

NOTICE OF DECISION

Case File: T2-2018-10465 & EP-2018-10581

Permit: Adjustment; Lot of Record Verification; and Road Rules Variance

Applicant: Justin Williams **Owners:** Lon Williams

Location: 25346 SE McNutt Rd., Gresham
Tax Lot 4300, Section 23D, Township 1 South, Range 3 East, W.M.
Alt. Acct # R092605180 Property ID#118920

Zoning: Multiple Use Agriculture – 20 (MUA-20)

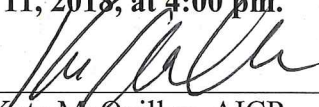
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Proposal Summary: A request for an Adjustment to the minimum setback requirements for a proposed agricultural building associated with indoor Marijuana Production. The applicant also requests a Lot of Record Verification, as well as a Multnomah County Road Rules Variance to add a second driveway to SE McNutt Rd.

Decision: Approved with Conditions

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, September 11, 2018, at 4:00 pm.

Issued By: 
Chris Liu, Asst. Planner


Kate McQuillan, AICP,
Transportation Planner

For: Michael Cerbone, AICP
Planning Director

Ian B. Cannon, P.E.,
County Engineer

Date: Tuesday, August 28, 2018

Tuesday, August 28, 2018

Opportunity to Review the Record: The complete case file, including a copy of the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at no cost at the Land Use Planning office during normal business hours. Copies of all documents are available at the rate of 30-cents per page. For further information on this case, contact Chris Liu, Staff Planner at 503-988-2964. To schedule an appointment to view the County Engineer's Decision and associated documents, contact Kate McQuillan at 503-988-0204 or Katherine.mcquillan@multco.us.

Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.



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Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at multco.us/landuse/zoning-codes at the link *Chapter 36: West of the Sandy River Rural Plan Area* and *Chapter 37: Administration and Procedures*; as well as multco.us/transportation-planning/plans-and-documents under the document titled Multnomah County Road Rules.

Conditions of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit shall expire as described in a. or b. below:**

- a. **When construction has not commenced within two years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.**
- b. **When the structure has not been completed within four years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.**

The property owner may request to extend the timeframe within which this permit is valid as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. A marijuana business registration is required prior to land use sign-off for building plan review of the proposed agricultural building.
4. All exterior light fixtures for the proposed building shall meet the requirements of the County's Dark Sky Lighting Standards in MCC 36.0570. Prior to land use sign-off for building plan review, the property owner or their representative shall modify the site plan to show the location and details of any lighting fixtures that will be installed.
5. Approval of this Road Rules variance is based on the submitted written narrative(s) and plan(s). This application and approval is for the variance to Multnomah County Road Rules section 4.000. No work shall occur under this Road Rules variance other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
6. Prior to Building Permit approval, the applicant shall acquire an Access/Encroachment Permit for the new, second access onto SE McNutt Road. [MCRR 4.000]
7. Prior to Building Permit approval, the applicant shall acquire a separate Access / Encroachment Permit for the existing access onto SE McNutt Road. [MCRR 4.000]
8. Prior to issuing the Certificate of Occupancy, the applicant shall provide a 20-foot paved approach for the new, second access onto SE McNutt Road, as well as culvert under the driveway connecting to the existing drainage system. The paved approach should be measured from the edge of pavement of SE McNutt Road-. This paved approach will help to protect the County Road from debris from the new driveway, and will improve the safety of this access. A \$1,000 fully refundable deposit is required for this work.
 - a. **Any work in the right of way, including the removal of trees, or any increase in storm water drainage from the site to the right of way will require review and storm water analysis and a permit from Multnomah County [MCRR 18.750, DCM 5.1]**

Findings of Fact

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

1.0 Project Description:

Staff: The applicant requests an Adjustment to the 100 ft. minimum setback requirement from the South and East property lines for a proposed agricultural building associated with indoor Marijuana Production. If approved, the adjustment would reduce the required setback from the South and East property lines by 40% to 60 ft. The applicant also requests a Lot of Record Verification, as well as a Multnomah County Road Rules Variance to add a second driveway to SE McNutt Rd.

