

**BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER**

This decision consists of a Condition, Findings of Fact and Conclusions

April 8, 1997

CU 13-96

Conditional Use Request

Applicant requests Conditional Use approval for conversion of a residence to retail nursery use and office use consistent with uses allowed in the zone, and construction of a greenhouse and shade house on the subject property.

Location: 30039 and 30105 SE Orient Drive

Property Description: Tax Lot 36 and Tax Lot 103, Section 19, 1S, 4E

Zoning: Rural Center

Applicant Owner: Kathy Taggart
30039 SE Orient Drive
Gresham, OR 97080

Hearings Officer Decision:

Approve applicant's request for Conditional Use to allow sales of nursery products not grown on the premises, the conversion of a residence to retail nursery office use, along with other office uses consistent with those uses allowed in the zone, plus the construction of a greenhouse and shade house on the subject property, based on the findings and conclusions contained herein and subject to the condition of approval.

Condition of Approval:

The applicant shall submit appropriate documents for review and approval by Design Review before this decision becomes effective.

PARTY STATUS

Parties to the Proceeding:

The persons, agencies and organizations who submitted written or oral testimony in the proceeding:

- A. Multnomah County Planner Bob Hall submitted a staff report and testified at the hearing.
- B. The applicant Kathy Taggart appeared at the hearing and testified in support of the application.

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Procedural Issues

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

FACTS

1. Applicant's Proposal

Applicant requests approval of a Conditional Use permit on this property to allow its use for the sales of nursery products not grown on the premises, the conversion of a residence to retail nursery and office use, plus the construction of a greenhouse and shade house on the subject property.

A previous request for the sale of nursery products grown on the property was approved on September 26, 1996 (PRE 13-96). That use has existed on the property since that time. This request would expand the use to sales of nursery stock grown elsewhere and allow office use of the property.

2. Site and Vicinity Information

This 0.97 acre parcel is located on the north side of Orient Drive just westerly of its intersection with SE Bluff Road at the easterly edge of the Orient community. The property is level and developed with a 1½ story dwelling constructed in 1923. Access to the property is provided by a wide circular drive with access points nearly 150 separate.

The surrounding area is a mixture of rural residences, community service and rural commercial uses. The Orient community provides a wide range of rural commercial uses such as a feed store, lumberyard, implement dealership, store, barbershop, etc. The community has a fire station, two elementary schools, and Sam Barlow High School is located approximately two miles to the north. Lot sizes within the Rural Center area range from approximately one-quarter to over two acres in size.

3. Testimony and Evidence Presented

- A. Bob Hall testified for the County and summarized the Staff Report. During the course of the hearing Mr. Hall amended his staff report to clarify the property description and the nature of the application. In addition to requesting retail nursery uses, the applicant was also requesting use of the residence for other office uses consistent with the uses allowed in the zone.
- B. The applicant Kathy Taggart appeared at the hearing and testified in support of the application.

STANDARDS AND CRITERIA, ANALYSIS AND FINDINGS OF FACT

1. MULTNOMAH COUNTY ZONING CODE CRITERIA:

MCC 11.15.2252(B)(1) allows approval of limited rural service commercial uses such as local stores, shops, offices, repair shops, and similar uses in the Rural Center district when it is demonstrated that the request;

(1) Is consistent with the character of the area;

Finding: The surrounding Orient community is a rural center with a wide range of community and commercial services. A retail nursery will be compatible with that character by adding to the range of commercial services available to the community and surrounding rural area.

(2) Will not adversely affect natural resources;

Finding: There are no identified natural resources that would be adversely affected by the conversion of this property and residence to nursery sales.

(3) Will not conflict with farm or forest uses in the area;

Finding: There are no forest uses in the surrounding area. The majority of the agricultural uses in the area are nurseries. A facility for the sale of nursery products will be compatible and not conflict with such agricultural activities.

(4) Will not require public services other than those existing or programmed for the area;

Finding: The proposed use will not require any public services beyond those currently supporting the residential use of the property.

(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable

Finding: The property is not within a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife.

(6) Will not create hazardous conditions; and

Finding: There are no identified hazardous conditions resources that would result from the conversion of this property and residence to nursery sales

(7) Will satisfy the applicable policies of the Comprehensive Plan.

