

1600 SE 190th Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-2016-5841

Permit: Administrative Decision by the Planning Director

Location: 33410 E. Historic Columbia River Highway, Corbett
Tax Lot 100, Section 04AB, Township 1 South, Range 4 East, W.M.
Tax Account #R994040040

Applicant/

Owner: Jessica Kyrie Eppley

Base Zone: Exclusive Farm Use (EFU)

Overlays: n/a

Summary: The applicant is proposing to convert an existing agricultural building to a relative farm help dwelling in the Exclusive Farm Use zone.

Decision: Denied

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, August 17, 2017 at 4:00 pm.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

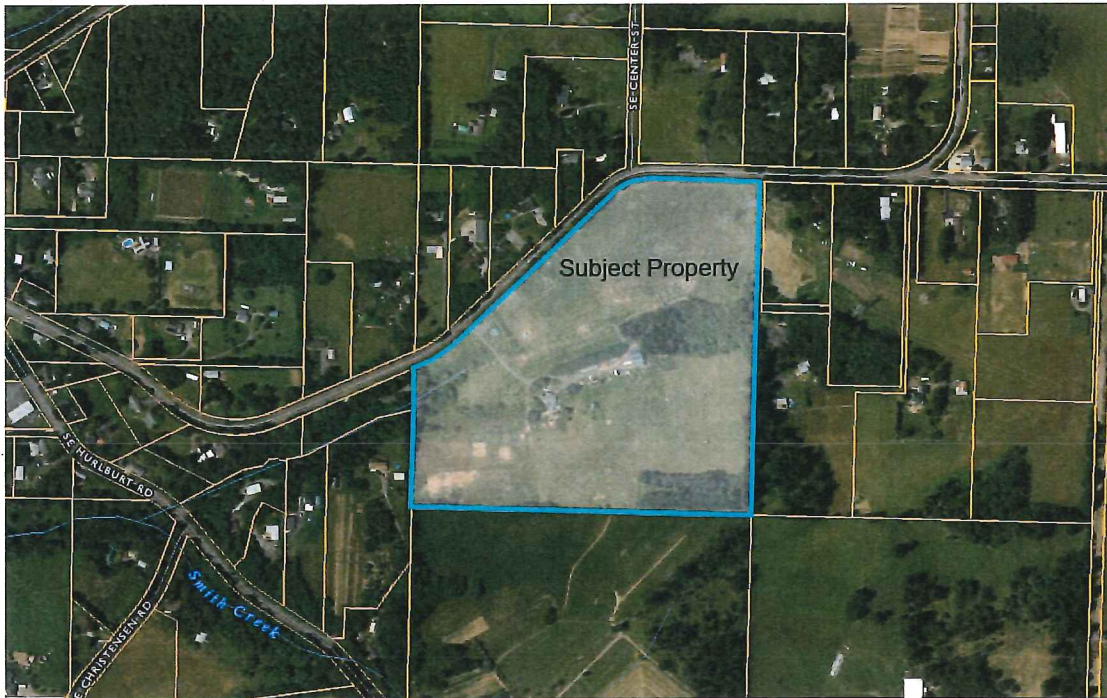
Issued by:



Lisa Estrin, Planner

For: Michael Cerbone, AICP
Planning Director

Date: Thursday, August 3, 2017



Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-0167 or lisa.m.estrin@multco.us.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 35.0005 Definitions, MCC 37.0560 Code Compliance, MCC 35.2625(C) or (E), Review Uses, , MCC 35.2655 Single Family Dwelling Condition of Approval – Prohibition on Claims Alleging Injury from Farm or Forest Practices, MCC 35.2660 Dimensional Requirements, MCC 35.2675 Lot of Record, MCC 33.3185 Access, and Oregon Administrative Rule 660-033-0130(9)(a).

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at multco.us/landuse/zoning-codes under the link *Ch 35: East of Sandy River Rural Plan Area*.

NOTICE OF APPEAL HEARING

If an appeal of this decision is filed, a public hearing will be held on Friday, September 1, 2017. The hearing will begin at 9:00 AM or soon thereafter.