2.0 Property Description:

Staff: The subject property is located in the Multiple Use Agriculture 20 zone in East Multnomah County. The City of Gresham boundary is approximately ½ mile to the North and West of the property and the border for Clackamas County is approximately ½ mile to the South of the property. Johnson Creek runs within a ½ mile of the subject property in all directions. The surrounding area is a mix of urban, rural residential and small-scale agriculture uses. There is an existing dwelling and attached garage on the property.

3.0 Administration and Procedures:

3.1 CODE COMPLIANCE AND APPLICATIONS

MCC 37.0560: Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

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

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or
- (2) It is necessary to protect public safety; or
- (3) It is for work related to and within a valid easement over, on or under an affected property.

Staff: The subject property is a Legal Lot of Record; see section 4.1 below. There are two permitted buildings on the property including an existing dwelling and an outbuilding. No known outstanding compliance issues exist on the property.

Standard met

4.0 Multiple Use Agriculture – 20 Approval Criteria:

4.1 LOT OF RECORD

MCC 36.0005: Lot of Record - Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured,

- (a) satisfied all applicable zoning laws and

- (b) satisfied all applicable land division laws, or
- (c) complies with the criteria for the creation of new lots or parcels described in MCC 36.7785.

Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

- (a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.
- (b) "Satisfied all applicable land division laws" shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and 5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

- (c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.
2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

MCC 36.2870(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 zone 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, MUA-20 zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;
- (6) May 16, 2002, Lot of Record section amended, Ord. 982.

Staff: Staff has reviewed the deed information provided by the applicant as part of this application. A warranty deed from July 18, 1963 Book 2178, Page 142 describes "The East 285 feet of Lot 97, Botefuhr Tracts. A Bargain and Sale Deed instrument # 2012-102294

recorded on August 17, 2012 also describes the property as “The East 285 feet of Lot 97, Botefuhr Tracts”(Exhibit A.14).

At the time the deed of creation was recorded in 1963, the subject property was zoned SR (Suburban Residential). The subject property met the minimum requirements in-place for the SR zone (Exhibit B.2). Hence, the subject property is a Legal Lot of Record.

Criteria met.

4.2 MARIJUANA BUSINESS

MCC 36.0560(E)(2): Outdoor marijuana canopies, buildings and structures used for indoor or outdoor marijuana production, and buildings and structures used for marijuana processing shall be located at least 100 feet from any property line, unless an adjustment or variance is approved. The distance shall be measured using a straight line extending horizontally from the closest part of the canopy area or building or structure used for marijuana production or marijuana processing to the closest property line. This 100 foot setback does not apply to a building or structure, or portion thereof, lawfully established within 100 feet of a property line prior to January 1, 2016.

Staff: The applicant has requested an adjustment to reduce the required 100 ft. setback from the South and East property lines to 60 ft. Section 5 below discusses the adjustment approval criteria. This application specifically addresses the adjustment request; a separate marijuana business registration is required to address the other relevant standards in MCC 36.0560. The applicant will also need to obtain approval for the construction of the proposed structure through the building plan review and permitting process.

Standard met.

4.3 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS

MCC 36.2855: All development proposed in this district shall comply with the applicable provisions of this section.

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

Staff: The existing single-family dwelling and attached garage meet the minimum yard dimension requirements as the house is sited 40 ft. from the front lot line and over 10 ft. from the side lot line. The proposed agricultural building also complies with the required minimum yard dimensions as shown on the site plan (Exhibit A.15).

Dimensional Requirements met.

4.3.1 MCC 36.2855 (B), (D), (E), (F), (G), (H), (I), (J)

Staff: The above standards are not applicable as this application is for a proposed setback adjustment.

Standards not applicable.

4.4 ACCESS

MCC 36.2885: All lots and parcels in this district shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does

not apply to a preexisting lot and parcel that constitutes a Lots of Record described in MCC 36.2870(B).

Staff: The subject property abuts SE McNutt Rd., a public street maintained by the County.
Standard met.