See (2) below for a discussion of Comprehensive Plan Policies.

2. MULTNOMAH COUNTY COMPREHENSIVE PLAN POLICIES:

Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision include:

(1) POLICY 7: RURAL CENTERS

THE COUNTY'S POLICY IS TO ESTABLISH AND MAINTAIN RURAL CENTERS WHICH ARE INTENDED PRIMARILY FOR COMMERCIAL AND COMMUNITY SERVICES NEEDED BY THE RESIDENTS OF THE RURAL AREAS OF THE COUNTY, AND TO PROVIDE SOME TOURIST SERVICES. RURAL CENTERS ARE OR MAY BE ESTABLISHED ON THE BASIS OF EXISTING CENTER DEVELOPMENT, ON LOCAL AREA NEEDS, ON AN EVALUATION OF PROBABLE IMPACTS ON ADJACENT NATURAL RESOURCE AREAS, ON THE DEMAND FOR LAND TO SERVE THE PRIMARY PURPOSES IN A COMPACT PATTERN, AND ON THE CAPACITY AND CONDITION OF EXISTING SUPPORT SERVICES.

EXPANSION OF A RURAL CENTER (RC) TO ADJACENT LAND SHALL BE BASED UPON FINDINGS THAT:

- A. LAND ZONED EFU WILL NOT BE INCLUDED UNLESS THAT IS THE ONLY LAND PHYSICALLY AVAILABLE;
- B. INSUFFICIENT VACANT AVAILABLE LAND EXISTS WITHIN THE CENTER;
- C. THE EXPANSION WILL NOT SIGNIFICANTLY IMPACT ADJACENT NATURAL RESOURCE OR RURAL RESIDENTIAL AREAS OR THAT SUCH IMPACTS CAN BE MITIGATED;
- D. THE EXPANSION WILL BE ADJACENT TO EXISTING RC BOUNDARIES; AND
- E. THE EXPANSION IS NOT FOR THE PRIMARY PURPOSE OF RESIDENTIAL DEVELOPMENT.

THE COUNTY SHALL ENCOURAGE THE LOCATION OF SUITABLE USES WITHIN A RURAL CENTER BY:

- 1. MEASURING THE NEED FOR A USE BASED UPON THE PRIMARY INTENT OF THE CENTER.

2. DETERMINING THAT SUFFICIENT LAND EXISTS WITHIN A CENTER TO ACCOMMODATE THE NEEDED USES AND MAINTAINING A MEASUREMENT OF ABSORPTION RATE OF VACANT LANDS.
3. ESTABLISHING DEVELOPMENT STANDARDS COMMENSURATE WITH THE RURAL NATURE OF THE AREA.
4. ENSURING THAT ADJACENT NATURAL RESOURCE AREAS ARE MINIMALLY IMPACTED.

Finding: This policy is satisfied through the Rural Center designation of the property and the Code provisions which allow this application to be considered.

- (2) POLICY NO. 13, AIR, WATER AND NOISE QUALITY: MULTNOMAH COUNTY, ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. ... FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS.

Finding: No significant impact on air pollution will result from the conversion of the single-family residence to office space. Water provided to the site is in concert with D.E.Q. and State Water Resource requirements.

- (3) POLICY NO. 14, DEVELOPMENT LIMITATIONS. THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

- A. SLOPES EXCEEDING 20%;
- B. SEVERE SOIL EROSION POTENTIAL;
- C. LAND WITHIN THE 100 YEAR FLOOD PLAIN;
- D. A HIGH SEASONAL WATER TABLE WITHIN 0-24 INCHES OF THE SURFACE FOR MORE THAN 3 OR MORE WEEKS OF THE YEAR;
- E. A FRAGIPAN LESS THAN 30 INCHES FROM THE SURFACE; AND
- F. LANDS SUBJECT TO SLUMPING, EARTH SLIDES OR MOVEMENT.

Finding: This property is level and exhibits none of the above development limitations.

(4) POLICY NO. 22, ENERGY CONSERVATION: THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. ... THE COUNTY SHALL REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:

- A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;
- B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND RECREATION CENTERS;
- C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN AND BICYCLE FACILITIES;
- D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC CONDITIONS TO ADVANTAGE.
- E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES.

