

STAFF REPORT to the PLANNING COMMISSION

For the June 5, 2017 Public Hearing Deliberations (Continued from May 1, 2017)

FARM STAND PROVISIONS

(CASE FILE: PC -2017-7340)

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1.0 STAFF RESPONSE TO MAY 1, 2017 PUBLIC TESTIMONY

Based on the testimony received at the May 1, 2017 public hearing on proposed farm stand provisions, the Planning Commission continued the hearing in order to obtain further information before final deliberation and decision; however, the Planning Commission closed the hearing to further public testimony.

The Planning Commission asked staff to provide additional information on three specific points:

1. What farm stands were used in determining an average farm stand size upon which the proposed 1,000 s.f maximum building size is based. Is that the right number to use?
2. Clarify that the 25% limitation on incidental sales and promotional event fees is measured against the farm stand's gross annual retail revenue.
3. There are several existing farm stands that exceed the proposed maximum size standard. If they wanted to amend their current farm stand permit it would not be fair to require them to meet the new standards. They should be grandfathered by explicitly stating so in the code. How can existing farm stands that don't comply with the new standards be assured they can continue their current operation?

The following is staff's response to each of these points.

1. Farm Stand Size

The following table provides information on the farm stands that were used in arriving at the proposed 1,000 s.f. maximum floor area for farm stand structures. The average size of these farm stands is 745 square feet.

Farm Stand Name	Location	Building Size (s.f.)	Source of Info
Kunkel Farm Stand	Sauvie Island	100 (tent)	County land use permit
Burns Farm Stand	West of Sandy River	1,296	County land use permit

Growing Seed Farm	East of Sandy River	936	Scaled from aerial photo
Fuji Farms Berry Stand	Stark St and S Troutdale Rd	168	Scaled from aerial photo
Boring Farm Stand	Boring, OR	350	Scaled from aerial photo
Damascus Farm Stand	Damascus, OR	1,625	Scaled from aerial photo

It is important to note that the three major farm stands on Sauvie Island were not included in computing the proposed farm stand size standard. Based upon the 2013 Bella Organics Court of Appeals decision, these three farm stands are not what was envisioned under the statute. For comparison purposes, the size of the three Sauvie Island farm stands is shown below.

Farm Stand Name	Building Size (s.f)	Retail Market Area (s.f)	Other Uses in Building(s)	Info Source
Kruger Farms	9,950	6,900	Cold storage and wholesale	2009 farm stand permit application
Bella Organics	5,000	2,500	Wholesale	2008 farm stand permit application
Pumpkin Patch	5,900 (3 buildings)	5,000	Gift shop (600 sf) Café (300 sf)	2005 farm stand permit application

2. Gross Annual Revenue

Mark Greenfield testified that the 25% limitation rule is in relationship to the farm stand's total retail sales. The proposed standard as written does not say that and should be revised to make this relationship clear.

Staff agrees with this point and has revised proposed subsection 33.6765 (D) as shown in the Code Amendments section of this staff report.

3. Grandfathering Existing Farm Stands That Become Nonconforming

Testimony received at the last hearing raised concerns about the effect setting a 1,000 square foot maximum size for all farm stand structures would have on those existing farm stand structures that exceed this standard. Several large farm stands on Sauvie Island would fall into this category. The concern seemed to be asking for assurances that existing farm stands could continue to operate, and even expand, after becoming nonconforming under the new standards. The Planning Commission asked staff to explore the addition of a grandfathering provision.

Staff has examined this request and concludes that it is not necessary to add language to grandfather existing permitted farm stands because existing farm stands will be grandfathered automatically; they will be subject to the nonconforming use provisions if they want to expand or alter their activities in the future.

Under the proposed new provisions, some aspects of existing farm stands will become nonconforming (structure size, for example), while other aspects will be conforming because a

farm stand already complies with the new standards (parking spaces, for example). The nonconforming use provisions of the zoning code are quite lenient in allowing alterations or expansions as long as the alteration, expansion or replacement of a nonconforming use is a change in the use, structure, or physical improvement that has no greater adverse impact on the neighborhood or if it is required for the use to comply with State or County health or safety requirements. A nonconforming use is allowed to continue operation as authorized by its prior land use permit without the need for additional permission. A nonconforming farm stand would be required to conform with all the new farm stand provisions if it has been abandoned or discontinued for any reason for more than two years and then resumes operation.

Alternatively in some cases, an existing farm stand could seek a modification of a condition of its current land use permit by applying for a modification of conditions. This request is processed in the same manner as the original application. With either a nonconforming use application or a modification of conditions application, there can be no guarantee of approval because each application is evaluated on its own merits.