5.0 Adjustment Approval Criteria

5.1 MCC 36.7606: Scope

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

Staff: The applicant requests to adjust the 100 ft. setback requirement for structures associated with a marijuana business by the maximum allowable 40% for the South and East property lines, which would reduce the required setback from those property lines to 60 ft.

Criteria met.

5.2 MCC 36.7611: The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 36.7606 upon finding that all the following standards in (A) through (E) are met:

(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Staff: The purpose of the Marijuana Business regulations in MCC 36.0560 is “to protect and preserve the public health, safety and general welfare of the community by establishing restrictions on the siting and operation of Marijuana Businesses”. The proposed building is proposed to be setback more than 195’ from the front lot line and more than 175’ from the west property line; exceeding the minimum 100’ setback requirement. Prior to construction, the applicant is required to obtain a Marijuana Business Registration that addresses all other regulations of MCC 36.0560. Therefore, it does not appear that adjusting the required setback for the South and East property lines to 60’ will adversely affect the health, safety and general welfare of the surrounding community.

Criteria met.

5.2.1 MCC 36.7611(B): Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

Staff: Numerous trees surround the property on all four sides (Exhibit A.4 & A.15) providing screening for the proposed structure to maintain privacy from the West, East, and South lot lines. Per the applicant, the proposed structure design matches the look of an “old barn” and much of the structure will be recessed into the ground (Exhibit A.4 & A.7). The applicant proposes to harvest drainage from the roof in cisterns and direct excess water runoff to a soakage trench or grass filter strip. Erosion control measures will be proposed as part of the building plan review process prior to construction.

Criteria met.

5.2.2 MCC 36.7611(C): If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zoning district; and

Staff: The applicant requests two adjustments; each adjustment would reduce the required 100' setback by 40% to 60' for the South and East property lines. No additional adjustments to the required setback for marijuana businesses or adjustments to the MUA-20 dimensional requirements are proposed. The applicant has requested a Road Rules Variance for a second driveway access and County Transportation Planning discusses that request in section 6 below.

The purpose of the MUA-20 zone is to conserve agricultural lands not suited to full-time commercial farming. Marijuana production is a farm use per State regulations; hence, the project is consistent with the overall purpose of the zoning district.

Criteria met.

5.2.3 MCC 36.7611(D): If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and

Staff: The above criteria are not applicable as the property is in the MUA-20 zone.

Criteria not applicable

5.2.4 MCC 36.7611(E): If in a Rural Residential (RR) or Rural Center (RC) zone, the proposal will not significantly detract from the livability or appearance of the residential area

Staff: The above criteria are not applicable as the property is in the MUA-20 zone.

Criteria not applicable

6.0 Multnomah County Road Rules (MCRR)

6.1 Project Description:

The applicant is proposing a new access at 25346 SE McNutt Road, a Rural Collector under the jurisdiction of Multnomah County. The property currently has one existing access to SE McNutt Road. The Applicant is requesting a Road Rules Variance to Multnomah County Road Rules (MCRR) Section 4.200 that limits the number of accesses per property to one per property, as well as Section 4.300 that regulates minimum spacing standards between neighboring accesses.

6.2 ACCESS TO COUNTY ROADS

MCRR 4.000 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.

Staff: The applicant proposes to construct a new, second access from the subject property onto SE McNutt Road, a County road under County Jurisdiction. The second access will serve a proposed agricultural building for the production of marijuana. The proposed new access is shown on the applicant's site plan (see Exhibit A.17). The applicant has submitted all the required information. *This criterion is met.*

6.2.1 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.

Staff: Currently the subject property is served by an existing driveway. The applicant is proposing a new, second access from the subject property onto SE McNutt Road that will serve a new use. *Through approval of this road rules variance request, this criterion will be met.*

6.2.2 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.

