

## NOTICE OF DECISION

**Case File:** T2-2018-10320  
**Permit:** Administrative Decision by the Planning Director  
**Applicant:** Duncan Brown **Owners:** Victor & Denise Nyman  
**Location:** 20541 NW Sauvie Island Rd.  
Tax Lot 300, Section 07D, Township 2 North, Range 1 West, W.M.  
Tax Account #R971070110 Property ID #R324849  
**Zoning:** Exclusive Farm Use (EFU)  
**Overlays:** Willamette River Greenway (WRG)  
**Proposal Summary:** Request for an Administrative Decision to permit a Relative Farm Help dwelling within an existing Agricultural Building.  
**Decision:** Denied

**This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, February 12, 2019 at 4:00 pm.**

**Opportunity to Review the Record:** The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact Chris Liu, Staff Planner at 503-988-2964 or at [chris.liu@multco.us](mailto:chris.liu@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.

**Issued By:**   
Chris Liu, Assistant Planner

**For:** Michael Cerbone, AICP  
Planning Director

**Date:** Tuesday, January 29, 2019

## Vicinity Map

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**Applicable Approval Criteria:** Multnomah County Code (MCC): Multnomah County Code (MCC): MCC 37.0560 Code Compliance and Applications, MCC 34.0005 & MCC 34.2610 Definitions, MCC 34.2625 Review Uses – Relative Farm Help Dwelling, MCC 34.2655 Single Family Dwellings Condition of Approval, MCC 34.2660 Dimensional Requirements, MCC 34.2675 Lot of Record

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-304 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link *Chapter 34: Savie Island and Multnomah Channel Rural Plan Area* and *Chapter 37: Administration & Procedures*.

### **Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **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 approval of a relative farm help dwelling for owner Victor Nyman’s brother and partner to occupy a farm help dwelling on the subject property. Mr. Victor Nyman indicates that he is the farm operator and requires assistance with daily activities associated with the farm use on the property. This proposal includes the conversion of a portion of an existing exempt farm structure into the farm help dwelling.

### **2.0 Property Description & History:**

**Staff:** The subject property is 13.08 acres. The current owners purchased the subject property containing a blueberry farm and u-pick from the previous owner in 2017. In the applicant’s narrative, the applicant notes that the property owners have maintained the blueberry farm and u-pick operation and have invested in expanding operations to include beekeeping.

Improvements on the property include a dwelling constructed in 1955, a 49’ x 53’ barn, a 10’ x 12’ pump house, a T-shaped 4,320 sq. ft. exempt farm building, a 13’ x 35’ greenhouse, deer fencing, a 10’ x 20’ farm stand for blueberry sales, and a 24’ x 20’ exempt farm structure.

The T-shape exempt farm building currently contains a non-permitted residence. A previous decision for land use case #T2-2014-3743 approved a proposal to utilize the same portion of the exempt farm building as a relative farm help dwelling; however, the previous owner was not able to obtain the proper building permits prior to the expiration of the land use decision. T2-2014-3743 expired without establishing the authorized dwelling. This application is for a relative farm help dwelling on the new farm operation and based upon the new submitted information.

### **3.0 Public Comment**

#### **3.1 E-mail from Mark Greenfield, Sauvie Island Resident**

**Staff:** Mr. Greenfield voiced concerns with the proposal becoming an illegal bed and breakfast or other non-permitted residential purposes. He asked that the County include conditions of approval to ensure the proposed dwelling does not become an unlawful use in the future (Exhibit D.1).

The County has denied the proposed relative farm help dwelling application. If upon appeal a hearing’s officer approves the proposal, staff prepared suggested conditions of approval that would address Mr. Greenfield’s concerns.

#### **3.2 Phone Call from Bryan Hogan, Sauvie Island Resident**

**Staff:** Mr. Hogan had similar concerns voiced by Mr. Greenfield regarding the potential unlawful use of the proposed residence.

