

1600 SE 190<sup>th</sup> Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

## DECISION OF HEARINGS OFFICER

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

**Case File:** T2-2016-4951

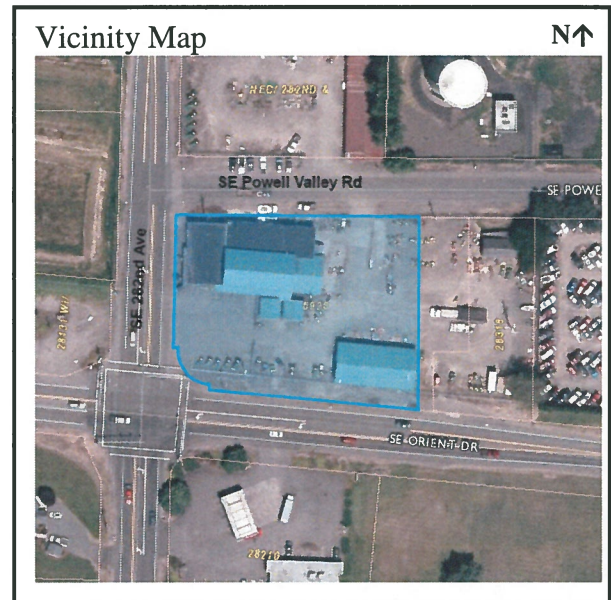
**Permits:** Design Review, Verification and Alteration of a Nonconforming Use, Lot of Record and Administrative Decision by the Planning Director

**Location:** 6928 SE 282<sup>nd</sup> Avenue  
Tax Lot 600, Section 19BC,  
Township 1 South, Range 4 East, W.M.  
Alt. Acct # R994191280

**Applicant:** Jeremy Pratt

**Owner:** Jeremy Pratt

**Base Zone:** Orient Commercial Industrial (OCI)



**Summary:** Applicant proposed to operate a 2,575 sq. ft. retail and medical marijuana dispensary in the Orient Commercial Industrial Zone (OCI) zone. No growing or processing is proposed at this location.

**Decision:** Denied. The applicant failed to establish the business proposed would primarily serve nearby rural residents and tourists. The septic holding tank system proposed by the applicant does not dispose of sewage on site or in another code-authorized manner. Additionally, the applicant failed to provide sufficient evidence about nearby development to allow the County to find that his proposed development is compatible with the area.

This decision is final when mailed but may be appealed to the Oregon Land Use Board of Appeals.

**Dated** this 3rd day of April, 2017.



Liz Fancher, Hearings Officer

## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusory statement in *italics*. The staff comments have, in places, been edited. All staff comments are hereby adopted by the hearings officer as her findings. Additional findings written by the hearings officer are also provided and identified as ‘Hearings Officer.’ In the event of conflict between staff findings and hearings officer findings, the hearings officer findings control.

### **1.00 Project Description:**

**Staff:** Applicant is proposing to operate a marijuana dispensary within the northwestern building near the corner of SE 282<sup>nd</sup> Avenue and SE Powell Valley Road. The use will occupy 2,575 sq. ft. of the 8,635 sq. ft. building. The business will sell to Oregon Medical Marijuana patients, growers and caregivers and recreational consumers and growers. Products will include flowers, seeds, plants with different genetic traits and a drop site for laboratory testing. Hours of operation or number of employees have not been discussed as part of the application.

Different plans have been submitted by the applicant with discrepancies regarding the use of the remaining 6,060 sq. ft. of the northwestern building. In one set of plans, the applicant indicates no improvements in this area. In a later set, it shows the area being built out. Another set of plans lists a use of a warehouse in this area and in the southeastern building on the property. No written narrative or request has been submitted indicating that these buildings are proposed for warehouse use. At this time, planning staff is not reviewing or approving a use for either the 6,060 sq. ft. of the northwestern building or the entire southeastern building. Future use of either of these building areas will require a separate review and approval through the land use process.

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

**Staff:** The subject property is 1.03 acres in size and is occupied by two existing older buildings. Neither the buildings nor the site is currently utilized for an approved land use. The former use of the site was for a tractor supply store. The property is zoned Orient Commercial Industrial (OCI). The property is currently fenced near the south property line with a 6-ft chain link fence, a 12-ft chain link fence and 3-ft vinyl fence adjacent to the former tractor yard area.

### **3.00 Procedural Issues**

Evidence was provided by “hanawaj” by e-mail on March 16, 2017. The applicant’s attorney, J. David Zehntbauer, objected to consideration of this evidence by the County in a letter dated March 22, 2017. Mr. Zehntbauer claimed that the submission contains no identifying information and that it could not be determined if they have standing to participate. County staff member Lisa Estrin responded to this objection in an e-mail dated March 22, 2017 to which no objection was raised.

The record contains an earlier e-mail dated November 28, 2017 from the same e-mail address and a handwritten letter signed by Jun Hanawa. County records show that Ms. Hanawa’s address is 3271 SE Quail Lane, Gresham, Oregon and she describes herself as a neighbor. This information is sufficient to identify her as a person with standing to participate in this review.

On March 22, 2017, Mr. Zehntbauer filed an additional objection to seven documents sent to him

by County staff on March 22, 2017 at 4:08 pm. These documents are: (1) e-mail from Kyle Kersey dated March 14, 2017; (2) e-mails and attachments from [hanawaj@gmail.com](mailto:hanawaj@gmail.com) dated March 16, 2017 and March 17, 2017 at 9:29 am; (3) e-mail from Kimber Shiroma dated March 15, 2017 with two aerial photograph attachments; (4) e-mail from Kat Arn dated March 10, 2017; and (5) e-mail from Kymberlee Lake dated March 16, 2017. These comments were timely filed with the County on or before March 17, 2017 at 4:00 pm. Each person, therefore, is entitled to have their comments be made a part of the record unless the evidence is outside the scope of evidence allowed during the rebuttal period. Mr. Zehntbauer has not claimed that any of the evidence is outside the scope of allowed evidence.

Mr. Zehntbauer correctly notes that the deadline for parties to ask to reopen the record to allow a response to comments filed during the post-hearing rebuttal period was March 22, 2017 at 4:00 pm. Rather than filing a request to reopen the record, however, Mr. Zehntbauer asked that the documents be stricken claiming “the County failed to comply with its own briefing schedule” by failing to send the documents prior to the March 22, 2017 deadline. I deny this request as the documents were timely filed with the County and there is no legal requirement that the County provide the applicant with copies of properly and timely filed evidence prior to any deadline. Furthermore, there is no indication that Mr. Zehntbauer had requested and been denied copies of the comments prior to the filing deadline. The only potentially appropriate remedy, given the rights of the parties who submitted comments, would be to reopen the record to allow the applicant to respond to new evidence.

Mr. Zehntbauer did not ask to reopen the record nor did he provide any evidence that he had requested that staff provide him with copies of the materials prior to the March 22, 2017 deadline. Mr. Zehntbauer has not claimed that any of the rebuttal information is otherwise improper or that it is new evidence to which his client has a right to respond. I would have reopened the record if Mr. Zehntbauer had requested it be reopened and had pointed me to new evidence in the submittals that merited a response. It also bears mentioning that the applicant had the opportunity to respond to the timely-filed documents with written arguments as a part of his filed final argument filed on March 24, 2017.

#### **4.00 Orient Commercial Industrial (OCI) Criteria:**

##### **4.01 § 36.3525 REVIEW USES.**

**The commercial and industrial uses listed in this section may be permitted when found to meet the approval criteria in 36.3527 unless other approval criteria are listed for the use, and are subject to Design Review approval. Uses in this section shall be processed as Type II decisions pursuant to MCC 37.0510 through 37.0800.**

**(A) Small-scale low impact rural service commercial uses such as local stores, shops, offices, repair shops, and similar uses including the uses listed below.**

- (1) Automobile Repair,**
- (2) Restaurant,**
- (3) Tavern,**
- (4) Professional Office,**
- (5) Garden supply store,**
- (6) Hardware store,**

- (7) Retail bakery,
- (8) Service station,
- (9) Beauty and barber shop,
- (10) Video Tape Rental

**Staff:** MCC 36.0005 Definitions defines a “*Small-scale Low Impact Commercial Use*” as “*Small-scale Low Impact Commercial or Industrial Use - As used in the rural communities of Orient and Pleasant Home, these terms have the following meanings:*

*A small-scale low impact commercial use is one which takes place in a building or buildings not exceeding 4,000 square feet of floor space.”* A retail dispensary is similar to a retail bakery or retail candy store. The use will only occupy 2,575 sq. ft. of the existing 8,635 sq. ft. building. As proposed, the use can qualify as a small-scale low impact rural service commercial use. *Criterion met.*

**Hearings Officer:** Marijuana Businesses, including dispensaries and retail shops, are restricted by MCC 36.0560 to two locations in the West of Sandy Area. They are allowed in the PH-RC and OCI zones – both zones that permit retail sales and the provision of services to rural communities.