Staff: The County minimum access spacing standard for a road functionally classified as a Rural Collector facility is 30 meters, or 98 feet (DCM Table 1.2.5). The minimum driveway access spacing distance is measured driveway centerline to driveway centerline. The minimum spacing distance is applied to driveways on the same side of the street as well as driveways opposite to the site (DCM Figure 1.2.1). Access driveways on opposite sides of the street should be located directly opposite to each other, or no less than 30 meters from adjacent accesses for a Rural Collector facility. [MCRR 4.300]

The location of the proposed access is located in less than 98-feet from three existing neighboring accesses. See graphic on page A.8 of the submitted Road Rules Variance application describing measurements of neighboring accesses. *Through approval of this road rules variance request, this criterion will be met.*

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

Staff: For agricultural use, a new or reconfigured driveway must be 6 to 10.5 meters (or approximately 19.9 to 34.4 feet) wide. The proposed width of the new, second driveway is 20 feet, within the standard width for agricultural use. *This criterion is met.*

6.2.4 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.

Staff: 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 County Design and Construction Manual or AASHTO's *A Policy on Geometric Design of Highway and Streets*. The location of the proposed new access has sight distance that meet the standards listed above. *This criterion is met.*

6.3 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 subsection 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.

MCRR 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.

Staff: The Multnomah County Road Rules defines a Transportation Impact as the effect of any new construction or alteration that 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 [MCRR 3.000]. A minimum increase of 10 new trips per day is required to find a transportation impact.

According to submitted application materials, the new use associated with the proposed second access will generate approximately one or less vehicle trips per day. Staff concludes there is no Transportation Impact associated with the proposed second access nor its use.

This criterion is met.

6.4 IMPROVEMENT REQUIREMENTS

MCRR 6.100 Site Development: The owner of the site or the applicant for a proposed development, which is found to cause a Transportation Impact will be responsible for improvements to the right-of-way as follows:

A. Dedication Requirement***

Staff: Staff determined there is no Transportation Impact caused by the proposed second access nor its proposed new use. Therefore the applicant will not be required to dedicate any property for right of way purposes. *The criterion is met.*

B. Frontage Improvement Requirements***

Staff: Staff determined there is no Transportation Impact caused by the proposed second access nor its proposed new use. Therefore the applicant will not be required to construct frontage improvements. *The criterion is met.*

6.5 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;**
- 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.**

Staff: As noted in the conditions of approval, the applicant will be required to obtain an access/encroachment permit for the proposed new access onto SE McNutt Road. The applicant will also be required to obtain an access/encroachment permit to retroactively approve the existing driveway on the property that serves the single family home. Both access/encroachment permits must be obtained prior to Multnomah County Land Use Planning's approval of the Building Permit. *As conditioned, this criterion is met.*

6.6 VARIANCE FROM COUNTY STANDARDS AND REQUIREMENTS

16.3000 Variance Request Procedure

For the County Engineer to consider a variance request, it must be submitted in writing with the appropriate fee to the County prior to the issuance of any development permit. The written variance request shall be signed by a person with the authority to bind the applicant and shall include the following information as applicable:

A. Applicant name, telephone/fax number(s), email address, mailing address;

Applicant:

Name - Justin Williams;(Contact: Anne Fishe, 503.665.1833; afishe@msn.com)

Telephone/fax number(s) - 503.753.0148

Email address - jtwllc@comcast.net

Mailing address - 26346 NE McNutt, Gresham, OR 97080

B. Property location and zoning;

Applicant:

Location: Map 1 South, 3 East, Section 23D

Zoning: Multiple Use Agricultural 20 (MUA-20)

C. Current or intended use of the property;

Applicant: Currently a Tree farm with over 500 arbovitae. Proposal would include the construction for a New Agricultural Building for marijuana production. The remainder of the property would remain allocated to tree growing.

D. The nature and a full description of the requested variance;

Applicant: A new road is required by Gresham Service Agency for fire vehicle access to the site. The variance is in conjunction to a Type II Land Adjustment for a setback of 40% to property line on the south and west.

E. Site plan, sight distance, pedestrian traffic, intersection alignment, traffic generation, vehicle mix, traffic circulation including impact on through traffic, and other similar traffic safety considerations;

Applicant:

1. Sight distance:

East View: 636 Feet to curve in road

West View: 615 Feet to curve in road

2. Pedestrian traffic: None to minor; no sidewalk

3. Intersection alignment:

North side of road:

One at East - 100 Feet
One at West - 79 Feet

South side of road:

One at East - 55 Feet

4. Traffic generation: Estimated client vehicle movement is approx 1 or less per day.
5. Vehicle mix, traffic circulation including impact on through traffic, and other similar traffic safety considerations: The road is a rural road generating very little traffic. The new proposal is anticipated to not add significantly to the traffic or impact any safety concerns.