The County has denied the proposed relative farm help dwelling application. As stated above, if upon appeal a hearing’s officer approves the proposal, staff prepared suggested conditions of approval that would address Mr. Hogan’s concerns.

#### **4.0 Administrative Procedures Criteria:**

##### **4.1 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:** As described in Section 2.0, the portion of the exempt farm building proposed as the relative farm help dwelling contains a non-permitted residence. If an approval is granted, this land use decision would allow the applicant to pursue building permits. Once building permits were obtained, the structure would be in compliance with land use code.

#### **5.0 Exclusive Farm Use Criteria:**

##### **5.1 Lot of Record**

**MCC 34.2675: Lot of Record -**

(A) In addition to the Lot of Record definition standards in MCC 34.0005, for the purposes of this district a Lot of Record is either:

- (1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or
- (2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record...

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

(4) Exception to the standards of (A)(2) above:

(a) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;
- (2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;
- (3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties, Ord. 236 & 238;
- (5) February 20, 1990, lot of record definition amended, Ord. 643;
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876; (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 34.2690 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(D) The following shall not be deemed 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) A Mortgage Lot.
- (4) An area of land created by court decree.

**Staff:** Land use case # T2-2014-3743 required a lot consolidation to combine two tax lots into a single parcel, which was the Lot of Record. The subject parcel is a single 13-acre unit of land (Exhibit B.3) consisting of the previously separate tax lots referenced in T2-2014-3743. Therefore, the subject parcel is a Lot of Record. *Criteria met.*

## **5.2 Single Family Dwellings Condition of Approval**



**MCC 34.2655:** As a condition of approval of a single family dwelling, the landowner for the dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging in-jury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

**Staff:** A condition of approval can be added to require the property owner to record a covenant regarding the right to farm and do forest practices. *Criterion can be met through a condition of approval*

### 5.3 Dimensional Requirements

#### **MCC 34.2660: Dimensional Requirements**

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

Front	Side	Street Side	Rear
30	10	30	30

##### **Maximum Structure Height – 35 feet**

**(D)** The minimum yard requirement shall be increased where the yard abuts a street having in-sufficient 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 is not adjacent to a public right-of-way. The property accesses Sauvie Island Road via an easement. No additional right-of-way is required adjacent to this property. The buildings and structures shown on the site plan/farm plan (Exhibit A.15) have met the above yard requirements.

### 5.4 Review Uses

**MCC 34.2625(C):**A farm help dwelling for a relative on real property used for farm use if the dwelling is:

**(1)** Located on the same lot or parcel as the dwelling of the farm operator; and is

**Staff:** The name of the farm is Blue Bee Farm. Evidence provided in the case file demonstrates the use occurring on the site qualifies as a farm use. The narrative identifies Victor Nyman as the farm operator (Exhibit A.19) and indicates that Victor Nyman and his family live in the existing dwelling on the site. As the farm operator, Victor Nyman is the person who makes the day-to-day business decisions about such things as plantings, harvesting, and marketing. Victor Nyman’s brother (Rick) and Rick’s partner would occupy the proposed dwelling (Exhibit A.11). *Criterion met.*

**5.4.1 MCC 34.2625(C)(2):** Occupied by a relative of the farm operator or the farm operator's spouse, if the farm operator does or will require the assistance of the relative in the

**management of the farm use. Qualifying relatives include, child, parent, step-parent, grandchild, grandparent, step-grandparent, brother, sister, sibling, stepsibling, niece, nephew or first cousin.**

**Staff:** As described above, the occupant of the proposed relative farm help dwelling would be the brother (Rick) of the identified farm operator (Victor Nyman) and Rick's partner. The applicant provided documents proving the farm operator's brother is a qualifying relative (Exhibit A.11). The applicant's statements regarding the farm operator's need for assistance with the blueberry and beekeeping operation are discussed in Section 5.5 below. *Criterion met.*

