spaces in front of the garage. In either case, the residential parking spaces are not required to meet the design standards of the County's parking regulations. The requirements of the County's parking standards that begin at MCC 33.4100 are addressed in Section 6, below.

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

Hearings Officer: Condition of approval 14 requires adherence to the above standard. *As conditioned, the criterion is met.*

4.05 (E) No outdoor storage or display.

Hearings Officer: Condition of approval 15 requires adherence to the above standard. *As conditioned, the criterion is met.*

4.06 (F) No signage (including temporary signage and those exempted under MCC 33.7420) with the exception of those required under the applicable street naming and property numbering provisions in Multnomah County Code.

Hearings Officer: No signs are proposed. Condition of approval 16 requires adherence to the above standard. *As conditioned, the criterion is met.*

4.07 (G) No noise above 50 dba at the property lines.

Hearings Officer: The office is not anticipated to result in noise above 50 dba at property lines. Condition of approval 17 requires adherence to the above standard. *As conditioned, the criterion is met.*

4.08 (H) No repair or assembly of any motor vehicles or motors.

Hearings Officer: The application is for a business office. No commercial assembly or repairs of motor vehicles or motors is proposed nor is it allowed by this approval. *Criterion is met.*

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

Hearings Officer: Notice was sent to Oregon DEQ Small Business Section. DEQ did not comment on the proposal (Exhibit B.16).

4.10 (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.

Hearings Officer: The proposal is for a home-based professional office to be operated by one resident and three non-resident employees within an existing accessory building. This permit is approved subject to a limit of no more than five employees including resident employees. The type and nature of the business is as outlined by the applicants in their application materials and as described herein.

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

Hearings Officer: No new structures are proposed.

5.00 Conditional Use Approval Criteria

5.01 MCC 33.6315 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;

Hearings Officer: The area consists of small forested lots of 1 to 20 acres in size. Several lots contain single-family dwellings with accessory buildings. The proposed use of the existing accessory building as a small office in a relatively secluded forest setting is consistent with the character of the area. *The criterion is met.*

5.02 (2) Will not adversely affect natural resources;

Hearings Officer: The proposed office will have little additional impact on the natural resources (water resources, wildlife habitat, forest management) above the impact created by the existing single-family dwelling. *The criterion is met.*

5.03 (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

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

Hearings Officer: The existing accessory building is located over 100 feet from the closest neighboring property. This location minimizes impacts on surrounding lands devoted to farm or forest use. The property owners control the farm and forest practices on the subject property. The use of the existing accessory building as an office will not interfere with farming and forestry uses in the area because it is located at least 100 feet from the nearest property that may have farm and forestry occurring and because the owners of the subject property can implement farming and forestry on the majority of the property without affecting the business or vice versa. *The criteria are met.*

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

Hearings Officer: The public services required for this site are road access, water, electrical power, and sanitation. Use of the existing accessory building will not add a need for additional public services because the building is already served. No services other than existing services are required by the home occupation. *This criterion is met.*

5.05 (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;

Hearings Officer: The property is located outside of designated big game winter habitat (Exhibit B.17). The criterion is met.

5.06 (6) Will not create hazardous conditions; and

Hearings Officer: No existing hazardous conditions associated with the dwelling or accessory building have been identified. The accessory building is required to receive the necessary building and sanitation permits to allow an office with employees (Condition 13). These permits will assure that the use proposed will not create hazardous building or sanitation issues. *As conditioned, the criterion is met.*

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

Hearings Officer: The Comprehensive Plan policies in the West Hills Rural Area Plan are implemented by the West Hills Rural Plan Area ordinance and are addressed in the findings of this report. *This criterion is met.*

6.00 Off-Street Parking and Loading

MCC 33.4100

6.01 MCC 33.4105 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.

Hearings Officer: The proposed change in use to an office is an intensified use of the property. As a result, the adequacy of parking must be determined as part of the review. According to MCC 33.4165, the parking required for the residence is not subject to the off-street parking design standards of this code.