F. Existing right-of-way or improvement limitations, and utility considerations;

Applicant: Aware of none.

G. Adjacent land uses, their types, access requirements, and impact of traffic on them;

Applicant: Single Family Residences with private driveways and normal traffic.

H. Topography, grade, side hill conditions, and soil characteristics;

Applicant: Mc Nutt Road slopes up toward the west approximately at a grade of approximately 1:10 to 1:12 .

I. Drainage characteristics and problems;

Applicant: There is a drainage ditch on the south side of Mc Nutt Road. There are no known issues.

J. Fire Department access requirements within a public right-of-way and their written approval of the proposed modification;

Applicant: Gresham Fire Service Agency Review signed and attached.

K. Natural and historic features including but not limited to trees, shrubs or other significant vegetation, water courses, wetlands, rock outcroppings, development limitation, areas of significant environmental concern, etc;

Applicant: Not aware of any significant environmental limitations.

L. Multnomah County Comprehensive Plan policies applicable to the particular parcel or location;

Applicant: All adjustment approval criteria and submittal requirements identified in the county review have been addressed in the adjustment application.

6.7 PUBLIC COMMENT

MCRR 16.310 Completeness, Timelines, Public Notice, Decision:

E: Public notice of an application for a variance to these Road Rules shall be as follows:

1. For variance applications not in conjunction with a proposed development requiring a land use decision:

- a. Notice of the application and invitation to comment shall be mailed to the applicant, the applicable recognized neighborhood association, and all property owners within 100 feet within the urban growth boundary or within 750 feet outside of the urban growth boundary. The County Engineer will accept comments for 14 days after the notice of application is mailed.

Staff: A 14-Day Opportunity to Comment was mailed to neighboring property owners in accordance with MCRR 16.310. County Transportation did not receive any comments related to the approval criteria for a Road Rules Variance.

This decision was drafted and will be mailed in accordance with MCRR 16.310. *Procedures met.*

6.8 The Applicant's Proposal Meets the General Variance Criteria

MCRR 16.200 General Variance Criteria: In order to be granted a variance, the applicant must demonstrate that:

A. Special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. The circumstances or conditions may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses;

Applicant: Because the location of the Agricultural building is required to be set back over 100' from the road the access road is required to provide fire protection for the property and neighbors by way of an access road.

Staff: As part of the land use application associated with this Road Rules Variance request, the applicant is proposing to build an agricultural building on the subject property for the purposes of marijuana production. As stated by the applicant above, the proposed agricultural building is required to be set back 100-feet from the road per Multnomah County land use codes (although the applicant is seeking an adjustment to this requirement to locate the agricultural building 60-feet set back). The local fire service agency, Gresham Fire & Emergency Services, require that the new agricultural building be accessible via an "access roadway" as noted in their memorandum dated 8/17/17 included in the application (see Exhibit A.16). Lastly, as shown in the submitted Septic Review Certification (see Exhibit A.8), the property's drain field is located directly east of the existing home, preventing the existing access from being extended internally within the site to provide the required access to the new agricultural building in the southeast portion of the property. These unique conditions necessitate a second access.

As for the variance request for minimum access spacing standards, given the subject property's frontage of approximately 285-feet, only a small portion of the property's frontage could accommodate a new access point that meets access spacing standards. This portion of frontage is located directly across the street from the northern neighbor's driveway. However, this portion of frontage is also where the septic drain field is located, thereby eliminating any feasible option for a second access to meet the County's minimum access spacing standards.

This criterion is met.

B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards;

Applicant: The applicant and neighbors would not be provided the protection of fire services without the road.

Staff: Strict compliance with the Multnomah County Road Rules would prohibit a second access that Gresham Fire & Emergency Services requires for an agricultural building for the production of marijuana. This land use is an allowed use under Multnomah County zoning code. Therefore, strict adherence to the Multnomah County Road Rules would limit the enjoyment of the applicant's substantial property right.