Finding: This proposal conserves energy by locating a retail use with direct access to a rural arterial within a developed rural center in close proximity to nursery stock production areas.

(5) POLICY 27, COMMERCIAL LOCATION THE COUNTY'S POLICY IS TO:

- A. IMPROVE THE AVAILABILITY AND ACCESSIBILITY OF CONSUMER GOODS AND SERVICES BY SUPPORTING THE LOCATION AND SCALING OF COMMERCIAL DEVELOPMENT TO MEET THE NEEDS OF THE COMMUNITY AND TO REINFORCE COMMUNITY IDENTITY
- B. ENCOURAGE COMMERCIAL ACTIVITY EXPANSION AND SITING AT LOCATIONS WHICH WILL REINFORCE ORDERLY AND TIMELY DEVELOPMENT AND PROVISION OF PUBLIC FACILITIES AND SERVICES.

- C. ENCOURAGE LAND USE DEVELOPMENT PATTERNS WHICH SUPPORT THE EFFICIENT USE OF EXISTING COMMERCIAL DISTRICTS AND MODES OF ACTIVITY.
- D. MAINTAIN A VACANT AND REDEVELOPABLE, BUILDABLE LAND INVENTORY RESPONSIVE TO THE LOCATIONAL AND SITING NEEDS OF COMMERCIAL ENTERPRISES.
- E. CLASSIFY COMMERCIAL DEVELOPMENTS ACCORDING TO THEIR FUNCTION, TENANT/TENANT MIX, AND SCALE OF OPERATIONS, AS FOLLOWS:

This request is classified as a Local Isolated commercial development

SCALE	INTENT AND PURPOSE	PRIMARY TENANT/ TENANT MIX INCLUDES	GROSS LEASEABLE AREA(@
LOCAL ISOLATED	TO ALLOW FOR SMALL BUSINESS TO BE INTEGRATED INTO OTHER USE AREAS WHERE THE SCALE AND IMPACT WILL BE COMPATIBLE WITH THE ADJACENT CHARACTER.	VARIABLE	1,000 TO 10,000 SQ. FT.

Finding: This request proposes a possible tenant mix compatible with the adjacent character. The property is to be utilized for nursery stock sales and other compatible office uses, including but not limited to, garden design, landscaping, bookkeeping, and retail uses such as garden and gifts. The proposal would integrate small business into a rural center developed with a wide range of commercial uses.

- F. USE THE FOLLOWING ESTIMATES AS INDICATIVE OF THE MARKET AREA POPULATION AND SITE SIZE TYPICAL OF THE FOLLOWING SCALES OF COMMERCIAL DEVELOPMENT:

SCALE	MARKET AREA POPULATION	SITE SIZE
5. LOCAL ISOLATED	VARIABLE	LESS THAN 0.5 ACRES

Finding: This commercial use would serve a variable population consisting of residents in and around the Orient community plus residents of the Gresham-Troutdale areas. The site size is larger than normal local isolated commercial but is necessary due to the outside display area required of nursery sales.

- G. LOCATE COMMERCIAL ESTABLISHMENTS ON SITES WITH AVERAGE SLOPE GRADES CONSISTENT WITH THE ACTIVITY'S SCALE OF OPERATIONS AND IMPACTS. SITE SLOPE REQUIREMENTS BY SCALE ARE:

SCALE	SLOPE
5. LOCAL ISOLATED	10%

FOR SITES WITH AVERAGE SLOPES STEEPER THAN THE STANDARD, THE DEVELOPER MUST BE ABLE TO DEMONSTRATE THAT THROUGH ENGINEERING TECHNIQUES, ALL LIMITATIONS TO DEVELOPMENT AND THE PROVISION OF SERVICES CAN BE MITIGATED.

Finding: This site is essentially level; therefore, exhibits no limitations due to slope.

- H. SUPPORT THE LOCATION OF COMMERCIAL ACTIVITIES ON EXISTING TRANSPORTATION SYSTEMS WITH VOLUME CAPACITIES AND MODAL MIXES AVAILABLE AND APPROPRIATE TO SERVICE PRESENT AND FUTURE SCALES OF OPERATION. VEHICULAR ACCESS REQUIREMENTS BY SCALE OF DEVELOPMENT ARE:

SCALE	VEHICULAR ACCESS REQUIREMENTS
5. LOCATED ISOLATED AND HOME OCCUPATION	NO ADVERSE NEIGHBORHOOD IMPACTS.