#### 4.02 § 36.3527 REVIEW USES APPROVAL CRITERIA.

- (A) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

**Staff:** The subject property is located within the Orient Commercial Industrial (OCI) zone. Surrounding land uses are shown in the July 2016 aerial photograph included below:



While some of the properties are available for farm use, none of the nearby properties in the OCI or OR (Orient Residential) zone are in farm deferral. No comments were received from adjacent property owners indicating that the proposed use will increase the cost or change farm or forest uses. *Criterion met.*

**4.03 (B) The proposed use will not, by itself or in combination with existing uses in the community, result in public health hazards or adverse environmental impacts that violate state or federal water quality regulation; and**

**Staff:** The subject property is not connected to a public sewer system. The disposal of human waste and grey water from the proposed tenant improvements must be handled by an on-site sewage disposal system. The application materials submitted did not address the on-site feasibility for septic service. The materials submitted were preliminary documents. If the site is served by an on-site sewage disposal system of any kind, it is not shown on the site plan or known by the County's Sanitarian (Exhibit A.46, A.34 & B.11).

Land Use Planning contacted the City of Portland, Bureau of Development Services to determine if the Septic Evaluation Application (Exhibit A.34) had been completed by the applicant. They responded that the application was submitted but never completed (Exhibit B.11). In addition, their records do not have any record of the property's septic system. They are unsure whether an on-site system is approvable for the property. The alteration from a tractor store to a marijuana dispensary is a change of occupancy and requires an Authorization Notice.

The application materials submitted do not demonstrate that the site has a functional on-site sewage disposal system. Without evidence that a working septic system exists or can be installed, staff cannot find that the proposed use will not result in a public health hazard.

**Hearings Officer:** Following the hearing, the applicant provided evidence from Erin Mick, the County Sanitarian, to show that it is feasible to meet the sewage disposal needs of the proposed business with a holding tank. Ms. Mick indicated that this type of system is common in the area due to compacted soils. If properly maintained, a holding tank system should not create a public health, environmental or other hazard. *As a result, a condition of approval requiring approval of such a system could be imposed to assure compliance with this approval criterion.*

**4.04 (C) The proposed use will not, by itself or in combination with existing uses in the community, exceed the carrying capacity of the soil or of existing water supply resources and sewer services; and**

**Hearings Officer:** Evidence in the record shows that the soil on the subject property has the carrying capacity to support an on-site sewage disposal system. This point has been conceded by the applicant. No sewer service exists to serve this property. A holding tank collection system is needed because the soil cannot support the use and no sewer service exists. As a result, the demand created by the business for sewage disposal service cannot be met by the soil on site or by sewer service. *This criterion is not met.*

**4.05 (D) The proposed use will not create significant adverse effects on existing uses or permitted uses on adjacent land, considering such factors as noise, dust and odors.**

**Staff:** The County has received a number of comments regarding the proposed use. One comment discussed odor coming from the shop and from individuals smoking or vaping on the site. The County's marijuana business ordinance (MCC 36.0560 et al) requires that all buildings

used for a marijuana business be equipped with an air filtration system designed and verified by an Oregon licensed mechanical engineer. This will eliminate odors emanating from the building. The recreational consumption of marijuana in a public place is not allowed (Exhibit B.10). ORS 161.015 defines a “Public Place” as “A place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.” A condition of approval has been included requiring the applicant install signs in the parking lot that consumption is not allowed on the premises. At this time, staff is not aware of any other environmental adverse impacts that could be created by the proposed use. *Through a condition, this criterion can be met.*

**4.06 (E) The proposed use will primarily support the needs of residents of the rural area or tourists visiting the area.**

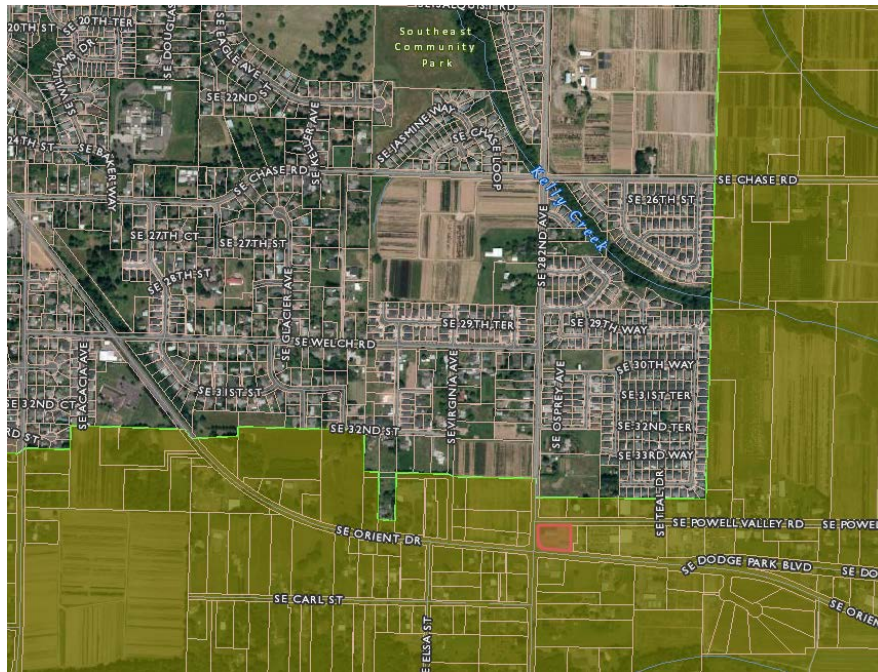
**Staff:** The applicant has indicated that Nectar will be retailing to both the recreational market and the Oregon Medical Marijuana program (OMMP) card holders. The evidence provided by the applicant is that the customers for the business will come primarily from the rural area or tourists visiting the area. He has provided nine testimonials (Exhibit A.4) from individuals indicating they will utilize the business. Further review of the testimonials finds that five individuals live in the West of Sandy River area and two live in the urban areas of Boring. One lives past the City of Sandy and is not within the area we consider to be within our rural area. The final individual does not supply an address on his testimonial. No documentation was provided as to the number of tourist customers would be expected to visit the store daily.

The declaration by Jeremy Pratt (Exhibit A.3) indicates that research was completed for determining the most desirable locations for customer, potential performance and demand for various locations were completed (Exhibit A.3, page 1, paragraph 4). No report documenting the proposed customer base was provided as part of the land use application.

The application argues that the Declaration of Jeremy Pratt, the nine testimonials and the Transportation Analysis is adequate to show compliance with (E) listed above. The applicant also states that they could find “no historical data of the market dynamics of medical marijuana” (Exhibit A.2., page 5, 4<sup>th</sup> paragraph).

The proposed dispensary location is located near the unincorporated Multnomah County and the City of Gresham border as shown in the 2012 aerial below:





The West of Sandy River rural area is highlighted in pea green. The City line is in lime green. The property is in a pinkish tone. The land uses in Gresham are mostly residential. The Gresham residents are a large potential customer base for the dispensary. It would seem the more populated City of Gresham would provide the potential for more customers than the County's rural area.

**Hearings Officer:** This criterion creates a significant hurdle for any retail use that wishes to locate in the western part of the Orient Rural Community other than those that cater to the needs of the rural community such as a feed store. This part of the rural community adjoins a residential area of the City of Gresham. Most of the land in Gresham is developed at urban standard residential densities with single-family homes. A large number of urban residences are located in close proximity to the subject property.

The purpose statement for the Orient Commercial-Industrial Zone increases the hurdle for the applicant. It states that uses in the zoning district are to primarily serve the immediate Orient Rural Community, the immediate rural area and tourists. As a result, I may not consider persons who live in rural areas a substantial distance from the subject property as a part of the rural area population that must be primarily served by the business. The County's code also specifies that the persons primarily served, other than tourists, must be residents. It does not include employees of Orient rural community businesses.

#### **§ 36.3500- PURPOSE.**

**The purpose The Orient Commercial-Industrial Zone is to provide for small-scale low-impact commercial and industrial uses that primarily serve the population of the immediate Rural Community area, and the immediate surrounding rural area as well as tourists traveling through the area. The uses allowed within the zone should reinforce the rural nature of the area and not adversely impact agricultural uses in the area.**

The County's comprehensive plan for the West of Sandy River area shows that the Rural Community is sparsely populated. It is comprised of 62 residential parcels on 98 acres of land. The comprehensive plan also shows there are two residential commercial properties in the community. Much of the area in the rural community area is committed to and designated for industrial and commercial use. It is reasonable to assume that these businesses employ persons who live outside the rural community who would be potential patrons for the proposed retail use. Nonetheless, given the language of the code, these employees and business owners are treated the same as residents of Gresham. They are likely customers who do not count in meeting the "primarily serve" test.