This criterion is met.

C. The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties;

Applicant: The road would provide beneficial support to fire protection for the area.

Staff: As stated by the applicant above, the local fire service agency, Gresham Fire & Emergency Services, requires direct access to the proposed new agricultural building to ensure that the fire agency is able to serve the property in an event of an emergency. As discussed in the staff response to Variance Criteria A, the proposed location for the new second access is the site's only feasible opportunity to meet the Gresham Fire & Emergency requirement. Ensuring fire access is a benefit to not just the applicant, but to the neighboring properties as well.

Although the proposed second access does not meet minimum access spacing standards, the information provided by the applicant as well as a review from Multnomah County engineering staff indicate that there low traffic on SE McNutt Road, and that there is sufficient sight distance at the driveway location. The location of the new second access will not adversely affect neighboring properties, nor will be detrimental to the public welfare.

This criterion is met

D. The circumstances of any hardship are not of the applicant's making.

Applicant: The applicant proposes to be fully in compliance and provide the protection and safety which the regulations require.

Staff: In order to realize an allowed use on the property per the County's zoning code, the applicant is subject to several competing regulations from County Land Use, County Transportation and Gresham Fire & Emergency Services. The proposed location of the new, second access is the only feasible location for the require fire access given the set-back distance required by the County's land use code and the location of the septic drain field. Additionally, the applicant is unable to meet the minimum access spacing standards due to existing neighboring driveways. The hardship of not being able to meet the minimum access standards as stated in the Multnomah County Design and Construction Manual is not of the applicant's making.

This criterion is met.

6.9 **Conclusion**

Based on the findings, narrative, and other information provided herein, this application, as conditioned, satisfies all applicable approval criteria required for a variance to allow a second access at 25346 SE McNutt Road that does not meet the County's minimum access spacing standards. Any changes to the scope of the project will must reviewed for transportation impact to County facilities.

7.0 **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for an Adjustment to the Marijuana Business property line setbacks for the South and East property lines as well as a Road Rules Variance for a second driveway in the MUA-20 zone. This approval is subject to the conditions of approval established in this report.

8.0 **Exhibit**

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Procedural Exhibits

Exhibits with a "*" after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2018-10465 at the Land Use Planning office and in Case File EP-2017-9842 by appointment at the Right-of-way permits office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	5.22.2018
A.2	3	Narrative	5.22.2018
A.3	1	Index of Drawings	5.22.2018
A.4	2	Site Photos & Rendering of Site with proposed building	5.22.2018
A.5	1	Site Plan	5.22.2018
A.6	1	Septic & Stormwater Plan	5.22.2018
A.7	2	Building & Elevation Drawings	5.22.2018
A.8	7	Septic Review Certification	5.22.2018
A.9	3	Fire Service Agency Review	5.22.2018
A.10	1	Transportation Planning Review	5.22.2018
A.11	2	Certification of Water Service	5.22.2018
A.12	2	Sheriff Service Review	5.22.2018
A.13	2	Stormwater Certificate	5.22.2018
A.14	8	Title Report from First American Title	5.22.2018
*A.15	1	Revised Site Plan	6.19.2018
A.16	1	Variance Narrative	5.22.2018
A.17	1	Figure 1: Site Plan	5.22.2018

'B'	#	Staff Exhibits	Date
B.1	1	A&T Property Information for 1S3E23D- 04300	5.22.2018
B.2	3	Suburban Residential Zoning Code (1962)	5.22.2018
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	6.20.2018
C.2	3	Opportunity to Comment	8.3.2018
C.3	16	Administrative Decision	8.28.2018

[illegible]

SITE PLAN

arf
architecture

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afishe@msn.com

PROJECT

JUSTIN WILLIAMS
AGRICULTURAL
BUILDING

OWNER

LON WILLIAMS.
25346 Mc Nutt Rd
Gresham, OR 97080

SITE PLAN

SCALE: 1" = 40'

DATE: 6/19/2018

PAGE: A.4

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EXHIBIT

A. 15