

## **APPLICATION NARRATIVE**

### **A. Background.**

The subject property is located at 38905 SE Gordon Creek Road, Corbett OR (the “Property”) and is owned by the applicants Jim and Linda Gee (the “Applicants”). The Property is approximately 5.04 acres and is zoned Commercial Forest Use (CFU-4). The Property is significantly smaller than the 80-acre minimum that applied when the County rezoned the Property CFU-4 in the 1970’s. The property is one of several long and narrow properties created in this area prior to the implementation of the CFU-4 zoning.

The Applicants are submitting this application in response to the letter from the County Land Use Compliance Office, dated June 4, 2014, regarding a request to voluntary comply with the Multnomah County Code (“MCC”) and the corrective actions noted in the June 4<sup>th</sup> letter. The June 4<sup>th</sup> letter was supplemented by a letter from the Applicant’s attorney to the County Land Use Compliance Office, dated June 12, 2014, requesting clarification regarding the June 4<sup>th</sup> letter, and a response letter from the County Land Use Compliance Office, dated June 16, 2014, clarifying the County’s position. A copy of the June 4<sup>th</sup>, June 12<sup>th</sup> and June 16<sup>th</sup> letters are enclosed with this application. The June 4<sup>th</sup>, June 12<sup>th</sup> and June 16<sup>th</sup> letters are collectively referred to herein as the “Compliance Letters”.

The Applicants previously submitted an application in 2015 for this same purpose (Case No. T3-2015-4490), but the County deemed the application incomplete and due to a miscommunication regarding the deadline for responding to the notice of incomplete application the Applicants withdrew the application. On September 11, 2015, the County sent the Applicants a notice of incomplete application requiring the requested information be submitted to the County by March 9, 2016. On January 22, 2016, the County sent the Applicants a letter clarifying that the deadline for submitting the requested information was February 6, 2016, not March 9, 2016. Because the Applicants were unable to meet the new February 6, 2016 deadline, the County and the Applicants agreed to withdraw the application and the County provided the Gees a \$2,404 credit for the resubmission of the application.

The Compliance Letters identify several accessory structures, an access road in excess of 500 feet, a dog kennel and setback encroachments that need to be addressed. The Applicants already removed the shed/pigeon pen (9’x12’) and the old dog house (7.5’x 20’) referenced in the Compliance Letter.

The Applicants are seeking approval of the additional items noted in the Compliance Letter via this application to bring the Property into compliance (the “Application”).

### **B. Nature of the Request.**

The Applicants are submitting this application in response to the Compliance Letters in order to obtain the necessary approvals and/or permits for the improvements that require permits and to bring the Property into compliance. The enclosed site plan provides the location and description of the remaining improvements located on the Property. The accessory structures are identified in the site plan as follows: (1) garage/workshop; (2) storage shed (12’x16’); (3) above ground pool; (4)

detached deck; (5) pump house; (6) two pigeon pens; (7) barn; and (8) the dog house, which has been converted to a chicken/poultry house.

The improvements fall into the following categories: (1) accessory structures located within 100 feet of the dwelling; (2) a barn or agricultural building; (3) accessory structure(s) located more than 100 feet from the dwelling; and (4) the access road. Additionally, some of these improvements will require a variance or adjustment from the setback and secondary fire safety zone requirements.

There are four structures located within 100 feet of the dwelling: (1) the detached deck; (2) the above ground pool; (3) the garage/workshop; and (4) the storage shed. All of these structures qualify as accessory structures which are allowed uses in the CFU-4 zone. MCC 39.4070(T)(1)(a), (e), (i), (k). The combined square footage of these accessory structures is less than 2,500 square feet. Therefore, these structures can qualify as allowed accessory structures. Additionally, the garage/workshop was constructed in 1978 and therefore it alternatively qualifies as a nonconforming use since it pre-dates the existing CFU-4 regulations.

