

Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet applicable approval criteria below:

Multnomah County Code (MCC): *General Provisions:* MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.6850 Dark Sky Lighting Standards, MCC 39.8860-Condition of Approval

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3090 Lot of Record – Rural Residential (RR)

Rural Residential (RR): MCC 39.4360(F) Allowed Uses, Accessory Structures, MCC 39.4365(I) Review Uses, Accessory Structures, MCC 39.4375 Dimensional Requirements and Development Standards

Geologic Hazards: MCC 39.5075 Permits Required, MCC 39.5085 Geologic Hazards Permit Application Information Required, MCC 39.5090 Geologic Hazards Permits Standards

Significant Environmental Concern (SEC): MCC 39.5510 Uses, SEC Permit Required, MCC 39.5515(A)(8) Exceptions

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-304 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link: Chapter 39 - Zoning Code

Multnomah County Road Rules (MCRR):

MCRR 4.000 Access to County Roads, MCRR 11.00 Local Access Roads, MCRR 16.000 Variance from County Standards and Requirements

Copies of the referenced Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/transportation-planning/plans-and-documents/> under the link: **Multnomah County Road Rules**.

Land Use Planning Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

1. **Permit Expiration** – This land use permit shall expire two years after the date of the final decision, unless the use or development was established according to all specifications and conditions of approval in the land use approval. Expiration of an approval means that a new application is required for uses that are not established during the approval period. [MCC 39.1185(A)]

Note: The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

2. **Prior to land use sign off for building plan check, the property owner shall:**

- a. Provide documentation from a licensed surveyor the exact location of the gate house in relation to the front lot line. In addition, the surveyor shall document the height of all four building elevations on the exempt farm structure to be converted to an accessory building. The licensed survey shall stamp the plans and certify that they are accurate. [MCC 39.1515 and MCC 39.4375(C)]
 - i. If the accessory building exceeds 35 feet in height as defined in MCC 39.2000 Definitions - Building Height, the conversion of the exempt farm building cannot move forward in obtaining a building permit or being convert in its use until such time as the building is modified to meet the requirement **or** a variance or adjustment is applied for and approved pursuant to MCC 39.8200 *et al*.
 - ii. If the gate house is located closer than 11 feet from the front lot line of the property, the conversion of the exempt farm building to an accessory building cannot move forward in obtaining a building permit or being used as an accessory building until such time as the property owner shall remove the structure, **or** apply for a variance or adjustment as determined by the Planning Director pursuant to MCC 39.8200 *et al* and enter into a Voluntary Compliance Agreement with the County to correct the situation
- b. Modify the floor plans for the accessory structure as follows:
 - i. Show all existing improvements for the basement (animal pens included);
 - ii. Remove the toilet from the main floor plan and alter the label on the shower to read “Dog Bathing Facilities”; and

- iii. Provide a floor plan for the loft that demonstrates compliance with the applicant's narrative statements.
 - iv. Add lighting details for all new fixtures and a Dog Bathing Facility detail for the one to be installed on the main floor of the building.
 - c. Record a covenant (Exhibit B.15) with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. [MCC 39.4365(I)(7) and MCC 39.8860]
 - d. Create a Lighting Plan from the site plan that shows the location of all existing and proposed exterior lighting on the subject property. In addition, photographs shall be taken of each existing light fixture. The photograph shall be marked to correspond with its location on the Lighting Plan.
 - i. The light fixtures on the accessory building shall have the light source be fully shielded with opaque materials and directed downwards or be changed out to meet the Dark Sky Lighting Standards. [MCC 39.6850(C)]
 - 1. If the light fixtures must be replaced to comply with MCC 39.6850(C) on the accessory building, they shall be replaced prior to occupancy of the building and the property owner shall contact her case planner for a site inspection.
 - e. Contact Code Compliance at 503.988.5050 and set up an appointment for the Code Compliance Specialist to visit the site. The Code Compliance Specialist shall inspect the inside of the proposed accessory building to ensure there are no cooking facilities, beds, or built in closets within the building.
 - i. If these improvements are found, the project cannot move forward to building plan check until they are removed from the building.
3. The bathing facilities to wash the dogs shall be limited to a dog washing station similar to the following and shall not be a shower or shower/tub combo unit suitable for human use:



4. No cooking facilities such as a range, stove, oven, hot plat, microwave, toaster oven or wet bar shall be installed in the accessory building or any other equipment that can be used to warm or cook food. [MCC 39.2000 Definitions, Cooking Facilities]
5. No mattress, bed, murphy bed, cot, or other similar item designed to aid in sleep as a primary purpose shall be allowed in the accessory building. These items may be placed in the building if they are disassembled for storage. [MCC 39.4365(I)(5)]
6. The installation of the septic tank, the related trenching and the spreading of the soil within the pasture area shall only occur between June 1st and September 1st during the dry season. The project shall be completed within two weeks and the disturbed area re-seeded and covered with straw within two days of the spreading of the soil. [MCC 39.5090(G) & (J)]
7. No non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall leave the site unless it is properly handled and disposed of. {MCC 39.5090(T)}

TRANSPORTATION PLANNING

Scope of Approval

Approval of this Road Rules variance is based on the submitted written narrative(s) and plan(s). This application and approval is for the variance to Multnomah County Road Rules section 4.000. No work shall occur under this Road Rules variance other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein. The findings and conditions contained in this decision are subject to Multnomah County Road Rules 16.100 B, which states the following:

All requests for a variance to these Road Rules that are part of a development that requires approval of that development as a “land use decision” or “limited land use decision,” as defined in ORS 197.015, shall be submitted to the County Engineer at the time that application for the land use review is submitted to the applicable planning office having land use jurisdiction. The County Engineer’ decision on the variance to these Road Rules shall not become effective until the date that the associated land use decision becomes effective.

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this Road Rules Variance permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. The applicant shall provide the following materials to be appended to the driveway permit on file (Permit number 81879)
 - a. Site plan showing both driveways and their dimensions, location of gates, roadway, and parcel lines. [MCRR 18.250]
2. The eastern driveway is only used for service access on an as-needed basis and not for daily use.
3. The driveways will remain gated when not in use.

Note: Once this decision is final, building plan check can be done with Multnomah County prior to an application for building permits with the City of Portland. You will need to complete the following steps prior:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, “Prior to land use sign-off for building plan check...” Be ready to demonstrate compliance with the conditions.
2. Contact Right-of-Way Permits at row.permits@multco.us, or schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/>, or at (503) 988-3582 for an appointment to review your plans, obtain your access permit, and satisfy any other requirements. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation at (503) 823-6892 or e-mail septic@portlandoregon.gov for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.
4. Contact Staff Planner, Lisa Estrin, at (503) 988-0167 or lisa.m.estrin@multco.us, for an appointment for review of the conditions of approval and to sign the building permit plans. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department. At the time of this review, Land Use Planning will collect additional fees.

The above must be completed before the applicant can obtain building permits from the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee will be collected.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:
ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in bold font. Staff analysis and comments are identified as ‘Staff:’ and address the applicable criteria. Staff comments may include a conclusionary statement in italic.

1.00 Project Description:

Staff: The applicant is requesting a Lot of Record Verification, an Accessory Use Determination, a Geologic Hazards, and a Road Rules Variance to authorize the conversion of a previously permitted agricultural building into an accessory building.

The applicant has proposed a Road Rules Variance to allow two driveways to serve 13816 NW Old Germantown Rd.

2.00 Property Description & History:

Staff: The subject application is for one tax lot located at 13816 NW Old Germantown Road (also known as tax lot 2900, Section 09C, 1 North, 1 West, W.M.). The property is approximately 4.22 acres and is located on the south side of NW Old Germantown Road within the Rural Residential (RR) zoning district in the West Hills rural area.