Information filed by Jun Hanawa during the rebuttal period makes the claim, supported by an aerial photograph, there are over 250 homes within one half mile of the subject property and that there are under 50 home within a half mile of the property in the rural area. A comparison of the map included in this decision, above, and Ms. Hanawa's maps shows that Ms. Hanawa included some land and homes in the "urban" category that are located outside of the City of Gresham. A count of parcels in the area erroneously identified as urban shows that approximately 20 parcels were misidentified. From a visual observation of the maps in the record, it appears that no more than 20 homes are located in the misidentified area. This means that there are over 230 homes in the urban area and less than 70 homes in the rural area identified by Ms. Hanawa. Ms. Hanawa's evidence makes it clear that far more urban residents than rural residents live in close proximity to the subject property. This evidence creates a strong presumption that the primary customers of the proposed business will be urban residents.

The applicant provided evidence from persons who live in rural areas outside of the Orient rural community that they are potential customers for the new store. This evidence demonstrates that if these persons patronize the store that a very small percentage of the clientele will be rural residents. At best, this evidence shows that rural residents in general are a population that would patronize the applicant's business. What this evidence does not show, however, is that more rural residents in the immediate area and tourists will patronize the new business. The type of evidence that would have been more probative would have been market research or data from the applicant's Burnside store that shows that it serves a large number of rural residents who would be better served by the new location or market research. None of this type of evidence was provided.

The applicant submitted population data to support his claim that the majority of customers would be rural residents or tourists. The final iteration of this data was provided as Attachment F of Exhibit I.5 filed on March 9, 2017. The applicant claims this data shows a possible service area for the business with an urban population of 63,605 and a rural population of 34,608. There are, however, some significant errors in the applicant's work. I've reviewed this work to obtain a general idea of the "big picture" and with the understanding that this analysis contains assumptions that make it only generally helpful as a guide to determine whether the proposed business will primarily serve nearby rural residents and tourists.

Much of the area in two of the census tracts included in the "rural" population category include the City of Sandy. Cities, by definition in Oregon land use law, are urban areas. The applicant also excluded urban areas from rural census tracts 104 but failed to add the excluded urban areas to the total urban population of the service area. The applicant also failed to include the urban population for Census Tracts 104.10 and 104.11 in his tally of the population of the urban area. These census tracts are shown on the applicant's map as urban areas in the potential service area



for the proposed business. The size of nearby tracts (104.07, 104.08, 104.09) range from 5,524 to 7,436 persons. As the actual population information was not provided for Tract 104.10 and 104.11, I will assume a population of 7,000 persons near the high end of the range for each of the omitted areas.

In order to obtain a more accurate picture of the size of the urban vs. rural population, I moved the two census tracts that include Sandy and the population in the Exclusion A and B areas into the urban population total. I moved all population for Sandy area tracts to the urban column as I have no data that allows me to exclude any part of the population in the Sandy tracts as being rural. I added 14,000 persons to the urban population to account for residents in Tracts 104.10 and 104.11. This provides the following results:

63,605 urban population per Attachment F + 5,785 (Tract 234.04) + 4,931 (Tract 234.03) + 1,074 (Tract 104.02, Ex A) + 2,328 (Tract 104.02, Ex B) + 14,000 (Tracts 104.10 & 104.11) = **91,723 urban population**

34,608 rural population per Attachment F - 5,785 (Tract 234.04) - 4,931 (Tract 234.03) = **23,992 rural population**

This shows that urban residents outnumber rural residents by almost 4:1. Some of the urban census tracts include rural areas. As a result, this assessment errs on the side of underestimating the percentage of the total population of the area identified by the applicant that is rural.

The applicant also provided information that shows that many urban residents in his study area live in close proximity to existing marijuana sales locations on Burnside Road and in downtown Gresham. It is fair to assume that most persons in areas located close to existing stores will not shop at the applicant's proposed store in Orient. The information also shows that there is one rural area dispensary in the service area of its proposed location. Rural residents in the area around that dispensary and those closer to it than to the proposed location, likewise, are not likely to be customers of the proposed business. As a result, I have reviewed the census tract maps provided by the applicant to attempt to determine how much this fact might reduce the percentage of customers who will come from the urban area and how the rural dispensary might impact the number of rural customers who will use the dispensary.

From my review of the map provided, I believe that most urban customers will come from Census Tracts 104.02 (urban part only), 104.07, 104.08 and 104.09. I believe that the existing urban retail marijuana locations better serve persons in the other tracts identified by the applicant. The areas I've identified have an urban population of 22,472 persons.

In determining the rural population, I have excluded Tracts 231 and 235 from the rural population because they are not in the immediate surrounding rural area and because these areas are not shown, in their full extent on the map provided by the applicant. This leaves a rural population of 12,080 persons in the service area. This area, after the exclusion of Tracts 231 and 235, is served by one other rural area dispensary. I also excluded Tract 231 because the applicant submitted information that shows that there is an existing retail location on 242<sup>nd</sup> that is a more convenient location for Tract 231 residents. This rural retail location, like the proposed location, also serves the rural population of Tract 233. This will reduce the number of potential rural customers for the proposed business.

The applicant's attorney argues that information his firm provided on Attachment B of it March 17, 2017 letter provides "uncontroverted evidence" in support of the position that the proposed dispensary will primarily serve the currently underserved rural population. I disagree. The information provided is a listing of counties identified as rural counties and the number of dispensaries in each county per resident. Each identified county includes at least one city. The entire urban and rural population was used to determine the service level provided by dispensaries in those counties. This tells me nothing about the level of demand for marijuana by rural residents as compared to urban residents. The shop per capita data indicates it is likely that there is a large enough population in the rural areas to support the proposed shop. Nonetheless, this does not answer the question whether persons from this area and tourists would outnumber urban customers from Sandy and Gresham. Opponents provided evidence to show that rural residents may shop at urban area marijuana outlets in Gresham when they travel to Gresham for trips to the many restaurants, grocery stores, medical services and other retail establishments found in Gresham. Opponents have also introduced evidence that shows that the Orient retail outlet is not a more convenient location for use by rural residents than shops in Gresham.

Evidence in the record shows there is a large urban population (22,472 persons) in close proximity to the proposed dispensary. According to my review of the applicant's Attachment B, it appears these areas are, like the rural areas, underserved. I can find no logical reason that these areas will not provide a customer base for the proposed business. I also find insufficient evidence in the record to allow me to find that this urban population – especially residents in the area within one half mile of the proposed location – won't patronize the dispensary at about the same rate per person as rural residents.

The applicant has claimed that the new business will serve tourists but did little to defend this assertion when it was challenged. The location chosen by the applicant is not attractive to tourists. Tourist destinations include Mount Hood, the national forests, downtown Portland and the Columbia River Gorge. Visitors coming from the Portland Airport will, most likely, shop at the marijuana dispensaries on Burnside Road. These shops are located on Highway 26. The highway is the main route to the national forest and Mount Hood. There, also, is a dispensary in Welches that serves tourists. As a result, I find that the applicant has failed to demonstrate that tourists will frequent the proposed business in appreciable numbers.

Based on the above findings, I am unable to find that the applicant has met its burden of proving the proposed use will primarily support the needs of residents of the rural area and tourists visiting or traveling through the area. *This criterion has not been met.*

#### **4.07 § 36.3550 DIMENSIONAL STANDARDS AND DEVELOPMENT REQUIREMENTS.**

\* \* \*

##### **(B) Minimum Yard Dimensions – Feet**

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

**Maximum Structure Height - 35 feet**

**(C) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county "Design and**

**Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

\* \* \*

**Staff:** The subject property has two existing buildings located on it. One is located in the northwest corner of the property adjacent to 282<sup>nd</sup> Avenue and Powell Valley Road. The second building is located in the southeast corner of the property parallel with Orient Drive. Both buildings encroach into at least one required yard. The applicant has submitted a Verification of a Nonconforming request regarding the existing building setbacks in order to verify that the buildings were lawfully established and are currently nonconforming to current yard requirements. *Criterion met.*

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

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

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

**Staff:** The applicant has not provided information regarding the existing or proposed on-site sewage disposal system for the site. The applicant submitted an unsigned Sanitation Review Certificate (Exhibit A.34). The County’s Sanitarian has indicated that they have no record of the property’s septic system (Exhibit B.11). The proposed change from a tractor store to a dispensary is a “change of occupancy” and requires an “Authorization Notice” be completed before the use can occupy the site pursuant to OAR 340-071-0205(1).

The parking lot plans show that the applicant is proposing to continue the use of gravel for the parking lot’s surface, but a new curb and landscaping will be installed along its perimeter. It appears no new impervious surfaces are proposed for the site. If the parking area is paved in the future, stormwater/drainage control system would need to be installed.