6.02 MCC 33.4115 Continuing Obligation

The provision for and maintenance of off-street parking and loading facilities without charge to users shall be a continuing obligation of the property owner. No building or any other required permit for a structure or use under this or any other applicable rule, ordinance or regulation shall be issued until satisfactory evidence in the form of a site development plan, plans of existing parking and loading improvements, a deed, lease, contract or similar document is presented demonstrating that the property is and will remain available for the designated use as a parking or loading facility.

Hearings Officer: The applicants submitted two alternative parking plans to the County on July 24, 2012. Option 1 is the preferred option. Option 1 is a proposal to provide two paved parking spots

(19' x 9') on an existing paved area in front of the garage that is attached to the house. The paved area is bordered by 6 to 12-inch tall retaining walls that would function as curbing. In this plan designates two strips that are five feet wide as screening buffers. Both strips contain natural forest vegetation and that vegetation would be maintained. The home and topography screen this parking area from view from NW Skyline Boulevard. In this option, the required parking for the house is provided in front of the accessory building. Option 2 proposes to provide three parking spaces near the garage. Two parking spaces are currently found in this location. The spaces shown on each option are the spaces that would meet the requirements of the home occupation use. The hearings officer will address and consider the merits of each plan, below.

6.03 MCC 33.4125 Use of Space

(A) Required parking spaces shall be available for the parking of vehicles of customers, occupants, and employees without charge or other consideration.

(B) No parking of trucks, equipment, materials, structures or signs or the conducting of any business activity shall be permitted on any required parking space.

Hearings Officer: This code section imposes conditions that apply to the use of the parking area. Compliance with these conditions is required as a condition of approval. *As conditioned, these criteria are met.*

6.04 MCC 33.4130 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.

Hearings Officer: The applicable standard of this section is the requirement to provide parking spaces on the lot. Under Option 1 and Option 2, the required parking spaces will be located on the same property as the home occupation use. *The criterion is met.*

6.05 MCC 33.4135 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 33.0525, or a Performance Bond in favor of Multnomah County equivalent to the cost of completing such improvements shall be filed with the Planning Director.

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

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

Hearings Officer: Compliance with this section has been assured by the imposition of a condition of approval. *As conditioned the criterion is met.*

6.06 MCC 33.4145 Joint Parking or Loading Facilities

(A) In the event different uses occupy the same lot or structure, the total off-street parking and loading requirements shall be the sum of the requirements for each individual use.

Hearings Officer: The proposed home based office adds a new use to the property, a home occupation. An office requires one parking space per 300 feet of floor area per MCC 33.4205(C)(3). The office has approximately 400 square feet floor area so two parking spaces are required. Two parking spaces are required to serve the single-family dwelling. Both Options 1 and 2 provide at least four parking spaces. *The criterion is met.*

6.07 MCC 33.4165 Design Standards: Scope

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

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

Hearings Officer: The applicants argued that the design standards for parking lot contained in this section of the code do not apply to their application. Two prior County decisions found the design standards inapplicable to home occupation uses. Those decisions relied on a staff interpretation of the meaning of MCC 33.4165. The staff viewed a home occupation an accessory use of a single-family residence. Staff interpreted the exemption applied to single-family residences to the home occupations operated in conjunction with the residential use of the property. Since the time these decisions were issued, staff has changed its interpretation of the code. The current staff interpretation is that the design standards apply to a home occupation because it is a use other than a single or two-family residential dwelling use. This interpretation is consistent with the fact that home occupations and forest dwellings are separately listed uses in the CFU-2 zoning district and has been applied in recent home occupation cases. The hearings officer finds that each position is a reasonable interpretation of the County code but that the staff's current interpretation is a better interpretation because the separate listing of the home occupation use and the dwelling uses indicates that the home occupation is not an accessory use. If a home occupation were an accessory use, like a storage building, it would not be necessary to list it in the code as a separate use. In addition, staff has been applying its current interpretation to recent home occupation applications. As a result, the hearings officer adopts staff's interpretation and has applied the design standards to the review of this application.