- 5.4.2 MCC 34.2625(C)(3): Notwithstanding ORS 92.010 to 92.190 or the minimum lot size requirements of MCC 34.2660, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel, pursuant to OAR 660-033- 0130(9)(b)&(c). However, pursuant to MCC 34.2675(D), the area of land with the homesite created by the foreclosure shall not be deemed a Lot of Record, and shall be subject to all restrictions on development associated with that designation**

**Staff:** A condition of approval can be added that requires the recording of a deed restriction that informs the present and future property owners that foreclosure on the relative farm help dwelling will not create a separate Lot of Record. *Criterion can be met through a condition of approval.*

**5.5 OAR 660-033-0130**

**(9)(a): To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding, and marketing.**

**Staff:** Multnomah County Code does not incorporate *Commercial Farming Operation* into the approval criteria noted in section 4.1 for a relative farm help dwelling. The County does define in the EFU code section MCC 34.2610 "Commercial Agricultural Enterprise". This definition is the same as the OAR listed below. As MCC 34.2625(C) does not use the term "commercial agricultural enterprise" or "commercial farm operation", the County directly applies state law, which per OAR 660-033-0020(2)(a) states:

*Commercial Agricultural Enterprise* "consist of farm operations that will:

- (A) Contribute in a substantial way to the area's existing agricultural economy; and**
- (B) Help maintain agricultural processors and established farm markets.**

**When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.”**

**Staff:** See findings for (A) and (B) in section 5.5.1 and 5.5.2 below. Based on the information provided, there does not appear to be sufficient evidence to support the need for full-time assistance in managing the current farm use on the site as the applicant based the need on projected future growth. *These criteria are not met.*

**5.5.1 OAR 660-033-0020(2)(a)(A):**

*Commercial Agricultural Enterprise* “**consist of farm operations that will:**

**(A) Contribute in a substantial way to the area’s existing agricultural economy; and**

The applicant provided a business plan (Exhibit A.19) for Blue Bee Farm predicated on projected future growth of the bee keeping operation. With the projected growth of the bee keeping operation, the farm operator anticipates additional employees will be required. On page 7 of the proposed business plan, the steps for growth indicate that the 2018-2019 outlook involves developing bee genetics to increase queen production, evaluate best rearing and over-wintering methods for local weather conditions, develop commercial beekeeper connections, etc.

In 2020, they expect to hire additional employees to assist with grafting, inspections, and harvesting the queens to begin sales to interested buyers. Projections include utilizing 125 mating NUCs (mini hives) across 10 mating cycles to yield 1000 queens. At present, the farm operator has not demonstrated the need to hire farm labor for the bee keeping operation.

Sauvie Island experiences heavy traffic in the summer months and early fall where visitors have the opportunity to support a number of farming and u-pick operations. The farm operator’s business proposal appears to maintain the blueberry and fruit u-pick operation on site. The business plan indicates that the income from the blueberry u-pick operation is projected to maintain minimal growth for the foreseeable future.

After reviewing the information provided for the new farm operation on the site, there does not appear to be enough information to find that the farm use will substantially contribute to the area’s existing agricultural economy. At present, the farm operation does not wholesale or retail to agricultural processors or at farmer’s markets. The farm has not shown a net income and the focus appears to be turning to a beekeeping operation that is still developing the genetics for its hives (and has not commenced sales of its bee crops). *This criterion not met.*

**5.5.2 OAR 660-033-0020(2)(a)(B):**

*Commercial Agricultural Enterprise* “**consist of farm operations that will:**



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**(B) Help maintain agricultural processors and established farm markets.**

**When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.”**

**Staff:** Per the farm operator’s Schedule F report to the IRS (Exhibit A.20), the farm operator sustained a net loss for 2017. As noted in section 2.0, the farm operator purchased the farm in 2017. A majority of the expenses identified (Exhibit A.9 & A.20) relate to depreciation, supplies, repairs and maintenance, and utilities. Expenses related to hiring farm help (Exhibit A.9) to assist with the blueberry and orchard operation included:

Date	Total Hours Worked	# of Laborers	Average Hours/Laborer
11/3/2017	15	2	7.5
11/4/2017	14	2	7
12/29/2017	48	6	8
12/30/2017	48	6	8
1/8/2017	48	6	8
1/9/2017	27.25	5	5.45
2/14/2017	34	4	8.5

As shown above, minimal hired farm help was required to prepare the berries for fruit production. The farm operator submitted a proposed work schedule for his brother’s (Rick) involvement in the farm (Exhibit A.10). The majority of the proposed work tasks for Rick are associated with expanding the beekeeping operation. Since the beekeeping business has yet to sell any product and it may be over two years or more before sales begin, it does not presently contribute to the commercial farm operation. Rick’s tasks related to the current farm operation appear to involve general maintenance (lawn mowing, irrigation maintenance, pruning, and pest control) and summer u-pick sales for the blueberry operation.

At the present size and scale of the Blue Bee farm operation, the applicant has not demonstrated the need for on-site farm help to support approximately 4.0 acres of blueberry fruit, and vegetable sales, which is the extent of the current farm use. Future production of bee colonies and queens is speculative at this time and is not producing agricultural products for sale. *This criterion not met.*

**6.0 Conclusion:**

Based on the findings and other information provided above, the applicant has not carried the burden necessary to approve the establishment of a relative farm help dwelling in the EFU zone. The applicant has the ability to appeal this Administrative Decision by the Planning Director to a Hearings Officer for consideration.

**7.0 Exhibits**

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits  
‘C’ Procedural Exhibits  
‘D’ Comments Received

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 T2-2018-10320 at the Land Use Planning office.

<b>Exhibit #</b>	<b># of Pages</b>	<b>Description of Exhibit</b>	<b>Date Received/ Submitted</b>
A.1	1	Application Form	4.17.2018
A.2	12	Narrative	4.17.2018
A.3	1	Applicant Exhibit List	4.17.2018
A.4	4	Site Plan and Aerial Photos	4.17.2018
A.5	3	Tax Maps	4.17.2018
A.6	7	Applicant photos of the primary dwelling	4.17.2018
A.7	9	Applicant photos and floor plans of the proposed relative farm help dwelling	4.17.2018
A.8	9	Stormwater Certification	4.17.2018
A.9	16	Receipts for operating expenses	4.17.2018
A.10	2	Proposed work schedule	4.17.2018
A.11	2	*Confidential* Proof of relationship for relative	4.17.2018
A.12	3	Transportation Planning Review	4.17.2018
A.13	5	Certification of Water Service	4.17.2018
A.14	1	Fire Service Agency Review	4.17.2018
A.15	2	Revised Site Plan	10.12.2018
A.16	1	Revised Floor Plan	10.12.2018
A.17	11	Right of Way Access Permit & Easement Documents	10.12.2018
A.18	2	Beekeeping Area Photos	10.12.2018
A.19	11	Farm Business Plan and Photos of Farm Help	10.12.2018
A.20	2	*Confidential* IRS Farm income information	10.12.2018
A.21	1	General Application form with signature of second property owner	10.12.2018
A.22	23	Miscellaneous documents provided by the Applicant	4.17.2018 – 10.12.2018
A.23	5	Septic Review Certification	11.7.2018
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	3	A&T Property Information	4.17.2018
B.2	3	Memorandum from Applicant regarding Incomplete Letter	10.9.2018
B.3	2	Warranty Deed 2017-040730	1.22.2019

<b>'C'</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	3	Incomplete Letter	5.16.2018
C.2	1	Applicant Response	5.23.2018
C.3	1	Memorandum from Applicant Deeming Application Complete (Day 1)	10.14.2018
C.4	2	Opportunity to Comment	12.7.2018
C.5	11	Administrative Decision	1.29.2019
<b>'D'</b>	<b>#</b>	<b>Comments Received</b>	<b>Date</b>
D.1	1	E-mail from Mark Greenfield	1.11.2018