**Hearings Officer:** The applicant has conceded that on-site sewage disposal or disposal in an off-site easement area is not feasible. Instead, he is proposing to place sewage in an on-site holding tank. The sewage will be pumped and transported elsewhere for treatment. This system does not dispose of the effluent on site. As a result, this method of addressing sewage disposal does not comply with this part of the code. *This criterion is not satisfied.*

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

\* \* \*

**Staff:** A condition of approval can be included if the application is approved requiring compliance with the County’s Grading and Erosion Control ordinance. *Through a condition, this criterion can be met.*

**4.10 § 36.3570 LOT OF RECORD.**

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

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

**(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 36.3585, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**(C) Except as otherwise provided by MCC 36.3560, 36.3575, and 36.4300 through 36.4360, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot of less than the area or width requirements of this district.**

**(D) The following shall not be deemed to be a lot of record:**

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**
- (3) An area of land created by court decree.**

**Staff:** The applicant has provided deed information for tax lot 1S4E19BC – 00600 (Exhibit A.7 through A.16, and A.43). The parcel known as 1S4E19BC – 00600 was established prior to 1955 when zoning was originally applied throughout the County. *Tax lot 1S4E19BC – 00600 is a Lot of Record.*

**4.11 § 36.3575 LOT SIZES FOR CONDITIONAL AND REVIEW USES.**

**The minimum lot size for the uses listed in 36.3525 and 36.3530 shall be based upon:**

- (A) The site size needs of the proposed use;**
- (B) The nature of the proposed use in relation to its impact on nearby properties.**
- (C) Consideration of the purposes of the district.**

**Staff:** Tax lot 1S4E19BC – 00600 is a 1.03-acre parcel. The proposed retail dispensary needs to have an on-site sewage disposal system as required by MCC 36.3550(E). There is no documentation that the proposed use will be served or can be served by an on-site system. Planning staff is unable to find that the site size is adequate for the proposed use without knowing that it can be served by a septic system.

**Hearings Officer:** The septic disposal needs of the proposed use cannot be met by an on-site septic system. A holding tank solution is feasible but is not allowed by MCC 36.3550(E) and MCC 36.3527(C).

#### **4.12 § 36.3580 OFF-STREET PARKING AND LOADING.**

**Off-street parking and loading shall be provided as required by MCC 36.4100 through 36.4215.**

**Staff:** Please see findings under Section 5.00 et al.

### **5.00 Off-Street Parking and Loading Requirements**

#### **5.01 § 36.4105 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.**

#### **§ 36.4115 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.**

#### **§ 36.4120 PLAN REQUIRED.**

**A plot plan showing the dimensions, legal description, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit, or for a change of classification to O-P.**

**Staff:** Tax lot 1S4E19BC – 00600 was previously used as a John Deere dealer selling tractors, tractor parts, tractor repair and sale of other farm equipment. The business moved to the City of Gresham in on December 20, 2013. The use of the parking area adjacent to the store front has lost its nonconforming status pursuant to MCC 36.7204(A)(2). In addition, a tractor repair and sales business requires one parking space for each 600 square feet of gross floor area. The proposed marijuana dispensary requires one space for each 400 sq. ft. of gross floor area. The dispensary is an intensified use and the on-site parking must be updated to serve the proposed use. The applicant has provided a plan showing improvements to the parking area and landscaping (Exhibit A.46). *Requirement met.*

**Hearings Officer:** The applicant filed revised site plans on March 9, 2017. *Requirement met.*



**5.02 § 36.4125 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.

(C) A required loading space shall be available for the loading and unloading of vehicles concerned with the transportation of goods or services for the use associated with the loading space.

(D) Except for residential and local commercial districts, loading areas shall not be used for any purpose other than loading or unloading.

(E) In any district, it shall be unlawful to store or accumulate equipment, material or goods in a loading space in a manner which would render such loading space temporarily or permanently incapable of immediate use for loading operations.

**Staff:** *Through a condition of approval, the above criteria can be met.*

**5.03 § 36.4130 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.

**§ 36.4135 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 36.0525, 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:** The applicant has submitted a plan to develop twelve parking spaces on tax lot 1S4E19BC – 00600. A condition of approval will require that the parking spaces be installed prior to occupancy. *Through a condition, these criteria can be met.*

**5.04 § 36.4140 CHANGE OF USE.**

(A) Any alteration of the use of any land or structure under which an increase in the number of parking or loading spaces is required by this Section shall be unlawful unless the additional spaces are provided.

(B) In case of enlargement or change of use, the number of parking or loading spaces required shall be based on the total area involved in the enlargement or change in use.

**Staff:** At present, there is no existing use authorized for tax lot 1S4E19BC – 00600.

**5.05 § 36.4165 DESIGN STANDARDS: SCOPE.**

**(A) The design standards of this section shall apply to all parking, loading, and maneuvering areas except those serving a single family dwelling on an individual lot. Any non-residential use approved on a parcel containing a single family dwelling shall meet the design standards of MCC 36.4170 through 36.4200.**

**Hearings Officer:** The proposed application is for a retail dispensary. The design standards of MCC 36.4170 through 36.4200 are discussed in Sections 5.06 through 5.16 below.

**(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:** All parking and loading areas comply with this approval criterion. *Criterion met.*

#### **5.06 § 36.4170 ACCESS.**

**(A) Where a parking or loading area does not abut directly on a public street or private street approved under MCC 36.7700 et seq., the Land Division Chapter, there shall be provided an unobstructed driveway not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.**

**(B) The Approval Authority may permit and authorize a deviation from the dimensional standard in paragraph (A) of this section upon finding that all the following standards in subparagraphs (1) through (4) are met:**

- (1) The authorized provider of structural fire service protection services verifies that the proposed deviation complies with such provider's fire apparatus access standards, or, if there is no such service provider, the building official verifies that the proposed deviation complies with the Oregon Fire Code;**
- (2) The County Engineer verifies that the proposed deviation complies with the County Road Rules and the County Design and Construction Manual Standards;**
- (3) Application of the dimensional standard would present a practical difficulty or would subject the property owner to unnecessary hardship; and**
- (4) Authorization of the proposed deviation would not:**
  - (a) be materially detrimental to the public welfare;**
  - (b) be injurious to property in the vicinity or the zoning district in which the property is located; or**
  - (c) adversely affect the appropriate development of adjoining properties.**

**(C) Parking or loading space in a public street shall not be counted in fulfilling the parking and loading requirements of this section. Required spaces may be located in a private street when authorized in the approval of such private street.**

**Staff:** There are three existing access points onto County roadways. Two of the three will be required to be closed by Transportation Planning. The new parking area will be required to access Powell Valley Road via a 24-ft, 10-inch driveway access. The access point then leads to the parking area via a 23-ft, 8-inch drive aisle. The revised driveway access point and drive aisle

meets the requirements of MCC 36.4170(A) above. No deviation as permissible under MCC 36.4170(B) from the dimensional standards in (A) are requested or approved. No off-site parking spaces have been counted in fulfilling the parking and loading requirements. *Criteria met.*

#### **5.07 § 36.4175 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)**

<b>District</b>	<b>Minimum Width</b>	<b>Minimum Depth</b>
<b>All</b>	<b>12 feet</b>	<b>25 feet</b>

**(2) Minimum vertical clearance shall be 13 feet.**

**Staff:** The applicant is proposing one ADA Accessible parking space that will be a minimum 9-ft in width, 18 –ft long with 8-ft access on passenger side and 10-ft on driver’s side. The remaining 16 parking spaces will be a minimum of 9-ft wide by 18-ft long. The drive aisle width between the two rows of parking is dimensioned at 27 feet wide. All parking spaces are 90 degrees to the drive aisle. The site has a number of existing loading areas accessing off of Powell Valley Road. Because of the size of the dispensary, no designated loading area is required pursuant to MCC 36.4210. When a new use is proposed for the remaining building square footage on tax lot 1S4E19BC – 00600, a loading area will be required.

**Hearings Officer:** The revised site plan shows a drive aisle width of approximately 25’ 6”. This space must be at least 25.’ The site plan has an obvious error in how it depicts the handicapped parking space. The space does not provide the unloading areas claimed by the applicant – one on each side of the vehicle. This should be corrected. *Criterion can be met with imposition of a condition of approval.*

#### **5.08 § 36.4180 IMPROVEMENTS**

**(A) Surfacing**

**(1) Except as otherwise provided in this section, all areas used for parking, loading or maneuvering of vehicles, including the driveway, shall be surfaced with at least two inches of blacktop on a four inch crushed rock base or at least six inches of Portland cement, unless a design providing additional load capacity is required by the fire service provider.**

**(2) The Approval Authority may permit and authorize a deviation from the surfacing standard in paragraph (A)(1) of this section and thereby authorize, alternate surfacing systems that provide a durable dustless surface, including gravel. A deviation under this paragraph may be permitted and authorized only upon finding that each parking area supporting the existing and the proposed development meets the following standards in subparagraphs (a) and (b) and, for parking areas of four or more required parking spaces, also meets the following standards in subparagraphs (c) and (d):**

**(a) The authorized provider of structural fire protection services verifies that the proposed deviation complies with such provider's fire apparatus access standards, or, if there is no such service provider, the building official verifies that the proposed deviation complies with the Oregon Fire Code;**

**(b) The County Engineer verifies that the proposed deviation complies with the County Road Rules and the County Design and Construction Manual Standards. Alternative surfacing can be considered for all areas used for parking, loading and maneuvering, including the driveway; however, approaches to paved public right-of-way shall be paved for a minimum of 21 feet from the fog line, or for a greater distance when required by the County Engineer;**