The hearing will take place in Room 103 at the Land Use Planning office located at 1600 SE 190th Avenue, Portland, OR 97233. If no appeal is filed, a notice canceling this hearing will be posted on the outside of the Yeon Annex Building doors. You can also call the receptionist at 503-988-5050 option '0' to inquire on the status of the hearing after August 17, 2017.

The Hearing shall be regarding the Planning Director's decision denying a relative farm help dwelling for the property located at 33410 E. Historic Columbia River Highway, Corbett in the Exclusive Farm Use (EFU) zone. This staff report serves as the staff report available at the hearing pursuant to MCC 37.0620(D).

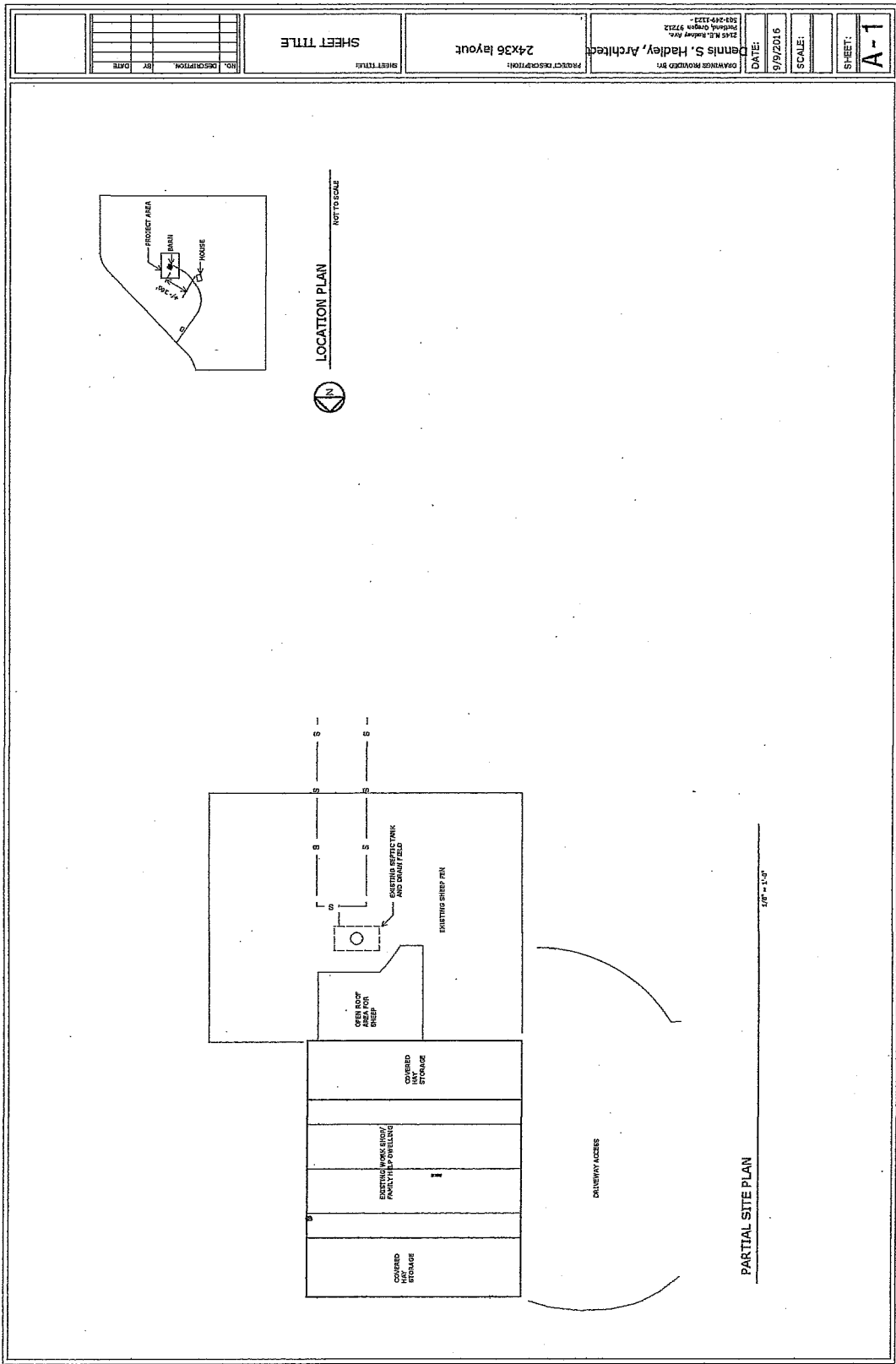
Any issue that is intended to provide a basis for an appeal to the Land Use Board of Appeals must be raised prior the close of the public record at the public hearing. Issues must be raised and accompanied by statements or evidence sufficient to afford the County and all parties an opportunity to respond to the issue.