One accessory structure is located more than 100 feet from the dwelling, identified on the site plan as the dog house. The structure was previously used to shelter the Applicants' personal hunting dogs, but has been converted to a chicken/poultry house that now houses the Applicants' chickens. A shelter for pets is an allowed accessory structure in the CFU-4 zone. MCC 39.4070(T)(1)(h). Although the structure is more than 100 feet from the dwelling, it qualifies as a review use under MCC 39.4075(L) and is not subject to the 2,500 square foot limitation. Although the Compliance Letters refer to this structure as a dog kennel, as previously communicated to the County the Applicants are not boarding dogs and agreed not to operate a dog kennel in the future as part of the voluntary compliance. Therefore, it can be permitted as an accessory structure.

A barn is located on the northern part of the Property as shown on the site plan. The barn was constructed in the 1990's for purposes of storing fire wood, farm animals, hay and equipment. The barn is an allowed use in the CFU-4 zone as a building in conjunction with a forest and farm use. MCC 39.4070(A)(1) & (C).

The Property contains a gravel access road that provides access to the northern end of the Property. The access road is longer than 500 feet. MCC 39.4115(B)(2)(d) provides that an access road can exceed 500 feet if the Applicants can demonstrate that it is necessary due to physical limitations unique to the property and is the minimum length necessary. The Property has unique physical limitations that necessitate the longer access road since the northern and southern portions of the property are essentially split in two by a deep gully. The access road is necessary in order for the Applicants to be able to access and use the northern portion of the Property, including but not limited to providing access to salvage blow down and dead trees from the northern part of the property. The gravel road is the minimum length necessary given that it terminates at the top of the gully on the northern end of the Property.

The Application includes requests for variances and/or exceptions to the setback and secondary fire safety zone requirements for some of the structures. The Property's unique size and shape necessitate these variances and/or exceptions. The Property is one of several long and narrow properties created in this area in the 1970's. The Property is significantly smaller than the 80-acre minimum that applied when the County rezoned the Property CFU-4. The Property is only 200 feet

wide, which makes it extremely difficult and/or impossible to satisfy the setback and secondary fire safety zone requirements. Additionally, the northern and southern portions of the Property are essentially split in two by a deep gully. Based on these property conditions, the Applicants justified the necessary variances pursuant to MCC 39.8215. Additionally, the Applicants can satisfy the secondary fire safety zone requirements and request a reduction pursuant to MCC 39.4155(A)(1) because the tract has an average width of 330 feet or less. The County approved similar setback variances and exceptions to the secondary fire safety zone requirements for the neighboring property to the east as set forth in Case File No. T3-08-001.

During the Pre-Filing Conference, the County advised the Applicants that they will be required to demonstrate that the Property is a Lot of Record. The Applicants demonstrated that the Property is a Lot of Record below.

## **C. Compliance with Multnomah County Zoning Code Chapter 39.**

### **A. Lot of Record.**

#### **39.3005        Definition of “Lot of Record”.**

*(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.*

*(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.*

*(1) “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.*

*(2) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:*

- (a) By a subdivision plat under the applicable subdivision requirements in effect at the time; or*
- (b) 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*
- (c) 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*
- (d) By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and*

(e) “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.*)

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

(a) 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.

(b) An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

**Response:** The Property qualifies as a Lot of Record under MCC 39.3005(B)(1) and (B)(2)(b) because it satisfied all applicable zoning laws and all applicable land division laws at the time it was created. The Property satisfied all applicable zoning laws because it was created in full compliance with all zoning minimum lot size, dimensional standards, and access requirements in place on August 18, 1975. The Property satisfied all applicable land division laws because it was created by a deed or sales contract dated, signed and recorded prior to October 19, 1978. The Application includes a copy of the sales contract, dated August 18, 1975, which created the Property.

#### **39.3050           LOT OF RECORD – COMMERCIAL FOREST USE-4 (CFU-4).**

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-4 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

**Response:** The Property was not contiguous to any other parcel or lot under the same ownership on February 20, 1990. Therefore, the Property satisfies the additional Lot of Record standards under MCC 39.3050.