The applicants also argued that MCC 33.7015 exempted their application from the design standards of MCC 33.4165. MCC 33.7015 exempts Type B home occupations from "Design Review" for compliance with the provisions of MCC 33.7000 through 33.7065, not from the "Design Standards of MCC 33.4165 or other the requirements of other sections of the County code. As a result, the exemption of MCC 33.7015 does not apply to exempt the applicants from complying with the MCC 33.4165.

The parking, loading, and maneuvering areas are located on the same property as the single-family dwelling. The parking and maneuvering areas are over 300 feet away from the nearest right of way. The parking is arranged so that vehicles are not required to back into the right-of-way of a public street. *The criteria are met.*

6.08 MCC 33.4170 Access

Hearings Officer: Staff determined that this code section does not apply to this application. No party challenged this conclusion. The hearings officer did not advise the applicants or other parties that this code section might be an applicable approval criterion. State law requires the County to advise the applicant and parties of the applicable approval criteria that will be used in the review of the land use application. As a result, the hearing officer will not disturb staff's determination and will not apply this code section to her review of this application.

6.09 MCC 33.4175 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.**

(C) Loading spaces shall meet the following requirements:

(1)

District	Minimum Width	Minimum Depth
All	12 Feet	25 Feet

(2) Minimum vertical clearance shall be 13 feet.

Hearings Officer: The applicant's site plan and narrative confirms that the two parking spaces meet the above criteria. The area behind the parking spaces, the area that is considered the "aisle," is at least 25' deep. *The criteria are met.*

6.10 MCC 33.4180 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 provide durable and dustless surface capable of carrying a wheel load of 4,000 pounds.**

Hearings Officer: Condition of approval 6 requires confirmation of the above surfacing improvements for the parking and maneuvering area within one year of approval date. *As conditioned, the criterion is met.*

6.11 (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.

Hearings Officer: The parking and maneuvering area is located over 100 feet from all property lines. The existing parking and maneuvering area is delineated by existing vegetation. Landscape strips have been provided for Option 1 and Option 2 so no curbing is required to prevent unchanneled motor vehicle access or egress. In Option 1, the outer boundary of the parking area is bounded on two sides by retaining wall blocks that act as curbing. The third side is bounded by the garage of the building which serves the function of a curb. These areas are all at least three feet from the lot lines of the subject property. No fence is required. In Option 2, bumper rails or curbing is needed on two sides of the parking area. The accessory building provides the third curb for the parking area. Condition 4 requires that if the applicants proceed with Option 2 that the parking for the home occupation use be clearly delineated by bumper rails or similar device. *As conditioned, the criteria are met.*

6.12 (C) Marking – All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 33.4120, and such marking shall be continually maintained.

(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.

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

Hearings Officer: Condition 4 requires that if Option 2 is chosen that the employee parking to be clearly delineated by bumper rails or a similar device, as described in Section 6.11, above. Condition 8 requires a completed storm water certificate if a new paved parking area is provided and creates an impervious surface greater than 500 square feet. No covered walkway is proposed. A condition of approval has been imposed to require, with either Option 1 or 2, that the parking spaces be marked. *As conditioned, the criteria are met.*

6.13 MCC 33.4185 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.

Hearings Officer: No new lighting is proposed. *The criterion does not apply.*

6.14 MCC 33.4195 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.

Hearings Officer: The parking and maneuvering area is not located in a required yard that abuts a street lot line. No required yard which abuts a street lot line is paved. *The above criteria are met.*

6.15.1 MCC 33.4200 Landscape and Screening Requirements

(A) The landscaped areas requirements of MCC 33.7055 (C) (3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 33.4165 (A).