For the above reasons, staff does not propose any text revisions in response to this request.

2.0 PROPOSED CODE AMENDMENTS

Staff Note:

Existing text to be deleted is shown with ~~strikeout~~.

New text being added is shown with **bold underline**.

Changes from the May 1, 2017 version are shown in **red**.

EFU Review Uses in Chapters 33, 34, 35, and 36

§ 33.2625 REVIEW USES

§ 34.2625 REVIEW USES

§ 35.2625 REVIEW USES

§ 36.2625 REVIEW USES

.....

(G) ~~A farm stand when found that~~ **subject to 33(34,35,36).6750 through .6765**

~~(1) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items, and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand; and~~

~~(2) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.~~

~~(3) As used in this section, “farm crops or livestock” includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, “processed crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.~~

~~(4) As used in this section, “local agricultural area” includes Oregon or an adjacent county in Washington that borders Multnomah County.~~

Chapter 35 –East of Sandy -- Conditional Uses in MUA-20, RR and SRC.

Staff Note: The following stricken text occurs only in Chapter 35 and is specific to farm stands listed as a conditional use in the MUA-20, RR and SRC zones.

§ 35.2830 *CONDITIONAL USES IN MUA-20*

~~.....~~

~~(F) A farm stand subject to MCC 35.6750 and MCC 35.6760.~~

§ 35.3130 *CONDITIONAL USES IN RR*

~~.....~~

~~(E) A farm stand subject to MCC 35.6750 and MCC 35.6760.~~

§ 35.3330 *CONDITIONAL USES in SRC*

~~.....~~

~~(E) A farm stand subject to MCC 35.6750 and MCC 35.6760.~~

FARM STANDS

~~§ 35.6750 —~~ DEFINITIONS

~~(A) *Local agricultural area* — Oregon or an adjacent county in Washington that borders Multnomah County.~~

~~(B) *Farm crops or livestock* — Both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, “processed crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.~~

~~§ 35.6760 —~~ CRITERIA FOR APPROVAL

~~(1) — The parcel where the farm stand is located is adjacent to the Historic Columbia River Highway (Highway) or has road frontage on a County maintained road that intersects with the~~

~~Highway. A portion of the parcel's road frontage shall be within 500 feet, as driven, from the Historic Columbia River Highway.~~

~~(2) The farm stand is designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items, and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand.~~

~~(3) A farm stand operation that includes fee-based activities shall be located on a lot of with a minimum lot size of five acres and 75 percent of the lot must be used in the farm operation. The farm stand shall be open for retail sales of farm crops and livestock during all hours that fee-based activities are offered.~~

~~(4) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.~~

~~(5) The proposed farm stand shall meet the criteria in MCC 35.6315.
(Ord. 1198, Added, 03/14/2013)~~

FARM STANDS

33 (34, 35, 36).6750 PURPOSES

The purposes of these regulations are to limit the area, location, design, and function of farm stand promotional activities, events and farm gatherings to the extent allowed by law in order to retain a maximum supply of land in production for farm crops or livestock, to ensure public health and safety, to minimize impacts on nearby farming operations, residents, roads, traffic circulation, wildlife and other natural resources, and to maintain the rural character.

33 (34, 35, 36).6755 DEFINITIONS

As used in MCC 33(34, 35, 36).6750 through 33(34, 35, 36).6765, the following words shall have the following meaning:

~~(3) As used in this section, “fFarm crops or livestock” includes - bBoth fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, “pProcessed farm crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.~~

(4) ~~As used in this section, "Local agricultural area - includes Oregon or an adjacent county in Washington that borders Multnomah County.~~

Prepared Food Items -- Food that has been prepared and is sold for immediate consumption.

Promotional Activity – A fee-based activity, gathering or event in conjunction with a farm stand that promotes the contemporaneous sale of farm crops or livestock from the farm stand and whose primary purpose is significantly and directly related to the farming operation. Permissible farm stand promotional activities include harvest festivals, corn mazes, hayrides, farm animal exhibits, small farm-themed gatherings such as birthday parties and picnics, school tours, musical entertainment (but not concerts), farm product food contests and food preparation demonstrations, and similar activities. Fee-based activities, such as weddings, corporate retreats, family reunions, anniversary gatherings, concerts, amusement park rides, sporting events and other activities for which the primary focus is the underlying cause for the gathering or activity rather than the farm operation and the sale of farm crops, are prohibited. Farm-to-plate meals can also be a promotional activity if more than 50 percent of the food making up the farm-to-plate meal comes from farm crops or livestock grown on the farm.