The property is located in multiple overlays including the Significant Environmental Concern for Wildlife Habitat (SEC-h), Significant Environmental Concern for Streams (SEC-s), and Geologic Hazards (GH). The SEC-h overlay covers the entire property. The SEC-s overlay is over a tributary of Abbey Creek and bisects the property. The GH overlay is located in three areas on the property where slopes were determined to be greater than 25%. One of the GH areas also covers a historic landslide that is located in the southern portion of the property.

Previously owned by Lawrence D. Rout, the property was eventually conveyed to Ava Chapman in 1993. According to Multnomah County Department of Assessment, Recording, and Taxation (DART) data, the subject property contains a single-family dwelling with unfinished basement, deck, and farm building. The dwelling was first assessed in 1920. Aerial photo review from 2018 confirms the presence of the single-family dwelling with deck and the farm building (Exhibit B.3).

The subject property has not had an extensive permit history; below are the land use and/or building permits that are on record:

Land Use Case / Build Permit #	Determination Date	Description
Building Permit	May 26, 1989	Addition to SFR (Single-Family Residence)
Building Permit	September 18, 1989	Exempt Farm Structure
T2-01-088	No Decision	Planning Directors Determination
Building Permit	August 5, 1994	Fence Gatehouse

3.00 Code Compliance and Applications Criteria:

3.01 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or
- (2) It is necessary to protect public safety; or
- (3) It is for work related to and within a valid easement over, on or under an affected property.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: The subject site contains a registered exempt farm structure (ag building). The property is no longer in farm use. Use of the building continues without authorization as an accessory structure. The submitted application is to convert the ag building to an accessory building which will allow non-farm usage. If the application is approved, the property owner will need to obtain a building permit to bring it into compliance with building requirements. In addition to the exempt farm building issue, the applicant has provided site plans that show the gate house immediately adjacent to the front parcel line, a condition of approval has been included requiring that she clarify the exact location of the gate house before she can move on to building plan check. Planning staff does not know of any other violations on the site.

4.00 Lot of Record Criteria

4.01 § 39.3005 LOT OF RECORD – GENERALLY.

(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.

(a) “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.

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

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. 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
3. 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
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. “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.)

Staff: In order for a property to be considered as a Lot of Record; when the parcel, lot, or a group thereof was created or reconfigured, it satisfied all applicable zoning laws and satisfied all applicable land division laws. The subject property was originally created as Lot 27 and 28 of Andrews Acres subdivision. Andrews Acres subdivision was created on September 25, 1911 (Exhibit B.6). Subsequently, Lot 27 and 28 were reconfigured into its current configuration by a metes and bound description that was recorded by Warranty Deed in Book 1472, Page 328 on April 24, 1951 (Exhibit A.4).

In order to satisfy all applicable zoning laws at the time of creation or reconfiguration, the subject property must have been in full compliance with all zoning minimum lot size, dimensional standards, and access requirements. At that time in 1951, Multnomah County had not yet adopted zoning laws or land division laws. The first interim zoning ordinance was adopted in May 26, 1953. Therefore, the recording of the warranty deed in 1951 satisfied all applicable zoning laws at that time.

In order to satisfy all applicable land division laws at the time of creation or reconfiguration, the process to adjust common property lines was to write up a new legal description and record a new deed or contract that utilized the new description. The property owner at that time in 1951 recorded a Warranty Deed with the Recording Section of the public office responsible for public records on April 24, 1951 in Book 1472, Page 328 (Exhibit A.4). Therefore, they satisfied all applicable land division laws at that time.

This property satisfied all applicable zoning and land division laws at the time of its reconfiguration in 1951 and is a Lot of Record.

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

1. 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.

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

Staff: The subject property is zoned Rural Residential in its entirety. It is not intersected by an acknowledged unincorporated community boundary which are zoned Rural Center (RC, BRC, SRC, PH-RC, etc.). *Therefore, these criteria are not applicable.*

4.02 § 39.3090 LOT OF RECORD – RURAL RESIDENTIAL (RR).