*A public hearing to consider any appeal will be conducted before one of the following County's Hearings Officers: **Liz Fancher, Dan Olsen, or Joe Turner.***

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.

RECEIVED
SEP 13 2016
E. K.



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*.

1.00 Project Description:

Staff: The applicant is proposing to convert an agricultural building to a Relative Farm Help Dwelling. The applicant states that the farm operations are done in conjunction with the land owner Jessica Kyrie Eppley and her father Tom Eppley. Kyrie Eppley owns a business in Portland with at least 90 full time employees. Her businesses are called Growing Seeds Learning Communities. The schools provide care and education to nearly 400 students in Portland. The Farm provides as much of the food as possible to the schools, as well as hands on educational experiences at the farm. Kyrie guides the day to day operation of the farm by discussing with her father, Tom Eppley the annual plan and he implements various tasks and duties depending on the time of year and what needs to be completed.

2.00 Property Description & History:



The applicant's site plan (Exhibit A.17) shows a house, barn and an unlabeled square. The square appears to be the farmer – operated produce stand building approved in 1986. This produce stand may be nonconforming to present day Farm Stand regulations in the Exclusive Farm Use zone. In addition, it appears that an approximate 225 sq. ft. addition was made to this produce building between 2006 and 2008 without permits. The applicant indicates that the former property owner operated the produce stand from 2000 to 2010 (Exhibit A.15) and that the stand again operated in 2015 and 2016. This four-year interruption in using the nonconforming use appears to indicate that the use of the building as a produce stand has been lost pursuant to MCC 35.7200(D), but as no

Verification of Nonconforming Use Determination has been requested, the County provides these comments about the farm stand are part of this report to assist the property owner in complying with land use laws.

In 2006, the County approved a two-story exempt farm structure (barn). The 28-ft by 40-ft (1,120 sq. ft.) ground floor (1st floor) was shown on the plans as being completely open with no rooms or improvements shown (Exhibit A.14). The second story had an approximate 20-ft by 28-ft (560 sq. ft.) loft area that would typically be used for storage such as hay. The remainder of the second story was to be opened to the floor below. No kitchen, bathroom, sink or shower were shown on the plans. The building was to be used for hay and equipment storage (Exhibit A.14).

In 2016, the County entered into a Voluntary Compliance Agreement (VCA) (Exhibit B.2) with the property owner in order to allow an expansion to the existing habitable single family dwelling before the various land use issues were resolved [MCC 37.0560]. The VCA discusses the conversion of the barn to a dwelling and the installation of a second, on-site sewage disposal system on the site. No other land use issues were identified as part of the VCA. The second septic system was connected to the unpermitted bathroom, sinks and kitchen area in the barn. The barn had been converted to a second single family dwelling on the property without necessary land use and building permits. This application is an attempt to legalize this unauthorized conversion.

Presently, the barn has three stories (Exhibit A.17) and is approximately 4,140 sq. ft. The applicant's floor plans show on the 2,160 sq. ft. 1st floor, a wood shop, bathroom (toilet, sink and shower) and an unlabeled area. Two lean-to structures have been attached to the sides. Both lean-to structures are labeled for hay storage. On the southern lean-to structure, a roof extension has been constructed for sheep (Exhibit A.17.). The addition of the bathroom on the first floor required a building permit and septic permit. The two lean-to structures and sheep roof area also required land use review. No land use review was obtained for the above described improvements.

The 1,120 sq. ft. second floor of the barn shows a 27-ft by 9.16-ft (247.32 sq. ft.) studio with a sink, a 21-ft by 8.91-ft (187.11 sq. ft.) storage room and the remaining area is shown as "open to below" and stairs. The installation of the sink required at a minimum land use review, plumbing permit and septic permit. No approvals were obtained for these improvements.