33 (34, 35, 36).6760 FARM STAND PERMITS

(A) A farm stand that occupies one acre or less, inclusive of parking area, ingress and egress driveways, product display area outside the farm stand structure, and has no promotional activities, shall be reviewed as a Type I permit.

(B) A farm stand that occupies more than one acre, inclusive of parking area, ingress and egress driveways, product display area outside the farm stand structure, or has one or more promotional activities, shall be reviewed as a Type II permit.

33 (34, 35, 36).6765 STANDARDS FOR FARM STANDS

(A) The farm stand is associated with and located on the same lot, parcel or tract as an active farm operation.

(1) Not more than one farm stand permit, whether Type I or Type II, shall be granted per farm tract.

(2) Not more than one Type II farm stand permit shall be granted where any Person has a financial or operational interest in more than one farm operation or in an farm operation occurring on more than one lot, parcel or tract. The prohibition in this paragraph applies, but is not limited, to those instances in which more than one legal entity has a financial or operational interest in the active farm stands described in this paragraph and one or more individuals has a financial or operational interest in such entities.

(B) One or more structures may be approved as part of the farm stand provided that such structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. Whether permanent or temporary, structures for banquets, public gatherings or public entertainment and structures designed or used for occupancy as a residence or for activity other than the sale of farm crops and livestock are prohibited.

(C) The sale of retail incidental items may occur in farm stand structures. Promotional activity shall occur outside of farm stand structures. The farm stand shall be open for retail sales of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, during the hours that promotional activity is offered.

(D) The annual gross revenue derived from the sale of retail incidental items and from fees collected for promotional activity, including sales made and fees collected by third parties, shall not make up more than 25 percent of the total gross annual retail revenue of the farm stand. When taken together, the nature and extent of the farm stand promotional activity shall be reasonable in light of the 25 percent limitation set forth in this subsection in relation to the total gross annual retail revenue of the farm stand. On an annual, calendar-year basis, and prior to July 1 of each year, the farm stand operator shall submit a written statement prepared by a certified public accountant that certifies compliance with the 25 percent limitation set forth in this subsection for the previous tax year. The compliance statement required in this subsection shall be submitted on the form and in the manner directed by the County.

(E) The square footage of all farm stand structures shall not exceed 1,000 square feet.

(F) The maximum land area occupied by farm stand structures and associated permanent parking shall be two acres.

(G) As compared to other alternatives, the siting of the farm stand, together with all associated structures, promotional activity areas, parking areas, and vehicular and pedestrian traffic circulation routes, or any part thereof, minimizes the amount of land area removed from the agricultural land base and, secondarily, minimizes interference with agricultural operations on adjacent lands.

(H) The amount of land used for promotional activity, including temporary parking, shall not exceed five percent or five acres of the property on which the farm stand is located, whichever is less, and is the minimum amount necessary to serve the promotional activity.

(I) Temporary parking for promotional activity may occur on high-value soils only if non-high-value soils are unavailable and the final harvest of the area to be used for temporary parking occurs prior to commencement of the temporary parking use or the area to be used for temporary parking was not farmed during the current growing season. The temporary parking area shall not be graveled or otherwise rendered

unusable for agriculture in the following growing season and may not be permanently taken out of agricultural production in order to serve as a temporary parking area.

(1) No mud, dirt, rock or other debris from the temporary parking area shall be deposited upon a public road. If these materials are tracked onto a public road, the event operator shall be responsible for its immediate removal.

(J) There shall be no charge or fee collected for the parking of vehicles in either permanent or temporary parking areas. Permanent parking areas are to remain available for public parking during all hours that the farm stand is open to the public and may not be used for promotional activity or occupied by picnic tables, sales displays, or other structures that obstruct the parking use.

(K) No artificial amplification of sound shall occur before 9:00 AM or after 8:00 PM. At no time shall a promotional event generate noise above 60 dB(A) (decibels adjusted) at the property lines. (Note: The sound intensity of 60 decibels is comparable to conversations in a public place like a restaurant.)

(L) Farm stand signage shall comply with the applicable provisions of MCC 33(34,35,36).7400 through 33(34,35,36).7505.

(M) Exterior lighting shall be in compliance with the dark sky lighting standards of MCC 33(34, 35, 36).0570)

OFF-STREET PARKING AND LOADING

§ 33 (34, 35, 36).4180 IMPROVEMENTS

(A) Surfacing

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

...

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