## **B. Commercial Forest Use-4 (CFU-4).**

### **39.4070 ALLOWED USES.**

*(A) The following uses pursuant to the Forest Practices Act and Statewide Planning Goal 4:*

*(2) Temporary or permanent on site structures which are auxiliary to and used during a particular forest operation per ORS 215 and 455.315. Conversion of these structures is subject to any applicable land use and building permit review procedures.*

**Response:** The barn located on the northern part of the Property qualifies as an auxiliary forest building, and therefore is an allowed use in the CFU-4 zone. The barn qualifies as an auxiliary forest building because it was initially constructed and is currently used for purposes of storing wood that is cut from the timber located on the Property.

*(C) Farm Use, as defined in ORS 215.203*

**Response:** The barn located on the northern part of the Property qualifies as an agricultural building and/or farm use, and therefore is an allowed use in the CFU-4 zone. The definition of “farm use” includes “the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof” and “the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.” ORS 215.203(2)(a). An “Agricultural building” is defined as “a structure located on a farm or forest operation and used for: (A) Storage, maintenance or repair of farm or forestry machinery and equipment; (B) The raising, harvesting and selling of crops or forest products; (C) The feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees; (D) Dairying and the sale of dairy products; or (E) Any other agricultural, forestry or horticultural use or animal husbandry, or any combination thereof, including the preparation and storage of the produce raised on the farm for human use and animal use, the preparation and storage of forest products and the disposal, by marketing or otherwise, of farm produce or forest products.”

The barn qualifies as an agricultural building and/or farm use because it was initially constructed and is currently used for purposes of storing farm animals (pigs, cattle and goats), hay, fire wood and related farm equipment.

Therefore, the barn is an allowed use in the CFU-4 zone as a building in conjunction with a forest and/or farm use. MCC 39.4070(C) & (T)(8).

*(T) Accessory Structures subject to the following:*

*(1) The accessory structure is customarily accessory or incidental to any use permitted or approved in this base zone, is located within 100 feet of the dwelling and is a structure identified in the following list.*

- (a) Garages or carports;
- (b) Pump houses;
- (c) Garden sheds;
- (d) Workshops;
- (e) Storage sheds, including shipping containers used for storage only;
- (f) Greenhouses;
- (g) Woodsheds;
- (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;
- (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;
- (j) Sport courts;
- (k) Gazebos, pergolas, and detached decks;
- (l) Fences, gates, or gate support structures; and
- (m) Mechanical equipment such as air conditioning unites, heat pumps and electrical boxes; and
- (n) Similar structures.

**Response:** There are four structures located within 100 feet of the dwelling as shown on the site plan: (1) the detached deck; (2) the above ground pool; (3) the garage/workshop; and (4) the storage shed. All of these structures qualify as accessory structures which are allowed uses in the CFU-4 zone. MCC 39.4070(T)(1)(a), (e), (i), (k). These accessory structures are all used for personal use and not for business purposes.

(2) *The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.*

(3) *The Accessory Structure may contain one sink.*

(4) *The Accessory Structure shall not contain:*

- (a) More than one story;
- (b) Cooking Facilities;
- (c) A toilet;
- (d) Bathing facilities such as a shower or bathing tub;
- (e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or
- (f) A closet built into a wall.

(5) *Compliance with MCC 39.8860 is required.*

(6) *The combined footprints of all Accessory Buildings on a Lot of Record shall not exceed 2,500 square feet.*

*(7) An Accessory Building exceeding any of the Allowed Use provisions above shall be considered through the Review Use provisions.*

*(8) Buildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions. Such buildings shall be used for their allowed farm purposes only and, unless so authorized, shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.*

**Response:** The deck, pool, garage/workshop and storage shed are not designed or used, temporarily or permanently, as a dwelling, do not contain a sink, do not include any of the items listed in subsection (T)(4), comply with MCC 39.8860 and the combined square footage of these accessory structures is less than 2,500 square feet. Therefore, these structures qualify as allowed accessory structures.