The 860 sq. ft. third floor shows a kitchen along the east wall and the remaining area unlabeled with a use. During the August 1, 2017 site visit, it was observed that bunk beds had been built into a wall. The installation and conversion of the third floor to habitable area with a kitchen required, at a minimum, land use review, plumbing, electrical and septic permit. No approvals were obtained.

Other Buildings

Planning staff reviewed recent aerial photos taken in 2016 (see above). At least, six small outbuildings are visible in the photos. These buildings appear to be in various fenced pasture areas. A third dwelling has been identified in a small building constructed without permits between the original single family dwelling and the barn building. This dwelling appears to be heated by a wood or pellet stove as it has a chimney. The applicant identified the building during the August 1, 2017 site visit as her "Daughter's dwelling" for when she comes home from college. Oral comments received during the comment period indicated that the structure is being used as another dwelling for a farm manager who lives on the site separate from the farm operator or her relative. None of these buildings are shown on the site plan (Exhibit A.17) and have not received land use approval. These buildings/structures are not addressed in the VCA and this land use application does not correct their issues. Pursuant to MCC 37.0560, **"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."** Since the VCA does not cover all land use issues, no approval can be given at this time.

3.00 Exclusive Farm Use Criteria:

3.00 § 35.2625 REVIEW USES

(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 proposed relative farm help dwelling is to be located on the same parcel as the existing, habitable single-family dwelling. The proposed dwelling (existing barn) is approximately 300 feet to the northeast of the dwelling. Tax lot 1S4E04AB – 00100 contains only one parcel based on the findings in Section 3.05 below.

Pursuant to MCC 35.2610, the term “*Farm Operator*” means “...*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.*”

The property owner, Jessica K. Eppley lives in the existing, 1920 single family dwelling. Her submittal indicates that she is the business owner of three separate entities with 90 plus employees that is known as Growing Seeds Learning Center. In her application narratives (Exhibit A.12 and A.15) she states that “The farm operation is done is [*sic*] conjunction with the land owner Jessica Kyrie Eppley and her father Tom Eppley. At no point in the original narrative does the applicant identify herself as the farm operator or farm manager. It is unclear whether she does the work and makes the day-to-day decisions or just guides her farm manager or father by discussing the annual plan. The term “facilitate” is used to describe the farm manager’s role. The Merriam-Webster Dictionary defines “facilitate” as “to make easier, help bring about”. One can facilitate the operation of a small farm by paying the mortgage or buying the seed, but the word does not mean or construe that Jessica Eppley is the farm operator.

Planning staff asked for clarification from the applicant as to who is the farm operator. In additional narrative, Jessica Eppley was listed as the farm operator (Exhibit A.18). In this new submittal, the farm operator duties include assigning tasks to the farm manager and decides what work needs to be accomplished for the day. The narrative states that the farm operator maintains all mechanical needs, fixing tractor and small machinery, provides all veterinary care to livestock, and builds all structures. The farm operator duties vary from daily to weekly and include doing a visual walk/inspection of the farm. The farm operator also looks into farm orders/sales and organizes harvest and collect goods to take to customers on multiple days per week.

The narrative does not discuss the number of hours that the farm operator spends daily at her tasks. Ms. Eppley has three, day care businesses with over 90 plus full time employees. These day cares appear to be a business activity that needs significant time allotted to them per work day. While the additional narrative (Exhibit A.18) indicates she “is on the farm most days of the week” she lives in the dwelling on the property so any day she sleeps on the site she would be at the farm to start the day. Providing direction to a farm manager as to the daily chores required is not the same as “...**doing the work...**” of the farm and “looks into farm orders/sales” does not necessarily mean that she is doing the marketing of the farm output.