(A) In addition to the standards in MCC 39.3005, for the purposes of the RR district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;
- (2) July 10, 1958, F-2 zone applied;
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (4) October 6, 1977, RR zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

Staff: Criterion (A) does not affect the determination on this case, as it is a listing of significant dates and ordinances for verifying zoning compliance. *This criterion is not applicable.*

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 39.4395, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Criterion (B) does not affect the determination on this case. *This criterion is not applicable.*

(C) Except as otherwise provided by MCC 39.4380, 39.4385, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard

requirements or result in a lot with less than the area or width requirements of this district.

Staff: Criterion (C) does not affect the determination on this case as the applicant is not selling or conveying of any portion of a lot as part of this application. *This criterion is not applicable.*

(D) The following shall not be deemed to be a lot of record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**
- (3) An area of land created by court decree.**

Staff: As discussed above in Section 4.01, the subject property was created through the recording of a Warranty Deed in 1951. Therefore, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes, an area of land created by the foreclosure of a security interest, or an area of land created by court decree. *These criteria are met.*

5.00 Rural Residential (RR) Criteria

5.01 MCC 39.4360 ALLOWED USES.

(F) 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 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 units, heat pumps and electrical boxes; and**

(n) Similar structures.

Staff: The applicant in her narrative (Exhibit A.20) has discussed the uses the building will be put to or is being used for presently. She indicates the Accessory Structure will be used for the following:

- As a garage or carport per se, but the daylight basement area where the stalls are located might on occasion have a truck to load or unload feed or when other necessary functions are required.
- In part to store tools, equipment, pots and other items relating to gardening and growing plants in multiple seasons.
- As a work shop both functionally and for my hobbies of raising and storing mason bees, preparation for truffle hunting, and functionally for cleaning oiling, sharpening and maintaining tools.
- Will function for storage for various items relating to approved uses of animal and pet husbandry, gardening and growing plants and raising pollinators.
- Will not formally be used as a greenhouse, but the decks will be used in the summer to ripen tomatoes and winter where the wood deck and barn provide protection for the young palm trees from winter winds.to pot certain tree plugs to grow for a year or two before transplanting in the forest.
- Will continue to provide shelter for my animals and pets. Currently chickens use areas of the structure in both summer and winter with the interior of the basement level of the barn used when the winters are excessively cold.
- The lower stall area is used to hold dogs when they are left for extended periods of time in a safe and secure area from predators and weather.
- Will be used to store pet food, treats, bedding, transportation kennels, used as an area to exercise my dogs in inclement weather along with storing grain and supplies for the poultry.
- The accessory structure will include a heat pump where noted on the site plan.

As listed above, the applicant will use the building for a number of accessory uses. These uses are accessory to the single family dwelling on the property. *Criterion met.*

(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.

Staff: The applicant has stated that the building will not be used, temporarily or permanently as any type of dwelling or sleeping quarters (Exhibit A.20). Additional discussion regarding the layout (design) of the building has been completed under MCC 39.4365(I) below.

(3) The Accessory Structure may contain one sink.

Staff: The applicant's narrative states that there will be one utility sink mainly for washing hands, and tools (Exhibit A.20). The floor plans show the sink will be on the main level of the accessory building (Exhibit A.13). *Criterion met.*

(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.**

Staff: The applicant has indicated that the existing agricultural building has a basement, main floor and loft (Exhibit A.20). The plans submitted for the main floor and basement area (Exhibit A.13, A.16 & A.15). The basement plan does not include the animal pen areas on either side of the building. One of the main floor plans shows where the bathroom is proposed. On the site plan submitted July 31st, there appears to be a floor plan for the loft, but it is not labeled as such (Exhibit A.13). The narrative states that she is proposing a shower and a toilet on the main floor and no built in closets or cooking facilities. *Criterion not met. The building will need to be reviewed under MCC 39.4365(I).*

(5) Compliance with MCC 39.8860 is required.