**(c) Authorization of the proposed deviation would not:**

**1. be materially detrimental to the public welfare;**

**2. be injurious to property in the vicinity or zoning district in which the property is located; or**

**3. adversely affect the appropriate development of adjoining properties; and**

**(d) Any impacts resulting from the proposed resurfacing are mitigated to the extent practical. Mitigation may include, but is not limited to, such considerations as provision for pervious drainage capability, drainage runoff control and dust control. A dust control plan is required when a dwelling, excluding any dwelling served by the driveway, is located within 200-feet of any portion of the driveway for which gravel or other similar surfacing materials is proposed. Common dust control measures include, but are not limited to, reduced travel speeds, gravel maintenance planning, establishment of windbreaks and use of binder agents.**

**(3) Notwithstanding paragraph (A)(1) of this section, parking fields for intermittent uses such as special events associated with farm stands and public parks, sporting events, and the like may be surfaced with gravel, grass or both and spaces may be unmarked if the parking of vehicles is supervised. Grass fields used for parking shall be maintained so that grass is kept short and watered to minimize fire risk and reduce dust.**

**Staff:** The retail dispensary does not qualify for an intermittent use as described in (3). The applicant has not requested a deviation from the surfacing requirements of MCC 36.4180(A). The former tractor store and repair facility was vacated on December 20, 2013. The

nonconforming status of the parking surface has been lost due to lack of use. The proposed parking, loading, and maneuvering areas will need to be paved with at least two inches of blacktop on a four inch crushed rock base or at least six inches of Portland cement. At present, the applicant is proposing to maintain the mixed mediums for the new parking area. A condition of approval can be included to require the parking lot be paved in compliance with MCC 36.4180(A). *Through a condition, criterion can be met.*

**5.09 (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 except as provided in (3) below.**
- (3) Except for development within the PH-RC, OR, OCI and CFU zones, the outer boundary of a parking or loading area with fewer than four required parking spaces may use a five foot wide landscape strip or yard planted with a near-continuous number of shrubs and/or trees. If the outer boundary of the parking area is within 50 feet of a dwelling on an adjacent parcel, the plant materials shall create a continuous screen of at least four feet in height except at vision clearance areas where it shall be maintained at three feet in height.**

**Hearings Officer:** Tax lot 1S4E19BC – 00600 is located in the OCI zone. The site plan shows a new 6-inch curb will be constructed around the perimeter of the parking area (Exhibit A.46). In addition, bumpers will be installed at the front of each parking space. The applicant is proposing to construct 12 parking spaces. The code requires 6 parking spaces for the 2,575 sq. ft. of retail area. *Criteria met.*

**5.10 (C) Marking - All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 36.4120, and such marking shall be continually maintained. Except for development within the PH-RC, OR, or OCI zones, a graveled parking area with fewer than four required parking spaces is exempt from this requirement.**

**Staff:** A condition of approval can be included that the paved parking area be marked in compliance with Exhibit A.46. *Through a condition, this criterion can be met.*

**5.11 (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.**

**Staff:** No covered walkways are proposed to be constructed.



The applicant has not addressed MCC 36.4180(D) as part of the submitted materials. As the applicant has not planned on paving and has not demonstrated that the site can handle an on-site sewage disposal system or where stormwater can be handled by the soils on the site, planning staff is uncertain that a stormwater system is feasible on the site.

**Hearings Officer:** The applicant filed a drainage and grading plan prepared by EMS with materials filed March 7, 2017. It appears feasible for the applicant to comply with drainage requirements. A condition of approval could be written to assure compliance with this criterion prior to occupancy. *Through a condition, this criterion can be met.*

#### **5.12 § 36.4185 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:** *Through a condition, this criterion can be met.*

#### **5.13 § 36.4190 SIGNS.**

**Signs, pursuant to the provisions of MCC 36.7465.**

**Staff:** No signage has been proposed.

**Hearings Officer:** An existing sign structure is shown on the site plan documents. Any new signs or changed signage will require separate County approval.

#### **5.14 § 36.4195 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 perpendicularly.**

**(B) In the PH-RC, OR or OCI districts, off-street parking for new, replacement or expansion of existing commercial or industrial developments on a parcel less than 1 acre shall provide a minimum of 10 foot landscaped front yard or street side setback. All other minimum yard dimensions for parking shall be as required in the Off-Street Parking and Loading Code Section.**

**(C) 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:** It is feasible for the parking and loading spaces to be moved outside of the 30-ft setback from 282<sup>nd</sup>, SE Orient Drive and SE Powell Valley Road. As currently designed the ADA parking space and at least one other parking space is within the 30-ft setback. In addition, a loading area is within the 30-ft setback for Powell Valley Road.

**Hearings Officer:** The applicant revised the site plan to move parking and loading spaces out of the 30-foot setback area. *Criterion MCC 36.4195 (A) is met.*

**Staff:** Tax lot 1S4E19BC – 00600 is located in the OCI zone and is 1.03 acres (44,867 sq. ft.) in size. Since the parcel is more than 1 acre in size, *MCC 36.4195(B) is not applicable.*

**Staff:** The site plan shows the ADA parking space and one other parking space within the 30-ft setback from SE Orient and SE 282<sup>nd</sup>. In addition, at least three loading areas are located within the 30-ft setback from Powell Valley Road. The proposed layout for the parking and loading area needs to be revised to meet MCC 36.4195(C).

**Hearings Officer:** The revised site plan corrected the setback issue noted by staff. *Criterion MCC 36.4195(C) is met.*

**5.15 § 36.4200 LANDSCAPE AND SCREENING REQUIREMENTS.**

**(A) The landscaped areas requirements of MCC 36.7055 (C) (3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 36.4165 (A).**

**Staff:** The proposed parking, loading and maneuvering areas are within the scope of the design standards listed in MCC 36.4165(A). The landscape areas of MCC 36.7055(C)(3) to (7) apply to the proposed project.

**5.16 § 36.4205 MINIMUM REQUIRED OFF-STREET PARKING SPACES.**

**(C) Retail and Office Uses**

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

**(E) Unspecified Uses**

**Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.**

**§ 36.4210 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 retail dispensary fits under the Off-Street Parking code as a “store”. The minimum required parking spaces for the 2,575 sq. ft. retail use is 6 parking spaces. The applicant is proposing one ADA space and 16 full-sized parking spaces. No loading space is required. The plan shows at least two loading zones. *Criterion met.*

**6.00 Design Review Criteria**

**6.01 § 36.7010 DESIGN REVIEW PLAN APPROVAL REQUIRED.**

**No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to this section, nor shall such a use be commenced, enlarged, altered or changed until a final design review plan is approved by the Planning Director, under this ordinance.**

**§ 36.7020 APPLICATION OF REGULATIONS.**

**(A) Except those exempted by MCC 36.7015, the provisions of MCC 36.7000 through 36.7060 shall apply to all conditional and community service uses, and to specified uses, in any district.**

**(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 36.4205 shall only be subject to the following Design Review approval criteria: MCC 36.7050(A)(1)(a) and (1)(c), (4) and (7), except when located in the PH-RC, OR, or OCI zone districts.**

**(C) All other uses are subject to all of the Design Review Approval Criteria listed in MCC 36.7050 and 36.7055.**

**(D) Alteration or modification of the physical development previously reviewed through the Design Review process shall be subject to the Design Review Approval Criteria listed in MCC 36.7050 and 36.7055.**

**Staff:** MCC 36.3525 requires that any new commercial or industrial use must comply with the Design Review approval criteria. The proposed retail dispensary must create 6 new parking spaces and is located in the OCI zone district. The proposed application must comply with the approval criteria listed in MCC 36.7050 and 36.7055.

## **6.02 § 36.7030 DESIGN REVIEW PLAN CONTENTS.**

**(A) The design review application shall be filed on forms provided by the Planning Director and shall be accompanied a site plan, floor plan, architectural elevations and landscape plan, as appropriate, showing the proposed development.**

**(B) Plans shall include the following, drawn to scale:**

- (1) Access to site from adjacent rights-of-way, streets, and arterials;**
- (2) Parking and circulation areas;**
- (3) Location, design, materials and colors of buildings and signs;**
- (4) Orientation of windows and doors;**
- (5) Entrances and exits;**
- (6) Existing topography and natural drainage;**
- (7) Pedestrian circulation;**
- (8) Boundaries of areas designated Significant Environmental Concern, Hillside Development and areas of Special Flood Hazards;**
- (9) Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;**
- (10) Areas to be landscaped;**
- (11) Exterior lighting location and design;**
- (12) Special provisions for handicapped persons;**
- (13) Surface and storm water drainage and on-site waste disposal systems; and**
- (14) The size, species, and approximate locations of plant materials to be retained or placed on the site; and**
- (15) Proposed ground-disturbance, grading, filling and site contouring.**

**Hearings Officer:** This section of the code lists the information that must be provided on the site plan to provide a complete application. *It is not an approval criterion.*

**6.03 § 36.7050 DESIGN REVIEW CRITERIA.**

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

**(I) Relation of Design Review Plan Elements to Environment.**

- (a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.**
- (b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.**
- (c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.**

**Staff:** The subject site is far from a natural environment. The proposed landscaping and new parking area will help to screen the existing building from a portion of SE 282<sup>nd</sup> and SE Orient Drive. Staff is not exactly sure about all of the proposed modifications. Existing windows that staff believes are not being modified are labeled on Exhibit A.47. It does not appear that any new siding will be added, but the existing siding will be painted. No paint chips have been provided. The standing seam metal roof will remain, but staff is uncertain whether its color will be changed.