Planning staff found on the internet on July 26, 2017 an advertisement for a Livestock Animal Manager/Caretaker (Exhibit B.3 and B.4). The duties and responsibilities for the position are as follows:

*“Daily care, nutrition, maintenance of all farm animals. (hogs, sheep, llamas, chickens (meat and layers), ducks, turkeys, geese)
Tractor use and maintenance for moving mobile structures
Tool use and maintenance for use during animal related items
Irrigation maintenance and set up for water needs of animals
Electrification of areas for animals
Pasture maintenance and upkeep”*

Many of these duties seem to be the same as those duties as the farm operator. It is likely that a farm manager who does the daily feeding and watering would also provide veterinary care at the same time and if necessary throughout the day. In addition, the maintenance skills required for the tractor, tools, irrigation, pasture, and farm animals seem to be those that the farm operator would do if she spent 10 to 12 hours a day working on the farm. Based on the information in the record, the County finds that Jessica Eppley owns the farm but she does not do the day-to-day work of operating it. A farm manager is employed or used to do the day-to-day work of the farm. *Criterion not met.*

3.01 (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: The application materials indicate that Tom Eppley and likely his wife will be living in the Relative Farm Help Dwelling located in the current barn. No other individuals have been identified as to be living in the structure. Tom Eppley lives part time in Thailand and California (Exhibit A.15). The farm has swine, sheep, llama and chickens that need to be fed and cared for year round. Upwards of five months when Mr. Eppley is living elsewhere, the farm operator would be without his assistance that she indicates is required.

On July 26, 2017 Planning staff found an advertisement on two internet sites for a livestock manager/care taker (Exhibit B.3 and B.4). The position advertised a “320 sq foot private studio space with small kitchenette and sink. Shared bathroom. Shared large full kitchen upstairs as well as communal living space for farm wwoofers.” (Wwoofers are visitors that spend about half a day helping out a host farm, learning about the organic movement and sustainable agriculture, and receive room and board during their visit.) This housing offer appears to match the layout for the proposed relative farm help dwelling.

The application is for a relative farm help dwelling. Non-relative farm workers may not live in the dwelling. On the third floor of the barn, code compliance staff saw during the August 1, 2017 site visit that bunk beds had been constructed for the wwoofers or other farm help. There are options for non-relative farm workers housing but based on income information provided, the farm operation appears not to meet the income thresholds. Based on the conflicting information in the record, the County finds that the proposed dwelling is not strictly for a relative. *Criterion not met.*

3.02 (3) Notwithstanding ORS 92.010 to 92.190 or the minimum lot size requirements of MCC 35.2660, 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

35.2675(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: If the application is approved, a condition of approval will require that the above language be recorded against the title so that secured parties are aware of their financial risks and the restriction of use in case of foreclosure. *Through a condition, this criterion can be met.*

3.03 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. 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: OAR 660-033-0130(9)(a) requires that a relative farm help dwelling be located on an existing commercial farm operation. Multnomah County Code as listed above has not incorporated the “commercial farming operation” standard into its applicable code criteria and must then directly apply State law. OAR 660-033-0020(2)(a) defines a “Commercial Agricultural Enterprise” as “consists 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.*

(b) 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.”

The applicant has submitted in the Schedule F for Growing Seeds Farm, LLC. The schedule F shows that feed, fertilizers, chicks and various supplies were purchased. In addition, there are butcher fees deducted. The applicant states that they sell their products to her three, day care facilities, at the farm stand and to the public as well as some restaurants. In the original narrative (Exhibit A.12 and A.15), no evidence was provided as to the amount of farm production sold. Planning staff asked for clarification and additional information was provided. Growing Seeds Farm has swine, sheep, llamas, turkeys, chickens (laying and meat), ducks and geese. The applicant has provided information (Exhibit A.18) on the number of animals produced this year and last. The addition narrative also discusses fruit production, produce production and where the products are sold (applicant’s schools, farm stand and CSA). Based on the information provided, the County finds that the use contributes in a substantial way to the area’s existing agricultural economy.

3.04 § 35.2660 Dimensional Requirements and development standards

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Staff: The location plan provided does not indicate a scale. While it appears the three buildings shown on the location plan will meet the above setbacks, the other existing outbuildings and property dimensions have not been shown. If the proposal is approved, a

condition of approval can be included requiring a scaled site plan at time of building permit sign off.