#### **39.4075 REVIEW USES.**

*(L) Structures or uses customarily accessory or incidental to any use permitted or approved in CFU, which do not meet the “accessory structures” standard in MCC 39.4070 Allowed Uses, but which meet the following provisions:*

*(1) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential unit.*

*(2) The Accessory Structure shall not contain a bathing tub.*

*(3) Any toilet or bathing facilities, such as a shower, shall be located on the ground floor of any multi-story building.*

*(4) An Accessory Structure containing a toilet or bathing facilities shall not contain Cooking Facilities.*

*(5) The Accessory Structure shall not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage.*

*(6) The applicant must show that building features or combined building footprints exceeding the Allowed Use provisions are the minimum possible departure from the Allowed Use standards to accommodate the use.*

*(7) Compliance with MCC 39.8860 is required.*

**Response:** The chicken house, two pigeon pens and the pump house would ordinarily qualify as allowed accessory structures, but they are located more than 100 feet from the dwelling. The former “dog house” is currently being used to shelter the Applicants’ chickens and the pigeon pens are used to shelter the Applicant’s pigeons. A shelter for pets is an allowed accessory structure in

the CFU-4 zone. MCC 39.4070(T)(1)(h). The pump house is an allowed accessory structure in the CFU-4 zone. MCC 39.4070(T)(1)(b). Although these structures are more than 100 feet from the dwelling, they qualify as review uses under MCC 39.4075(L). These accessory structures are all used for personal use and not for business purposes.

The chicken house, pigeon pens and pump house are not designed or used, temporarily or permanently, as a dwelling, do not contain a sink, do not include any of the items listed in subsection (L), comply with MCC 39.8860 and the combined square footage of these accessory structures are the minimum necessary to accommodate these uses. The Application includes drawings that show the dimensions of these accessory structures. Therefore, these structures qualify as review use accessory structures.

The Pre-filing Meeting Summary Notes states that the barn may not be able to satisfy the accessory structure requirements for a Review Use, but the barn is not subject to these accessory structure standards. As previously stated, the barn qualifies as an allowed use in the CFU-4 zone as a building in conjunction with a forest and/or farm use. MCC 39.4070(C) & (T)(8). A building in conjunction with a forest and/or farm use is not subject to the accessory structures standards in MCC 39.4075(L). Even if the barn was subject to these accessory structure standards, the barn satisfies these standards. The barn is not designed or used, temporarily or permanently, as a dwelling, does not contain a sink, does not include any of the items listed in subsection (L), complies with MCC 39.8860 and the square footage is the minimum necessary to accommodate this use. The Application includes drawings that show the dimensions of the barn.

#### **39.4105 BUILDING HEIGHT REQUIREMENTS.**

*(A) Maximum structure height – 35 feet.*

**Response:** All of the accessory structures are less than 35 feet.

#### **39.4110 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.**

*The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:*

*(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.*

**Response:** The setback and fire safety zone standards differ for those accessory structures located within 100 feet and more than 100 feet of the dwelling. The accessory structures within 100 feet of the dwelling are subject to 30-foot setbacks and the primary fire safety zone requirements. The accessory structures that are more than 100 feet from the dwelling are subject to 30-foot front setback and 130-foot side/back setbacks, and the primary and secondary fire safety zone requirements.

All of the accessory structures within 100 feet of the dwelling satisfy the setback and fire safety zone requirements. As shown on the site plan, the detached deck; above ground pool,

garage/workshop and storage shed are more than 30 feet from all property lines and satisfy the primary fire safety zone requirements.

The accessory structures that are more than 100 feet from the dwelling do not satisfy the setback or secondary fire safety zone requirements because it is not possible to satisfy those standards given the narrow width of the property. The barn is approximately 62 feet and 9 inches from the western property line, but it qualifies as an auxiliary forest building and farm use/agricultural building which are not subject to the setback or secondary fire safety zone requirements. The chicken house is approximately 22 feet and 9 inches from the eastern property line. The pump house and pigeon pens are located in the center of the Property, but they are less than 130 feet from the property line. Given that the property is only 200 feet wide, it is impossible to satisfy the 130-foot side setback regardless of where these structures are located. The Applicants demonstrated compliance with the variance and exceptions to fire safety zone requirements below.