Staff: The applicant has indicated that she will recorded the covenant as required (Exhibit A.20)

(6) The combined footprints of all buildings accessory to an accessory dwelling unit (ADU) shall not exceed combined footprints of 400 square feet and the combined footprints of all Accessory Buildings on a Lot of Record, including buildings accessory to an ADU, shall not exceed 2,500 square feet.

Staff: The applicant's narrative (Exhibit A.20) states "The Accessory Structure is accessory to my Home and will meet this requirement of being under 2,500 square feet." The applicant does not provide a footprint size for the building, nor are the other two accessory structures square footages mentioned.

The plans submitted to the fire service agency (Exhibit A.9) and the Sanitarian (Exhibit A.8) show a 24-ft by 36-ft building (864 sq. ft.). The building elevation and floor plan (Exhibit A.17) show a 12-ft by 24-ft (288 sq. ft.) deck area on the east side of the building that appears to also be covered animal pens below. An approximate 11.5-ft by 7-ft (80.5 sq. ft.) deck area on the west side is also labeled as covered animal pens below it. The total footprint for this building is 1,232.5 sq. ft. based on the drawings. The applicant indicates that there is a small well pump house on the property. The overall site plan labels one dimension for the building at 8 feet. Staff measurement via aerial sets the building size as 8-ft by 10-ft (80 sq. ft.). A gate house is also shown on the overall site plan and appears to measure approximately 8-ft. by 8-ft (64 sq. ft.). Based upon the plans showing no more outbuildings, the total square footage proposed for accessory uses is 1,376.5 sq. ft. *Criterion met.*

(7) An Accessory Structure exceeding any of the Allowed Use provisions above, except for the combined footprints allowed for all buildings accessory to an ADU, shall be considered through the Review Use provisions.

Staff: The applicant is proposing a toilet, shower and three floors for the accessory building. The building must be reviewed under MCC 39.4365(I) to determine if they are the minimum departure necessary to establish the use.

(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.

Staff: The building was permitted as an agricultural building in 1989. The applicant is proposing to convert it to an accessory building. *This criterion is not applicable.*

5.02 MCC 39.4365 REVIEW USES.

(I) Structures or uses customarily accessory or incidental to any use permitted or approved in this base zone, which do not meet the “accessory structures” standard in MCC 39.4360 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.

Staff: The above criteria under (1) requires planning staff to verify that the building is not designed as a type of dwelling unit and that it will not be used as a guest house, sleeping quarters or other type of residence.

The applicant states “The Accessory Structure was originally approved and built as an agricultural building, and was not designed nor has it ever been used as a dwelling or for sleeping. The Accessory Structure will not be used, temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or other residential use.”

The applicant has not provided any labeled plans for the loft area, nor have any photographs of the existing interior been provided so that staff can consider the quality of the existing improvements or the design of the structure. The applicant has provided plans for the existing basement layout, the existing main floor and the proposed main floor (Exhibit A.15, A.13 & A.16). The narrative states that the building will have:

- A sink, shower, water heater and a toilet on the main floor;
- No built in closets or cooking facilities;
- The building will be conditioned by a heat pump;
- Two large deck areas off of the main floor; and

- A separate septic tank that will connect into the existing drainfield for the property.



The loft area since it is conditioned could be used as a sleeping area. At a minimum, the proposed improvements could readily be used as a guesthouse or sleeping quarters. The photograph above is from 2010 and was taken off the web.

The elevation drawings provided are artistic renderings that do not truly represent the building's existing quality or appearance (Exhibit A.17). The proposed physical improvements have qualities of a guesthouse or sleeping quarters. Modifications will be necessary to alter the design of the building design for an alternative dwelling. See additional findings under MCC 39.4365(I)(6) below.