**Existing Northern Elevation**



The above photo is taken from Google Earth. Comparing the photo with the proposed building elevation, staff finds that two windows will be removed from the building and the concrete repaired on the portion of the store front used for the dispensary. The existing utilities on the building are not shown and staff is uncertain as to whether they are to remain or to be removed.

### **Existing West Elevation**



The two windows on the western portion of the building will be moved and replaced. It appears the man-door will be shifted towards the center of the elevation based on comparing the photo with the proposed elevation. The large utility door will also be removed. The existing small canopy is to remain. It appears a portion of the concrete siding will be repaired to fill in the utility door.

### **Existing South Elevation**



The south elevation will remain largely unchanged from the photograph. The front door to the business will be changed from a standard commercial French door to a divided light type French door. The windows to the east of the front door will be converted to a small window based on comparing the two elevations.



## Existing East Elevation



It does not appear other than paint that the east elevation will be modified.

While it is likely that the new paint on this building will improve it, staff is unable to find that the proposed improvements will comply with (1), (2) and/or (3) as the applicant may be planning on painting the building a color that would not be harmonious with the area. Additional landscaping is required to comply with the standards below. No signage has been included on the elevations. The incomplete picture of the required improvements to comply with the design review criteria needs to be more fully described so that an evaluation of the project can be made.

**Hearings Officer:** The applicant provided plans that show the colors proposed for the building and that provide additional landscaping. The new plans show a new sign in an existing pole sign structure but the applicant has not requested County review of the sign. If the site plans achieve the appearance shown on the applicant's site plans, it is likely they will meet the above-listed criteria. I, however, am not convinced that the promised appearance will be achieved by the painting and relatively minor changes proposed to the building by the applicant. The building is very old and in what appears to be poor condition. Also, the artist's rendering of the building includes garage doors that are different than the doors the applicant plans to retain. I am also unable to find compliance with these design review approval criteria because the record does not provide sufficient information about the appearance of the existing buildings in the area that have a visual relationship with the site. *Criteria not met.*

- 6.04**
- (2) Safety and Privacy - The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.**
  - (3) Special Needs of Handicapped - Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and braille signs.**
  - (4) Preservation of Natural Landscape - The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and**

**shrubs shall be protected during construction.**

**Staff:** The revised site plan (Exhibit A.46) shows a six foot tall and a 12-foot tall fence approximately 20 feet from the southern property lines adjacent to SE Orient Drive. There is also a six foot tall and a 12-foot tall fence along a portion of the north property line. These fences appear to be remainder fences from the prior tractor store. No documentation has been submitted that the 12-foot tall was lawfully established. No building or land use authorization has been found. The fencing as designed does not provide security as the site is not secure on its western boundary. The parking area is fairly open and will allow good sight lines between the adjacent public right of way and the private parking area.

An ADA parking space is proposed adjacent to the front retail door for the dispensary.

There is no existing landscaping that needs to be protected on this highly degraded site.

*Criterion met.*

**Hearings Officer:** The March 9, 2017 site plan shows that the two fences discussed by staff, above, will be removed.

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

**Staff:** As directed by Transportation Planning, the applicant is closing two access points onto County roads. A single access point will be used to access the retail dispensary as shown on Exhibit A.46. The proposed parking lot is limited in size and does not really have an interior circulation pattern. Vehicles will enter and access via Powell Valley Road. A sidewalk is shown adjacent to the building on the south side of the northwestern building. This sidewalk area is adjacent to the ADA parking space and five others. People parking in the southern most parking spaces will need to cross the drive aisle and the northern parking spaces to enter the building. No separate pedestrian path proposed for these southern parking spaces. The proposed parking area is screened from the dwellings located in the City of Gresham to the north. Additional pedestrian circulation paths leading from the southern parking spaces would bring the proposed parking lot into compliance with this criterion.

**Hearings Officer:** The sidewalk staff found was needed has not been provided on the March 9, 2017 site plan documents but could be required as a condition of approval. The site plan application does not provide me with sufficient information about neighboring buildings and structures to allow me, however, to find that the development will be harmonious with proposed and neighboring buildings and structure. *This criterion has not been met.*

- 6.06 (6) Drainage - Surface drainage and stormwater systems shall be designed so as not to adversely affect neighboring properties or streets. Systems that insure that surface runoff volume after development is no greater than before development shall be provided on the lot.**

**Hearings Officer:** The applicant has designed a stormwater system intended to comply with this approval criterion. Compliance with this criterion can be assured by the imposition of a condition of approval that requires demonstration of compliance with this criterion by proposed

improvements prior to operation of the proposed business. *Criterion could be met by a condition.*

- 6.07**      **(7) Buffering and Screening - Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.**
- (8) Utilities - All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.**
- (9) Signs and Graphics - The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.**

**Staff:** The revised site plan show, what staff believes, is a trash enclosure on the eastern end of the northwestern building on the site. It is unclear as it is not labeled. The location for the proposed or existing utility panels are not shown on the northwestern building as required by MCC 36.7050(A)(8). Since these utilities are only partially shown, it does not appear that they are screened from Powell Valley Road as no landscape buffering is proposed on the plan (Exhibit A.46). No signage or graphic information has been provided for review and approval with the sign code (MCC 36.7400 et al) or the design review criteria as required by MCC 36.7050(A)(9).

**Hearings Officer:** It appears that the site plan revisions made by the applicant address many of the issues identified by staff. The sign shown on the illustrative plan appears compatible with other elements of the design review. It is unknown whether the sign would be compatible with surrounding properties because there is insufficient evidence in the record to allow me to draw any reliable conclusions about the surrounding area. *Criterion not met.*

**6.08    § 36.7055    REQUIRED MINIMUM STANDARDS.**

**(C) Required Landscape Areas**

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

- (1) A minimum of 15% of the development area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.**
- (2) All areas subject to the final design review plan and not otherwise improved shall be landscaped.**

**Staff:** Tax lot 1S4E19BC – 00600 is 1.03 acres. The proposed modification to the site would need a minimum of 6,730 sq. ft. of landscaping to comply with MCC 36.7055(C)(1).

Planter	Dimensions - Feet	Square Footage
SE 282 <sup>nd</sup> Planter	73.5 x 10	735 sq. ft.
SE Orient Drive Planter	99 x 10	990 sq. ft.
Southern 5- ft wide	60 +/- x 5	300 sq. ft.
North – South Planter	72 +/- x 5	360 sq. ft.
Proposed Landscaping		2,385 sq. ft.

Based on the rough measurements staff was able to make, it appears that only 2,385 sq. ft. of landscaping is proposed. Significant areas are available to add to landscaping to bring the site up to the minimum standard listed in MCC 36.7055(C)(1). Since the applicant has failed to show where the on-site sewage disposal system is located or proposed and how stormwater for the new impervious surfaces in the parking lot area, staff is unable to assume all this area is available for landscaping. *The requirements of MCC 36.7055(C)(1) are met by the proposed plan.*

**Hearings Officer:** The applicant's March 9, 2017 site plan drawings provide more than 6,730 sq. feet of landscaped area. *MCC 36.7055(C)(1) has not been met.*

**Staff:** The proposed site plan (Exhibit A.46) does not add landscaping to areas that are available to the north and west of the northwestern building. A significant area for landscaping is available in the street side yard adjacent to SE Orient Drive and to the north of the southeastern building. *Criterion MCC 36.7055(C)(2) has not been met.*

**Hearings Officer:** *Compliance with MCC 36.7055(C)(2) can be achieved by imposition of a condition of approval.*

**6.09 (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.

**Staff:** The applicant is proposing 17 parking spaces. At 25 sq. ft. per parking space, a total of

425 sq. ft. of landscaping needs to be distributed in landscape planters throughout the parking area. No landscape planters have been proposed for the parking spaces immediately south of the building. The loading areas close to SE Powell Valley Road do not have a 10 ft wide landscape strip between them and the public right-of-way. The proposed landscape planters parallel with SE 282<sup>nd</sup> and SE Orient Drive appear to meet the standards of (3)(c)1. through 3. The landscaping planters are in defined landscape planters of at least 5 ft in width.