*(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 39.4155 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.*

**Response:** The chicken house, pigeon pens and pump house are the only accessory structures subject to the secondary fire safety zone because they are the only structures that are more than 100 feet from the dwelling. None of these structures satisfy the secondary fire safety zone requirements. As explained below, the Applicants demonstrated that these structures are entitled to an exception to secondary fire safety zone requirements pursuant to MCC 39.4410.

*(D) Fire Safety Zones on the Subject Tract.*

*(1) Primary Fire Safety Zone.*

*(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.*

*(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended farther down the slope from a dwelling or structure as follows:*

**Response:** All of the structures satisfy the primary fire safety zone requirements. All of the structures include a fire break extending a minimum of 30 feet in all directions and the trees within this zone are spaced greater than 15 feet between the crowns.

*(2) Secondary Fire Safety Zone.*

*A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 39.4155.*

**Response:** The chicken house, pigeon pens and pump house are the only accessory structures subject to the secondary fire safety zone because they are the only structures that are more than 100 feet from the dwelling. The barn qualifies as an auxiliary forest building and farm use/agricultural building which are not subject to the setback or secondary fire safety zone requirements. As explained below, the Applicants demonstrated that the accessory structures are entitled to an exception to secondary fire safety zone requirements pursuant to MCC 39.4155.

### **39.4115 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES**

*(A) For the uses listed in this subsection, the applicable development standards are limited as follows:*

*(3) Accessory buildings shall meet the development standards of MCC 39.4115(E).*

*(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 39.4115(C) and (E);*

*(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B), (C) and (E);*

**Response:** The chicken house, pigeon pens and pump house are accessory structures that are more than 100 feet from the dwelling and therefore are subject to these standards. The barn qualifies as an auxiliary forest building and farm use/agricultural building, which are not subject to these requirements, but even if it was subject to these requirements the barn satisfies the applicable standards. The Applicants demonstrated compliance with the standards in Subsections (B)(2) and (3) below.

*(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):*

**Response:** These standards only apply to the accessory structures that are more than 100 feet from the dwelling. The accessory structures that are more than 100 feet from the dwelling satisfy the standards in Subsection (B)(2) and (3) as explained below.

(2) *The structure shall satisfy the following requirements:*

(a) *It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 39.4110;*

**Response:** The chicken house, pigeon pens and pump house, and the barn as well to the extent the County believes it is subject to the accessory building standards, have the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 33.2256. The surrounding properties are developed with residential uses and it appears forest practices are quite limited on these properties. These structures have no impact on adjoining lands and will not impede or prohibit forest or agricultural practices on nearby or adjoining properties. The barn is an agricultural use and therefore cannot adversely impact nearby or adjoining forest or agricultural lands. The chicken house and barn are located toward the back of the property, and other than a barn and greenhouse on an adjacent property are a significant distance from the other structures on the adjoining properties. The pigeon pens and pump house are located in the center of the western/eastern property lines and are a significant distance from the other structures on the adjoining properties. Therefore, these structures will not impact the uses on the adjoining properties.

(b) *Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*

**Response:** These structures have no adverse impact on forest operations and accepted farming practices on the tract. The barn supports the forestry and farming operation located on the Property, including the storage of fire wood, farm animals, hay and related farm equipment. The other structures are existing structures that have no impact on the forest and farming activities on the Property. If the County denied these existing accessory structures and the Applicants were forced to rebuild these accessory structures within 100 feet of the dwelling on the southern portion of the Property, the adverse impacts on the forest operations would be worse. There are 37 mature trees of various species and 75 immature western red cedar trees located in this area of the Property. Many of these trees would need to be removed in order to provide room to rebuild some or all of the accessory structures in this area. Therefore, approving these accessory structures will have less adverse impacts on the forest operations than requiring the Applicants to rebuild these structures in a forested area.