Hearings Officer: This section specifically applies a small part of the Design Review criteria from MCC 33.7000 through 33.7065 to the review of this application. It does not require the application of a full design review under MCC 33.7000 through 33.7065 for the property. The exemption for Type B home occupations provided by MCC 33.7015(B) does not apply because MCC 33.4165(A) does not exempt home occupations from its Design Standards and this applicable provision of the code makes only this small part of the Design Review section applicable to the review of the pending application.

MCC 33.7055

(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.

Hearings Officer: This requirement does not apply as the applicant's use does not require ten or more spaces and the plan proposed does not include ten or more spaces. *This criterion is not applicable.*

(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.

Hearings Officer: The applicants' Option 2 parking plan complies with this requirement. The Option 1 plan does not comply. The applicants did not propose a landscape strip between the parking area and the lot line that adjoins Skyline Boulevard because the parking area is not visible from the street. This fact, however, does not excuse the applicants from the requirement to provide a 10'-wide landscaped strip. As a result, if the applicants proceed with Option 1, that option must include the 10'-wide landscaped strip shown on the Option 2 drawing submitted to the

county on July 24, 2012. *As conditioned, the applicant's parking area proposals comply with this approval criterion.*

(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 average; and**
- 3. Vegetative ground cover.**

Hearings Officer: The applicants will be required to comply with the requirements of this section as a condition of approval. *As conditioned, the criteria are met.*

(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.

Hearings Officer: Landscaping is not proposed in the parking areas. Landscaping is not required to be provided in the parking areas. The requirements of (d) and (e), above, therefore, do not apply. *Criteria (d) and (e) are not applicable.*

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

Hearings Officer: The natural vegetation surrounding the parking area is native and does not require supplemental watering. *The criterion is met.*

6.15.3 (5) Required landscaping shall be continuously maintained.

Hearings Officer: Condition 7 requires the protection of landscaping in the buffer areas shown on the Option 1 and 2 plans. *As conditioned, the criterion is met.*

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

Hearings Officer: No new trees are proposed. *The criterion is not applicable.*

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

Hearings Officer: No new landscaping is proposed.

6.16 MCC 33.4205 Minimum Required Off-Street Parking Spaces

(C) Retail and Office Uses

(1) Store, Supermarket, and Personal Service Shop – One space for each 400 square feet of gross floor area.

(2) Service and Repair Shop – One space for each 600 square feet of gross floor area.

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

Hearings Officer: The proposal requires one parking space per 300 feet of floor area. The 400-square foot office requires two parking spaces. *As conditioned the criterion is met.*

6.00 Other Issues

6.01 Stove in Accessory Building. Staff recommended that a condition be imposed to require that the stove in the accessory building be removed. The applicants' objected to this condition. The hearings officer is unable to find any provision of the applicable land use laws that prohibit the applicant's from keeping the kitchen in the accessory building. As a result, removal of the stove has not been required as a specific condition of approval of this application. The fact that this condition has not been imposed, however, does not necessarily mean that the applicants will be allowed to retain the stove. It is possible that they may be required to remove the stove in order to obtain required building permits.

6.02 Staff Objections to Option 1. Staff expressed concern that Option 1 would conflict with required parking in the garage. As proposed, cars parked in the home occupation parking lot will block access to the garage of the single-family home. While this is not ideal, the applicants have shown that there are two parking spaces adjacent to the accessory building that may be used to meet the requirement of two parking spaces for the residence. The locations selected for each use are not convenient or close to each use but I found no requirement in the land use code that the spaces be located within a convenient distance of the use. I have some concern that the parking spaces proposed in Option 1 are not ADA-compliant. This decision, by approving Option 1, does not excuse the applicants from complying with ADA requirements, if applicable, as that is a federal law that cannot be waived by this hearings officer. As a result, I have approved both options so that if ADA requirements are imposed during the building permit review, the applicants will be able to comply with the ADA as well as the land use laws.