3.05 § 35.2675 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 35.0005, 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.**

Staff: The applicant has provided a copy of a Indenture Instrument recorded in 1956 which describes the subject parcel (Exhibit A.3). The subject parcel is 31.29 acres and exceeded the 2 acre minimum lot size in 1956 under the Interim Zoning ordinance. Tax lot 1S4E04AB – 00100 met the minimum lot size at the time. Planning staff reviewed the ownership records for this and the surrounding properties for February 20, 1990. No other parcel was held under the same ownership. *Tax lot 1S4E04AB – 00100 is a Lot of Record.*

3.06 § 35.2655 SINGLE FAMILY DWELLINGS CONDITION OF APPROVAL - PROHIBITION ON CLAIMS ALLEGING INJURY FROM FARM OR FOREST PRACTICES

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 injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Staff: Through a condition, this criterion can be met.

3.07 § 35.2690 ACCESS

All lots and parcels in this district shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 35.2675(C).

Staff: The applicant has provided documentation (Exhibit A.3) that the Oregon Department of Transportation (ODOT) has granted permission for the driveway access onto the Historic Columbia River Highway. The Historic Columbia River Highway is a public street.
Criterion met.

7.00 Conclusion

Based on the findings and other information provided above, the applicant has not carried the burden necessary for the Administrative Decision by the Planning Director to establish a Relative Farm Help Dwelling in the Exclusive Farm Use zone.

8.00 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 T2-2016-5841 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	9/13/16
A.2	1	Birth Certificate and Passport	9/13/16
A.3	3	Indenture Instrument recorded in Book 1705 and Pages 419 – 421 in 1956	9/13/16
A.4	4	ODOT Access Permit	9/13/16
A.5	1	Land Use Card for Produce Stand issued in March 1986	9/13/16
A.6	1	Aerial Photo	9/13/16
A.7	1	Title Co Map with Property Identified	9/13/16
A.8	2	Fire Service Agency Review (for 2,600 sq. ft. structure)	9/13/16
A.9	1	Sheriff Services Review	9/13/16
A.10	1	Storm Water Certificate (for 2,480 sq. ft structure	9/13/16
A.11	1	Certification of Water Service	9/13/16
A.12	1	Project Description & Narrative	9/13/16
A.13	4	Reduced Plans – Sheet A-1: Location Plan & Partial Site Plan a. Sheet A-2: Ground Floor Plan & West Elevations b. Sheet A-3: Second Floor Plan & South Elevation c. Sheet A-4: Third Floor Plan & North Elevation	9/13/16
A.14	9	Reduced Plans for 28x40 Exempt Farm Structure approved in March 2006 – Sheet 1: Side Elevation, Front Elevation and Index to Drawings a. Sheet 2: Foundation Plan & Upper Floor Framing Plan b. Sheet 3: Rafter Layout, Truss Construction Detail, Gusset Detail, Truss Tie-Rod Connection Detail, Etc. c. Sheet 4: Front Elevation Structural, Side Elevation Structural, Etc. d. Sheet 5: Cross Section – Stairs (A/5 and B/5), Etc. e. Sheet 6: Loft Railing Elevation, Wall Section (3/6, 4/6), Etc. f. Sheet 7: Bi-Fold Door Elevation, Door Elevation, Door and Track Section, Etc. g. Cupola Plans h. 4’ Dormer Window	9/13/16
A.15	3	Revised Narrative	3/3/17

A.16	6	Schedule F 2015 for Growing Seeds Farm LLC a. 2015 Form 1065 – US Return of Partnership Income	3/3/17
A.17	4	Full-Scale Plans – Sheet 1: Location Plan & Partial Site Plan a. Sheet 2: Ground Floor Plan & West Elevation b. Sheet 3: Second Floor Plan & South Elevation c. Sheet 4: Third Floor Plan, East Elevation & North Elevation	3/3/17
A.18	5	Additional Narrative	7/24/2017
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1S4E04AB - 00100	3/13/2016
B.2	4	Voluntary Compliance Agreement	
B.3	6	Attra Ad for Animal Manager/Caretaker	7/26/2017
B.4	2	Barefoot Student ad for Animal Manager/Caretaker	7/26/2017
'C'	#	Administration & Procedures	Date
C.1	5	Incomplete Letter	10/13/16
		Application Complete – Day 1	3/31/17
C.2	3	Opportunity to Comment	4/12/17
C.3	10	Administrative Decision	8/3/2017
'D'	#	Comments Received (if needed)	Date
D.1	1	Brenner Comments	4/18/2017