(c) *The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;*

**Response:** The amount of forest land used to site these structures, and the access road for these structures, is minimized. The barn is relatively small for a forestry/agricultural building and is the

size necessary to provide for the intended storage of fire wood, farm animals, hay and related farm equipment. The chicken house provides shelter from the Applicants' chickens and is the minimum size necessary to provide such shelter. The access road is the minimum length necessary to provide access from the northern or back portion of the property to the access at Gordon Creek Road given that it terminates at the top of the gully on the northern end of the Property. The Applicants cannot locate these structures on the southern portion of the Property because it would require a complete redesign of the front yard driveway, turnaround area and landscape for the dwelling. It would also increase the impacts on the forest operations because it would require the removal of many of the 37 mature trees and 75 immature western red cedar trees located in this area of the Property. The pigeon pens and pump house are located toward the front of the Property and are the minimum size necessary. The Applicants desire to maintain these existing improvements is reasonable and the exceptions to the secondary fire safety zone requirements are designed to accommodate these situations.

*(d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and*

**Response:** The gravel access road that serves the northern or back portion of the Property is in excess of 500 feet. The access road is the minimum length required and is necessary due to the physical limitations of the Property. The Property has unique physical limitations that necessitate the longer access road since the northern and southern portions of the property are split in two by a deep gully. The access road is necessary for the Applicants to be able to access and use the northern portion of the Property, including but not limited to providing access to salvage blow down and dead trees from the northern part of the property. The access road is the minimum length necessary given that it terminates at the top of the gully on the northern end of the Property.

*(3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:*

*(a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access;*

**Response:** The access road was developed and maintained in accordance with the requirements of the structural fire service. Pursuant to the attached Fire Services Review, the Applicants are willing to agree to a condition of approval requiring that the access road be widened one (1) foot.

*(b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source;*

**Response:** The access road meets the fire apparatus access standards of the Oregon Fire Code as evidenced by the attached Fire Services Review.

*(C) The dwelling or structure shall:*

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;*
- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;*
- (3) Have a fire retardant roof; and*
- (4) Have a spark arrester on each chimney*

**Response:** The accessory structures comply with the applicable building code and have a fire retardant roof. The accessory structures do not have a chimney.

*(E) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the Lot of Record.*

- (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.*

**Response:** There are sewage and stormwater disposal systems located on the Property. The Application includes a septic review certification and stormwater certificate evidencing this fact. The stormwater system is 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 as evidenced in the stormwater certificate.

## **39.4155 EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES.**

*(A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of MCC 39.4155 (B) when:*

- (1) *The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or*
- (2) *The dwelling or structure will be located within 130 feet of the centerline of a public or private road serving two or more properties including the subject site; or*
- (3) *The proposed dwelling or structure will be clustered with a legally existing dwelling or structure.*

**Response:** The Property is approximately 200 feet wide, well below an average lot width of 330 feet. Therefore, the Application satisfies MCC 39.2310(A)(1).

*(B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:*

- (1) *If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or*
- (2) *If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and*
- (3) *There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and*
- (4) *A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of (B) (1) are utilized, or*
- (5) *A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of subsection (B) (2) are utilized. Expansions of existing single family dwellings as allowed by MCC 39.4075(A) shall not be required to meet this standard, but shall satisfy the standard of MCC 39.4155(C)(3) and (E).*
- (6) *All accessory structures within the fire safety zone setbacks required by MCC 39.4110, and all accessory structures within 50 feet of a dwelling, shall have a central monitored alarm system.*
- (7) *All accessory structures within 50 feet of a building shall have exterior walls constructed with materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.*

*(8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban-Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication.*

*Exception: The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour-rated fire-resistive construction or heavy-timber construction.*

**Response:** The secondary fire safety zone for the chicken house, pigeon pens, pump house, and the barn to the extent the County believes it is subject to these standards, are less than 50 feet. These structures were constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction. There are no combustible fences within 12 feet of the exterior surface of the dwelling or structure. None of these structures are within 50 feet of the dwelling and therefore a central station monitored alarm system is not required. None of these structures are located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent.