**Hearings Officer:** The number of parking spaces has been reduced to 12 spaces by the March 9, 2017 site plan. 300 square feet of landscaping is required by the code to be located in landscape planters. The site plan provides approximately this amount of landscaped area in two planters and compliance could be assured by a condition of approval. The March 9, 2017 site plan provides the required landscape strips on the revised site plan. *The site plan meets these criteria.*

- 6.10**            **(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 proposed site plan indicates that the proposed landscaping will be hand watered (Exhibit A.46). A condition of approval can be included that if the landscaping is not watered and maintained in a healthy state, it shall be replaced and a permanent irrigation system installed. *Through a condition, this criterion can be met.*

## **7.00 Verification of Nonconforming Use**

### **7.01 § 36.7200- NONCONFORMING USES.**

**(D) If a nonconforming use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms with the requirements of this Zoning Code at the time of the proposed resumption.**

#### **§ 36.7204 VERIFICATION OF NONCONFORMING USE STATUS.**

**(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:**

- (1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and**
- (2) Has not been abandoned or interrupted for a continuous two year period.**

**Staff:** The prior use of tax lot 1S4E19BC – 00600 was a tractor store and repair facility. The business moved to their new facility in Gresham on December 20, 2013 per a phone conversation that planning staff had with Pape Machinery. The tractor store has ceased operation from the site for over two years. The site no longer has an authorized nonconforming use. The parking lot has



not been used for a lawful commercial or industrial use since Pape' Machinery has moved from the property. A free-standing sign frame currently exists on site. The sign face has been removed. It appears that the sign will be removed as a part of the construction of the new parking lot.

Tax lot 1S4E19BC – 00600 is occupied by two existing buildings. The northwestern building was originally constructed in 1905 and an addition was completed in 1958. The southeastern building was constructed in 1953 per the County's tax records. Interim Zoning came into effect in 1955 with permanent zoning adopted for the area on July 18, 1958. Planning staff found a permit granted on March 10, 1959 to remodel the 1905 building or replace the foundation on a portion of the building. Based on County records the northwestern and southeastern buildings were lawfully established.

- 7.02 (B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:**
- (1) Description of the use;**
  - (2) The types and quantities of goods or services provided and activities conducted;**
  - (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**
  - (4) The number, location and size of physical improvements associated with the use;**
  - (5) The amount of land devoted to the use; and**
  - (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.**
  - (7) A reduction of scope or intensity of any part of the use as determined under this subsection (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.**
- (C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.**
- (D) Except for nonconforming uses considered under MCC 36.7214 (B), the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification.**
- (E) An applicant may prove the continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding**

**application creates a rebuttable presumption that the use, as proven, existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.**

**Staff:** The northwestern building, on tax lot 1S4E19BC – 00600, is 8,635 square feet. The location of the northwestern building ranges from 5-ft to 10-ft, 3-inches from the northern property line adjacent to the Powell Valley Rd right-of-way (Exhibit A.46). The building is 11-ft, 8.25-inches from the west property line adjacent to SE 282<sup>nd</sup> Avenue’s right-of-way. Both of these building’s elevations are within the 30-ft front / street side yard and are considered nonconforming.

The southeastern building, on tax lot 1S4E19BC – 00600, is 3,190 sq. ft. The southeastern building is 10 inches from the eastern property line at its closest spot and is 20-ft, 2-inches from the southern property line adjacent to SE Orient Drive (Exhibit A.46). The eastern property line is a side property line which has a minimum yard requirement of 10 feet. The south property line is a street-side yard and the minimum yard requirement is 30 feet. Both the east elevation and the south elevation are nonconforming to setbacks.

## **8.00 Transportation Standards**

### **8.01 MCRR 4.000 Access to County Roads**

**MCRR 4.100 *Required Information:*** Applicants for a new or reconfigured access onto a road under County Jurisdiction may be required to provide all of the following:

- A. Site Plan;**
- B. Traffic Study-completed by a registered traffic engineer;**
- C. Access Analysis-completed by a registered traffic engineer;**
- D. Sight Distance Certification from a registered traffic engineer; and**
- E. Other site-specific information requested by the County Engineer.**

**MCRR 4.200 *Number:*** Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property will be the standard for approval. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system.

**Transportation Planning:** Applicant proposes one access onto SE Powell Valley Road. The site plan indicates that the applicant is closing the additional accesses that currently exist on SE Powell Valley Road and SE 282nd Avenue. The existing access on SE Powell Valley Road will be closed with fencing. The existing access on 282nd will be closed with landscaping. The project will ultimately have only one access. *Criterion is met.*

### **8.02 MCRR 4.300 *Location:*** All new access points shall be located so as to meet the access

**spacing standards laid out in the Design and Construction Manual.**

**Transportation Planning:** As shown on the site plan and outlined in the transportation analysis, the access onto SE Powell Valley Road meets the intersection setback required by Multnomah County Design and Construction Manual. The existing access onto SE Powell Valley Road is located 170 feet east of SE 282nd Avenue (measured from the end of the curb return to the edge of the access). Currently, the property across from the subject property, located at 28256 SE Powell Valley Road, is vacant, and has an unpermitted, gated access. Due to the proximity of the adjacent, the access for the subject property does not meet access spacing standards.

The access spacing standard for SE Powell Valley Road is 100 feet—this applies to driveways on the same side of the roadway as well as on opposite sides of the road. Two accesses are located opposite the subject parcel's existing access on the north side of SE Powell Valley Road. One active access is located northeast of the subject parcel, approximately 170 feet east of the subject property's access. The other inactive, gated, and unpermitted access serves the vacant parcel located directly north of the subject parcel and approximately 41 feet west of the subject property's access. This spacing is less than the minimum spacing standard of 100 feet. The subject parcel's access does not meet access spacing requirements due to its spacing from the access to the west. However, because the parcel located north of the subject parcel is vacant and has an inactive, unpermitted access, proposed development on this parcel would be subject to review at the time of development. Therefore, the spacing standard between the two accesses (subject parcel and the parcel north of the subject parcel) does not apply to this case. *Criterion met.*

**8.03 MCRR 4.400 Width: Driveway and Accessway widths shall conform to the dimensions laid out in the Design and Construction Manual.**

**Transportation Planning:** Per site plan the driveway width is 24 feet, 1 inch. This is consistent with allowable width of for type of use (20 feet to 35 feet). *Criterion is met.*

**8.04 MCRR 4.500 Sight Distance: All new access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the Design and Construction Manual and AASHTO's A Policy on Geometric Design of Highways and Streets.**

**Transportation Planning:** Multnomah County Road Rules Section 4.500 states that access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the Multnomah County Design and Construction Manual or American Association of State Highway and Transportation Officials' (AASHTO) *A Policy on Geometric Design of Highway and Streets*. County staff found site distance to be adequate. *Criterion met.*

**8.05 MCRR 5.000 Transportation Impact**

**MCRR 5.100 To determine if a Transportation Impact is caused by a proposed development, the County Engineer will determine the number of new trips generated by a site by one of the following methods:**

**A. Calculations from the most recent edition of the Institute of Transportation Engineers' Trip Generation (ITE); or**

**B. A site development transportation impact study conducted by a professional engineer registered in the State of Oregon and accepted by the County.**

**MCRR 5.200 The County Engineer will use the information obtained pursuant to sub-**

section 5.100 and/or the frontage length of the subject property to determine the pro-rata share of the requirements set forth in Section 6.000.

**MCCR 5.300** Except where special circumstances require the County Engineer to make an alternate determination, any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour shall be found to have a *Transportation Impact*. A minimum increase of 10 new trips per day is required to find a transportation impact.

**Transportation Planning:** Per the transportation analysis, the applicant projected 111 average daily trips for the proposed use, 2,500 square feet of specialty retail. Note that the trip generation rate is based on 2,500 square foot of the proposed use while the site plan proposes 2,575 square feet of the proposed use. Multnomah County Road Rules defines a Transportation Impact as, “the affect of any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour” [MCCR 3.000]. The proposed use meets the threshold of a transportation impact, as the proposed use is projected to generate more than 100 average daily trips. *Criterion met.*

## **8.06 MCCR 9.000 Compliance Method**

**9.100** Once frontage or off-site improvement requirements have been established, one or any combination of the following methods must be used to satisfy those requirements:

**9.400 Non-Remonstrance Agreement:** This agreement shall be recorded in the County’s Deed Records against the affected property and “runs with the land”, thereby obligating the property owner and any successors in interest to share in the cost of Multnomah County Road Rules the necessary improvements and to not remonstrate (object) against a petition or resolution for necessary improvements. In approving this method, the County Engineer may require a temporary improvement appropriate to the circumstances.