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

Staff: The applicant has requested a shower to wash her dogs and not a bathtub (Exhibit A.20). *Criteria met.*

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

Staff: The applicant is proposing a shower and toilet and sink on the main floor of the building. The Planning Director has interpreted the basement area to be subterranean so it does not count as the ground floor. *Criterion met.*

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

Staff: The applicant has stated the following “The Accessory Structure does not and will not have a kitchen or similar cooking facilities, and it will not be used for cooking.” **MCC 39.2000 Definitions** defines **Cooking Facilities** as “**Facilities such as a range, stove, oven, hotplate, microwave, or similar facilities, but not including a facility designed primarily for room heating, such as a wood or pellet stove.**” The term cooking facility does not mean kitchen. It means those items that can cook food. A microwave, hotplate or other cooking equipment such as a toaster oven would be prohibited from being placed in the building for use. A condition of approval has been included that no cooking facilities be placed or installed in the building to be used for warming of food or cooking of food. *Through a condition, criterion can be met.*

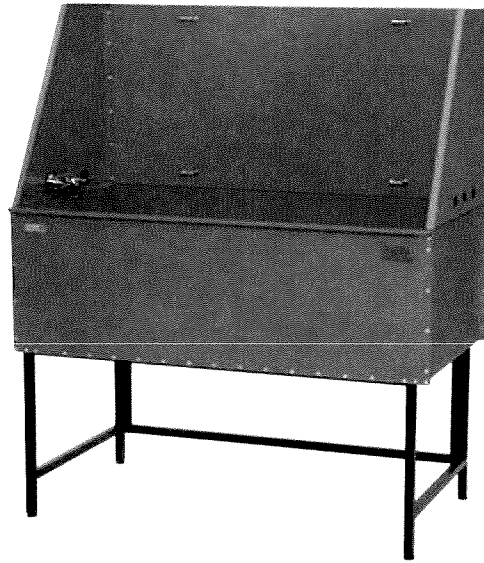
(5) The Accessory Structure shall not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage.

Staff: The applicant states the building will not include a bed or similar items. *Through a condition, criterion can be met.*

(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.

Staff: As discussed above, the applicant is proposing a toilet and shower on the main floor of the accessory building. Planning staff under MCC 39.4365(I)(1) found the design of the building suitable for a guesthouse or sleeping quarters due to the features proposed. There is less than 50 feet between the existing dwelling and the proposed accessory building. The applicant has indicated that she truffle hunts with her dogs which is an outdoor activity involving exercising over long and short distances in uneven terrain. The applicant has not demonstrated that a toilet would be necessary to accommodate the use of the building for potting plants and gardening, personal storage, her hobbies including truffle hunting, bees and chickens and exercising her dogs during inclement weather. She could do all these uses within the building without a toilet. As for the shower, as the applicant has indicated its use is for the washing of dogs, the minimum possible departure from the standards to accommodate this use would be a dog washing station such as the following below:





(7) Compliance with MCC 39.8860 is required.

Staff: The applicant has indicated that she will recorded the covenant as required (Exhibit A.20).

5.03 MCC 39.4375 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.

* * *

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

Staff: Plans in our possession place the building at approximately 32 feet in total height. The subject property is occupied by a number of buildings (Exhibit B.13). The buildings meet the minimum yard requirements as described below:

Building	Front Yard	Side Yard (West)	Side Yard (East)	Rear Yard
House	50+/- ft.	40+/- ft.	90+/- ft.	995+/- ft.
Well Pump Hse.	45+/- ft.	120+/- ft.	40+/- ft.	1025+/- ft.
Accessory Bldg.	133+/- ft.	90+/- ft.	13 ft.	950+/- ft.

Gate House	0 ft. to 12.5 ft.	50+/- ft.	90+/- ft.	1050+/- ft.
------------	----------------------	-----------	-----------	-------------

The gate house was approved through Planning in November 1993. The plan shows the gate house was to be constructed at least 11 ft. from the front property line (Exhibit B.8). In 1993, the minimum yard requirements were the same as today (Exhibit B.7). Planning allowed through interpretation fences and retaining walls to occupy the required yards without need for a variance at that time. The Gate House must have been interpreted to be part of the fence and allowed at its closest point 11 feet from the front lot line. Planning staff found no variance for the physical improvement. The applicant's plans show it at various distances from the front property line (Exhibits A.2, A.8, A.9, & A.17). A condition of approval has been included requiring that the property owner provide documentation as to the exact location of the gate house in relation to the front property line.