### **39.8215 VARIANCE APPROVAL CRITERIA.**

*The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (G) are met:*

**Response:** The Applicants request a variance from the 130-foot setback requirements applicable to the barn and chicken house. The Applicants demonstrated compliance with MCC 39.8125(A)-(G) below.

*(A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or base zone. The circumstance or condition may relate to:*

*(1) The size, shape, natural features and topography of the property, or*

*(2) The location or size of existing physical improvements on the site, or*

*(3) The nature of the use compared to surrounding uses, or*

*(4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or base zone, or*

*(5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.*

*(6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.*

**Response:** The unique size, shape, natural features and topography of the Property make it impossible to satisfy the setback requirements. The Property is one of several long and narrow properties created in this area in the 1970's. The Property is significantly smaller than the 80-acre minimum and is only 200 feet wide. This width makes it impossible to satisfy the 130-foot side setback requirement.

The Applicants' variance request is very similar to the setback variances for the neighboring property to the east (Sorenson) for a large horse barn riding arena, which the County approved pursuant to Case File No. T3-08-001. We enclosed a copy of the County Hearings Officer's decision approving the neighbor's variance request, dated September 23, 2009 (the "Hearings Officer's Decision").

This variance criterion requires the Applicants to show that a condition or circumstance that does not apply generally to other property in the same vicinity or zoning district justifies approval of a variance. The code lists examples of conditions that may provide a basis for approval. As noted below and supported by the Hearings Officer's Decision, there are several conditions and circumstances which together create a condition or circumstance that does not apply generally to other property in the same vicinity or zoning district and support approval of the variance.

First, similar to the Sorenson property the size of the Property is substantially smaller than required by the minimum lot size of CFU 4 zoning district. The minimum lot size is 80 acres. At 5.04 acres, the lot is one of the smaller lots found in the CFU 4 zoning district. It is 0.5 acres smaller than the Sorenson property, which the Hearings Officer's Decision concluded is smaller than most lots in the surrounding area.

Second, similar to the Sorenson property the Property is very narrow and very deep. There are other smaller lots in the CFU 4 zoning district which are narrow and deep, but as the Hearings Officer's Decision noted the majority of these other lots are wider than the Property. This likely is the result of an intent to provide a home location in the front of the lot and a wood lot in the rear of the property.

Third, as noted in the Hearings Officer's Decision the risk of forest fire increases if larger structures are sited closer than 100 feet. Similar to the Sorenson application, it is better to space these larger structures more than 100 feet from the dwelling to reduce the risk of fire. This spacing also provides a defensible space for fire fighting around each structure.

Fourth, similar to the Sorenson property it is necessary to locate the barn and chicken house more than 100 feet away from the dwelling to avoid negative impacts from odors and flies. The barn is currently used for purposes of storing farm animals (pigs, cattle and goats), hay and related farm equipment. The chicken house now houses the Applicants' chickens. These types of uses clearly will create negative impacts from odors and flies.

Fifth, the barn and chicken house cannot be located within 100 feet of and to the rear of the house because there is an existing drain field between the house and barn/chicken house. The area directly north of the dwelling is reserved for future drain field and it is too steep to build structures further north of this drainage area. The area south of the dwelling is already occupied with an access drive and other structures.

Sixth, the barn and chicken house would need to be located less than 100 feet from the dwelling if it were placed in the front yard in a location that complied with the front yard setback of 30 feet due to the location of the existing dwelling and other structures.

Seventh, hay is stored in the barn and the barn is a large structure. As a result, the barn has a higher risk of fire than other structures and a fire in the structure will be larger and more likely to spread than a fire in a smaller building. It is important to keep the barn away from the dwelling in order to reduce the risk that a fire in the barn will spread to the nearby dwelling.

Eighth, the front of the Property has been developed with a paved driveway, which is designed in a loop. That design allows emergency vehicles to turn around on the property and for good vehicle circulation in the event of a fire. The construction of the barn and chicken house in front of the dwelling would require the modification or removal of this driveway area.