Finding: This property has direct frontage on a rural arterial. Therefore, it will have no adverse impacts on local traffic patterns.

- I. RESTRICT THE SITING OF COMMERCIAL ACTIVITIES IN LOCATIONS WHERE THE SITE WOULD CAUSE DANGEROUS INTERSECTIONS OR TRAFFIC CONGESTION, CONSIDERING THE FOLLOWING:

1. ROADWAY CAPACITIES
2. EXISTING AND PROJECTED TRAFFIC COUNTS
3. SPEED LIMITS
4. NUMBER OF TURNING MOVEMENTS

Finding: The Oregon Department of Transportation has been notified of this request and indicates that no improvements will be required as a result of the proposed modified use. Adding the sale of wholesale purchases and office use of an existing residence should have minimal, if any, affect traffic generated by the use.

- J. SUPPORT COMMERCIAL DEVELOPMENT SITING AND EXPANSION AT SITES OF A SIZE WHICH CAN ACCOMMODATE THE PRESENT AND FUTURE USES, AND IS OF A SHAPE WHICH ALLOWS FOR A SITE LAYOUT IN A MANNER WHICH MAXIMIZES USER CONVENIENCE, ENERGY CONSERVATION, AND PEDESTRIAN AND BICYCLE ACCESS TO AND WITHIN THE SITE.

Finding: This site has a demonstrated history of being of sufficient size and shape to accommodate the use. This proposal allows the sale of plants from other nursery stock producers and office use of the property. Pedestrian and bicycle patterns are unaffected by the proposal.

- K. PROMOTE COMPATIBLE DEVELOPMENT AND MINIMIZE ADVERSE IMPACTS OF SITE DEVELOPMENT ON ADJACENT PROPERTIES AND THE COMMUNITY THROUGH THE APPLICATION OF DESIGN REVIEW STANDARDS CODIFIED IN MCC 11.05.7805 11.05.7865.

Finding: Design Review will be required of the modified use.

- L. PROVIDE FOR THE SITING AND EXPANSION OF COMMERCIAL DEVELOPMENTS IN A MANNER WHICH ACCORDS WITH THE OTHER APPLICABLE POLICIES OF THIS PLAN.

Finding: Compliance of this modified use with the other applicable policies of the Comprehensive Framework Plan are evaluated in the previous and following sections.

- (6) POLICY NO. 37, UTILITIES: THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE HEARING OR QUASI-JUDICIAL ACTION THAT:

WATER DISPOSAL SYSTEM:

- A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR
- B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR
- C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR
- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

Finding: Pleasant Home Water District indicates they can adequately serve this use.

DRAINAGE:

- E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE INCREASED RUN-OFF; OR
- F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND
- G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJACENT LANDS.

Finding: No development is proposed that would increase drainage generated by this property.

ENERGY AND COMMUNICATIONS:

- H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE LEVELS PROJECTED BY THE PLAN; AND
- I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

Finding: This modification of the nursery use of the property will not change energy or communication facility demands.

- (7) POLICY NO. 38, FACILITIES: THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

- A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.
- B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND
- C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.
- D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTECTION WITH THE STANDARDS OF THE JURISDICTION PROVIDING POLICE PROTECTION.

Finding: Orient School indicates they have no comment on this proposal.

(8) POLICY NO. 40, DEVELOPMENT REQUIREMENTS: THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

- A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.
- B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.
- C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE.

Finding: Orient Drive is not indicated as a bikeway on the Multnomah County Bicycle Plan. ODOT is not requiring any pedestrian improvements because of this modification. Consequently, no bikeway or pedestrian improvements are necessary.

CONCLUSION

Based upon the Staff Report and the findings and substantial evidence cited or referenced therein, I conclude that the application for Conditional Use Approval to convert a residence to retail nursery use and office use consistent with uses allowed in the zone, plus the construction of greenhouse and shade house on the subject property satisfies all applicable approval criteria, provided that the condition of

approval included herewith is complied with. The application is hereby approved, subject to the condition of approval contained herein.

IT IS SO ORDERED, this 8th day of April, 1997.


JOAN M. CHAMBERS, Hearings Officer