**Staff:** A non-remonstrance agreement, or “deed restriction” will require that the property participate in standard urban local road improvements along the site’s frontage that are not completed as a part of the site’s required interim improvements. Contact Pat Hinds at patrick.j.hinds@multco.us or (503) 988-3712 to complete the deed restrictions. *Through a condition, this criterion can be met.*

## **8.07 18.000 Right-of-Way Use Permits**

### **18.250 Access/Encroachment Permit:**

**A. An Access/ Encroachment Permit (A/E Permit) may be required for the following activities within the right-of-way:**

- 1. New or altered access to roads under County jurisdiction. An access is considered altered when a change in the development that it serves has a Transportation Impact as defined in section 6.000 of these rules;**

**Staff:** As noted in 4.000, project includes an existing, unpermitted access onto SE Powell Valley Road, a Multnomah County road. The applicant must to obtain access permit. *Through a condition, this criterion can be met.*

- 2. New or reconstructed driveway approaches, private road approaches, curb cuts, or sidewalks;**
- 3. Structures in the right-of-way, such as signs, posts, fences, flags, nonstandard**

mailboxes, etc.; or

**4. Any other minor physical alteration of the County right-of-way, including but not limited to any altered landscape design, vegetation planting or placement.**

**B. Unless otherwise provided in the special provisions of the permit, any work authorized pursuant to an access/encroachment permit shall be initiated within ninety days from the date the permit issued and completed within a reasonable time thereafter as determined by the County Engineer.**

**Staff:** The site plan depicts fencing along SE Powell Valley Road which encroaches on Multnomah County right of way. The fence line depicted on the site plan is less than 30 feet away from the roadway centerline. The standard cross section for SE Powell Valley Road, a Rural Collector, is 60 feet, 30 feet from roadway centerline. The applicant must obtain an encroachment permit.

## **9.00 Conclusion**

Based on the findings and other information provided above, the applicant has not carried the burden of proof necessary for approval of the Administrative Decision by the Planning Director and Design Review application to establish a retail dispensary in the Orient Commercial Industrial zone. Thus, the Hearings Officer has denied this application.

## **10.0 Exhibits**

‘A’ Applicant’s Exhibits  
‘B’ Staff Exhibits  
‘C’ Procedural Exhibits  
‘D’ Comments Received

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	4/22/2016
A.2	9	Narrative	
A.3	3	Exhibit A – Declaration of Jeremy Pratt	4/22/2016
A.4	9	Exhibit B – Testimonials of Prospective Customers	4/22/2016
A.5	1	Exhibit C – Assessor Map	4/22/2016
A.6	4	Title Plant Records Report for 6928 SE 282 <sup>nd</sup> Avenue, Gresham	4/22/2016
A.7	2	Exhibit D - Warranty Deed recorded in Book 930, Pages 113 – 114 on May 4, 1945	4/22/2016
A.8	2	Warranty Deed recorded in Book 930, Pages 113 – 115 on May 4, 1956	4/22/2016
A.9	2	Warranty Deed recorded in Book 1460, Pages 272 & 273 on February 19, 1951	4/22/2016

A.10	1	Warranty Deed recorded in Book 2201, Page 428 on January 3, 1964	4/22/2016
A.11	1	Quitclaim Deed recorded in Book 2680, Page 594 on April 26, 1993	4/22/2016
A.12	1	Quitclaim Deed recorded in Book 2680, Page 598 on April 26, 1993	4/22/2016
A.13	9	Warranty Deed recorded in Instrument #94-18794 on February 2, 1994	4/22/2016
A.14	1	Quitclaim Deed recorded in Instrument #98039364 on March 13, 1998	4/22/2016
A.15	8	Bargain and Sale Deed recorded in Instrument #2015-023042 on March 4, 2015	4/22/2016
A.16	2	Bargain and Sale Deed recorded in Instrument #2015-033284 on March 27, 2015	4/22/2016
A.17	5	Exhibit E - Memorandum of Contract for Sale 10/13/15	4/22/2016
A.18	2	Exhibit F - Customer Base	4/22/2016
A.19	1	Exhibit G – Aerial Photograph	4/22/2016
A.20	2	Exhibit H – Building Elevations (reduced)	4/22/2016
A.21	2	Exhibit I - Floor Plan – Sheet A0-1	4/22/2016
A.22	2	Exhibit J - Site Plans – Sheet T1.1	4/22/2016
A.23	1	Demo Plan – Sheet D1.1	4/22/2016
A.24	1	Floor Plan – Sheet A1.1	4/22/2016
A.25	1	Reflected Ceiling Plan – Sheet A1.2	4/22/2016
A.26	1	Electrical Plan – Sheet A1.3	4/22/2016
A.27	1	Mechanical Plan – Sheet A1.4	4/22/2016
A.28	1	ADA Details – Sheet A4.1	4/22/2016
A.29	1	Construction Details – Sheet A4.2	4/22/2016
A.30	8	Exhibit K – Multnomah County Certification of Fire Flow	4/22/2016
A.31	2	Exhibit L – Multnomah County Certification of Police/Sheriff Services	4/22/2016
A.32	6	Exhibit M – Multnomah County Certification of Transportation	4/22/2016
A.33	2	Exhibit N – Transportation Analysis dated 03/14/2016	4/22/2016
A.34	5	Septic Review Certification (NOT APPROVED)	4/22/2016
A.35	1	Exhibit O – 1S4E19BC – Tax Lot 600 Assessor Map	4/22/2016
A.36	2	Exhibit P – Multnomah County Certification of Water Service	4/22/2016

A.37	8	Exhibit Q – Multnomah County Fire District Review (6 pages) a. Email from Kyle Stuart explaining Fire Service Agency comments – dated 5/20/16 (2 pages)	4/22/2016
A.38	2	Email from Jeremy Pratt to Don Kienholz regarding T2-2016-4951 – Marijuana Dispensary	5/26/2016
A.39	1	Ty K. Wyman Attorney Letter	6/3/2016
A.40	1	Ty K. Wyman Cover Letter	10/19/2016
A.41	8	Memorandum from Ty K. Wyman	10/19/2016
A.42	2	Exhibit 2 Page 1 of 2 - Aerial Photo is a 7/24/2004 aerial Page 2 of 2 aerial photo (no dated seen)]	10/19/2016
A.43	2	Exhibit 3 Page 1 of 2 -Warranty Deed recorded on May 4, 1945 in Book 930, Pages 111 – 113 Page 2 of 2 – Warranty Deed recorded on May 4, 1945 in Book 113 - 115	10/19/2016
A.44	1	Exhibit 4 – General Application Form	10/19/2016
A.45	4	Exhibit 5 – Transportation Analysis dated 10/18/2016	10/19/2016
A.46	1	Revised Site Plan – Sheet SD1.1	10/19/2016
A.47	2	Building Elevations – Sheet A2.1 & A.2.2	10/19/2016
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information	
B.2	2	Gresham Fire Email regarding Occupancy Rating and Fire Sprinklers	
B.3	1	Zoning Map showing M-2 zone for Property	
B.4	1	Appraiser Description Card for R342223	
B.5	8	Appraisal Cards for Various Buildings	
B.6	1	2016 Improvement Information for 1S4E19BC - 00600	
B.7	4	M-2 Zoning Requirements	
B.8	5	General Provisions	
B.9	4	Interim Zoning Ordinance	
B.10	1	OLCC Handout on Marijuana Consumption	
B.11	1	Letter from the Bureau of Development Services, Onsite Sanitation Section	12/5/2016

'C'	#	Administration & Procedures	Date
C.1	9	Incomplete Letter	5/20/2016
C.2	1	Applicant's Acceptance of 180 Day Clock	5/25/2016
C.3	1	Complete Letter (Deemed Complete by Applicant on October 19, 2016 - Day 1)	11/7/2016
C.4	6	Opportunity to Comment	11/18/2016
C.5	6	Opportunity to Comment (Re-Notice)	12/7/2016
C.6	37	Administrative Decision	1/24/2017
C.7	3	T.K. Wyman Attorney Letter	2/7/17
C.8	2	Notice of Appeal	2/7/17
'D'	#	Comments Received	Date
D.1		In Support of the Application	Various
D.2		Not in Support	Various
'H'	#	Hearing Exhibits	Date
H.1	3	Updated Hearing Exhibit List	2/24/17
H.2	4	Letter from EMS re: Marijuana Dispensary Septic & Stormwater Design	2/21/17
H.3	2	Expert Summary of Changes to Drawings	
H.4	1	Plan TOC	
H.5	16	Site plans	
H.6	2	Hearing sign-in sheets	2/24/17
'I'	#	Post Hearing Exhibits	Date
I.1	4	660-011-0060 Sewer Service to Rural Lands (from staff)	3/10/17
I.2	1	Additional Landscaping (from staff)	3/10/17
I.3	15	OAR 340 Division 71 Definitions (from staff)	3/10/17
I.4	4	Richter e-mail parts 1 & 2 (from applicant)	3/9/17
I.5	27	Zehntbauer letter and attachments	3/9/17
'J'	#	Public Comments First Post-Hearing Period	Date
J. 1	34	Not in support of application	Various
'K'	#	Public Comments Received During Rebuttal Period	Date
K.1	20	Not in support of application	Various



'L'	#	Staff Comments	Date
L.1	15	E-mail from Lisa Estrin to Hearings Officer re: Hanawaj comments with attachment (Hanawaj materials)	3/22/17
'M'	#	Applicant Comments	Date
M.1	3	Letter from Dunn Carney objecting to rebuttal submission by unknown author	3
M.2	3	E-mail from Mr. Zehntbauer with additional objections to untimely notice of comments	3
'N'	#	Final Argument	Date
N.1	9	E-mail from Dunn Carney with attached final argument	3/24/17