* * *

(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county "Design and Construction Manual" and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.

Staff: Transportation Planning has not indicated that additional right-of-way will be needed from the property in the future. The minimum yard requirements do not need to be increased from the basic requirement. *Criterion not applicable.*

(E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirement if located at least 30 feet from any property line.

Staff: The applicant is proposing an accessory building. The building will need to meet the maximum building height of 35 feet. *Criterion not applicable.*

(F) 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.

(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.

Staff: The Sanitarian has indicated that the proposed improvements can be served by the on-site sewage disposal system. A new septic tank will need to be added and then connected to the existing drainfield. The amount of new impervious surfaces will not exceed 500 sq. ft. so stormwater will need to follow building code requirements only. *Criteria met.*

(G) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:

(1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU base zone; or

(2) Where the farm use does not occur on land in the EFU base zone, the owner shall record a covenant that states they recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

Staff: No new dwelling, dwelling addition or replacement dwelling is proposed. *Criterion is not applicable.*

(H) All exterior lighting shall comply with MCC 39.6850.

Staff: A condition of approval has been included requiring the property owner to document the location of all existing and proposed lighting and provide lighting details. *Through a condition, this criterion will be met.*

6.00 Geologic Hazards (GH) Criteria:

6.01 MCC 39.5075 PERMIT REQUIRED.

Unless exempt under this code or authorized pursuant to a Large Fill permit, no development, or ground disturbing activity shall occur: (1) on land located in hazard areas as identified on the Geologic Hazards Overlay map, or (2) where the disturbed area or the land on which the development will occur has average slopes of 25 percent or more, except pursuant to a Geological Hazards permit (GH).

Staff: The proposed development will convert an existing agricultural building to an accessory building and add a septic tank southwest of the outbuilding. The tank will be placed immediately east of the septic line running down from the dwelling. A 62-ft+/- long by 2-ft wide by 2-ft deep trench will be dug from the proposed accessory building to the septic tank to connect the building with the septic tank via pipe. The 7-ft long by 6.83-ft wide by 5.5-ft deep septic tank will be connected to the same drainfield as the dwelling. The subject property is located within the Tualatin River watershed. Staff could find no exemption under MCC 39.5080 that the project would fall under. The existing and proposed physical improvements are within the County's Geologic Hazard overlay and have slopes of approximately 40 percent south of the proposed accessory building and where ground disturbance will occur. A Geologic Hazard permit is required.

6.02 MCC 39.5085 GEOLOGIC HAZARDS PERMIT APPLICATION INFORMATION REQUIRED.

An application for a Geologic Hazards Permit shall include two copies of each of the following:

(A) A scaled site plan showing the following both existing and proposed:

(1) Property lines;

(2) Building structures, driveways, roads and right of way boundaries;

(3) Location of wells, utility lines, site drainage measures, stormwater disposal system, sanitary tanks and drainfields (primary and reserve);

- (4) Trees and vegetation proposed for removal and planting and an outline of wooded areas;**
- (5) Water bodies;**
- (6) Boundaries of ground disturbing activities;**
- (7) Location and height of unsupported finished slopes;**
- (8) Location for wash out and cleanup of concrete equipment;**
- (9) Storage location and proposed handling and disposal methods for potential sources of non-erosion pollution including pesticides, fertilizers, petrochemicals, solid waste, construction chemicals, and wastewaters;**
- (10) Soil types;**
- (11) Ground topography contours (contour intervals no greater than 10-feet); and**
- (12) Erosion and sediment control measures.**

Staff: The applicant has provided most of the above information so that the County can review the project in relation to the Geologic Hazard regulations (Exhibit A.7, A.21, A.22 & A.23).
Criterion met.