7.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for a Conditional Use Permit for a Type B Home Occupation for a home based office with up to five employees in an existing accessory building in the CFU-2 zone. This approval is subject to the conditions of approval established in this report.

8.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits are available for review in Case File T3-2011-1907 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/Submitted
A.1	1	General Application Form	09/30/2011
A.2	8	Applicant’s Original Narrative	09/30/2011
A.3	1	Agricultural Building Exemption for Existing Accessory Building. Dated December 24, 1984.	09/30/2011
A.4	4	Book 341, Page 302 of the Multnomah County Deed Records	09/30/2011
A.5	2	Book 1187, Page 2129 of the Multnomah County Deed Records	09/30/2011
A.6	2	Book 1210, Page 445 of the Multnomah County Deed Records	09/30/2011
A.7	4	Book 1232, Page 1634 of the Multnomah County Deed Records	09/30/2011
A.8	2	Statutory Bargain and Sale Deed recorded as Instrument Number 2009-036487 of the Multnomah County Deed Records	09/30/2011
A.9	2	Adjacent Property Owners on February 20, 1990	09/30/2011
A.10		City of Portland Building Permit Records – Indicates that dwelling passed final inspection on 03/26/1992.	09/30/2011
A.11	6	Certificate of Onsite Sewage Disposal	05/25/2012
A.12	2	Fire District Review	01/26/2012
A.13	7	Applicant’s Supplemental Narrative	03/21/2012
A.14	1	Site Plan	03/21/2012
A.15	1	Office Floor Plan	03/21/2012
A.16	9	Photographs of existing dwelling and past permit information in support of Habitable Dwelling definition	03/21/2012
‘B’	#	Staff Exhibits	Date
B.1	1	Aerial Photograph (2004)	N/A
B.2	1	Zoning Map with Zoning Overlays	N/A
B.3	1	Slope Map with Contours	N/A
B.4	14	Assessment and Taxation information for subject property and adjacent properties	N/A
B.5	2	1978 Zoning Map	N/A
B.6	1	1986 Zoning Map	N/A

B.7	5	Portland Maps Permit Data	N/A
B.8	5	County Building Permit Review Sign-offs	N/A
B.9	1	Meeting Notes from Staff consultation meeting with applicant on 02/10/2011 (File# CM-2011-1420)	N/A
B.10	3	Pre-Application Meeting Notes	N/A
B.11	1	Transportation Notes	N/A
B.12	6	Site Photographs from Staff Site Visit of 10/24/2011	10/24/2011
B.13	1	Copy from Land-Use Card Files	N/A
B.14	15	Correspondence between Applicant and Staff	N/A
B.15	7	Historical Zoning Maps	N/A
B.16	1	Notice Sent to Oregon DEQ	06/25/2012
B.17	1	Multnomah County Big Game Habitat Areas	N/A
B.18	1	Parking Area and Adjacent Trees	N/A
B.19	1	Acknowledgement of Farm and Forest Practices	N/A
B.20	1	Accessory Structure Covenant	N/A
B.20	148	Multnomah County Code – April 24, 2011 Edition	N/A
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	10/23/2011
C.2	1	Applicant's Acceptance of 180 Day Clock	11/03/2011
C.3	1	Complete Letter (Application Complete on 03/26/2012)	03/28/2012
C.4	3	Notice of Public Hearing and Associated Mailing Labels	06/14/2012
'H'	#	Exhibits filed with the Hearings Officer	Date
H.1	42	E-mail from Matt Schuckmann to Kevin Cook with string of prior e-mails and attachments	7/9/2012
H.2	7	Schuckmann Response to Staff Report	7/13/2012
H.3	1	Code Interpretation	7/13/2012
H.4	6	July 24, 2012 Schuckmann Response & Additional Information	7/24/2012
H.5	2	Staff Memorandum	7/24/2012