Ninth, the Applicants would not be able to “relocate” the barn and chicken house to the southern portion of the Property, but rather would be required to completely rebuild these structures. Rebuilding these structures on the southern portion of the Property would also require the removal of many of the 37 mature trees and 75 immature western red cedar trees located in this area of the Property.

Tenth, the barn and chicken house need to be located at the back of the Property for security reasons as other neighbors in the area have had significant problems with people breaking into structures located in the front yard and stealing valuable goods, materials and equipment. Requiring that these structures be rebuilt in the front yard will significantly increase the risk of theft.

*(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.*

**Response:** The narrow width of the Property is not of the Applicants making because it was the same width when the Applicants purchased the Property in 1975. The County adopted the 130-foot side setback requirements after the Applicants purchased the Property.

*(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.*

**Response:** There is a practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard for a variety of reasons. It is impossible to satisfy the 130-foot side setback requirement given the narrow width of the property regardless of where these structures are located. Given the topography and existing improvements around the dwelling, the Applicants cannot locate these structures within 100 feet from the dwelling. The northern and southern portions of the property are split in two by a deep gully. The area directly north of the dwelling is reserved for future drain field and it is too steep to build structures further north of this drainage area. The area south of the dwelling is already occupied with an access drive and other structures. The Applicants would not be able to “relocate” the accessory structures to the southern portion of the Property, they would be required to completely rebuild these structures. Rebuilding these structures on the southern portion of the Property would also require the removal of many of the 37 mature trees and 75 immature western red cedar trees located in this area of the Property. Additionally, the barn and chicken house need to be located at the back of the Property for security reasons as other neighbors in the area have had significant problems with people breaking into structures located in the front yard and stealing valuable goods, materials and equipment. It is also better from a fire safety standpoint to locate these structures more than 100 feet from the dwelling. These structures should also be located more than 100 feet from the dwelling to avoid negative impacts from odor, noise and flies.

*(D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or base zone in which the property is located, or adversely affects the appropriate development of adjoining properties.*

**Response:** Granting the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zoning district in which the property is located, or adversely affects the appropriate development of adjoining properties. These structures are located toward the back of the property, away from structures on the adjoining properties, and therefore will not impact the uses on the adjoining properties. Several other properties in the vicinity have a similar narrow width and have existing structures that are well within the 130-foot setback. As noted in the Hearings Officer’s Decision, the County approved a similar setback variance for the adjacent property to the east (Sorenson) for a large horse barn riding arena. The same considerations for authorizing a variance should apply in this case as well. The presence of the barn and chicken house will not affect the development of adjoining properties.

*(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.*

**Response:** The variance requested is the minimum necessary to alleviate the difficulty. The chicken house is located in close proximity to the barn in order to allow for more efficient access to both structures, and to mitigate any potential impacts on the adjacent residences which are located closer to Gordon Creek Road. To the extent the County determines the barn is subject to these standards, the barn was placed at this location because it is the closest flat land on this portion of the Property. There are no structures on the adjoining land in close proximity to any of these structures. The adjacent properties already have large structures within the 130-foot setback areas and therefore the Applicants’ structures will not be out of character with the development in the surrounding area. *See Hearings Officer’s Decision.*

*(F) Any impacts resulting from the variance 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.*

**Response:** Any impacts resulting from this variance are mitigated to the extent practical. There will be no light or privacy impacts on the adjoining properties. These structures are located toward the back of the property, away from structures on the adjoining properties, and therefore there are no structures on the adjoining land in close proximity to any of these structures the barn and chicken house. The adjacent properties already have large structures within the 130-foot setback areas and therefore the Applicants' structures will not be out of character with the development in the surrounding area. *See Hearings Officer's Decision.*

*(G) The variance must be in support of a lawfully established use or in support of the lawful establishment of a use.*

**Response:** The variance will support lawfully established uses on the Property. The Application seeks approval of the structures noted in the Compliance Letter and is intended to bring these structures into compliance.