(B) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). For purposes of this subsection, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

Staff: The Hillside Development Permit Preliminary Study form (Exhibit A.6) states that there will be no earth disturbance, storage or fill materials. No area is proposed to be disturbed. The applicant has provided additional information regarding the amount of land to be disturbed (Exhibit A.23). The trench from the accessory building to the new septic tank will involve approximately 9.19 cubic yards of dirt, but this soil will be replaced in the trench. The new septic tank is 7-ft by 6.83-ft by 5.5-ft for a total excavation of 9.74 cubic yards (Exhibit A.23). This material will be spread in an area behind the accessory building which is approximately 50-ft by 25-ft (1,250 sq. ft.) along the fence line. *Criterion met.*

(C) Written findings, together with any supplemental plans, maps, reports or other information necessary to demonstrate compliance of the proposal with all applicable provisions of the Geologic Hazards standards in MCC 39.5090. Necessary reports, certifications, or plans may pertain to: engineering, soil characteristics, stormwater drainage control, stream protection, erosion and sediment control, and replanting. The written findings and supplemental information shall include:

(1) With respect to fill:

(a) Description of fill materials, compaction methods, and density specifications (with calculations). The planning director may require

additional studies or information or work regarding fill materials and compaction.

(b) Statement of the total daily number of fill haul truck trips, travel timing, loaded haul truck weight, and haul truck travel route(s) to be used from any fill source(s) to the fill deposit site.

(2) A description of the use that the ground disturbing activity will support or help facilitate.

Staff: Exhibit A.23 provides some of the information required for the project. *Criterion met.*

(3) One of the following:

(a) Additional topographic information showing the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or

(b) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,

(c) A GHP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with their stamp and signature affixed indicating that the site is suitable for the proposed development.

(i) If the GHP Form– 1 indicates a need for further investigation, or if the director requires further study based upon information contained in the GHP Form– 1, a geotechnical report as specified by the director shall be prepared and submitted.

[a] A geotechnical investigation in preparation of a geotechnical report shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The report shall include specific investigations required by the director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from landslide hazards.

[b] Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the geotechnical report to ensure safety of the proposed development.

[c] Observation of work required by an approved geotechnical report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name

shall be submitted to the director prior to issuance of the permit.

[d] The director, at the applicant's expense, may require an evaluation of GHP Form– 1 or the geotechnical report by another Certified Engineering Geologist or Geotechnical Engineer.

Staff: The applicant has provided a geological report (Exhibit A.7) prepared by Britton Gentry, PE, GE. and the precursor to the GHP Form-1 known as the HDP Form-1 (Exhibit A.6). The engineer has signed the HDP Form-1 and affixed his stamp and certifies that the site is suitable for the proposed development. *Criterion met.*

(4) Documentation of approval by each governing agency having authority over the matter of any new stormwater discharges into public right-of-way.

(5) Documentation of approval by the City of Portland Sanitarian and any other agency having authority over the matter of any new stormwater surcharges to sanitary drainfields.

Staff: No stormwater is being proposed to be discharged to the public right-of-way known as NW Old Germantown Road. The Sanitarian reviewed the proposed development has not expressed a concern with stormwater surcharging the drainfield on the site. *Criterion met.*

6.03 MCC 39.5090 GEOLOGIC HAZARDS PERMIT STANDARDS.

A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(A) The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. For purposes of this provision, the term "site" shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

(B) Fill shall be composed of earth materials only.

(C) Cut and fill slopes shall not exceed 33 percent grade (3 Horizontal: 1 Vertical) unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in excess of 33 percent is safe (including, but not limited to, not endangering or disturbing adjoining property) and suitable for the proposed development.

(D) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property.

(E) Fills shall not encroach on any water body unless an Oregon licensed Professional Engineer certifies in writing that the altered portion of the waterbody will continue to provide equal or greater flood carrying capacity for a storm of 10-year design frequency.

Staff: As staff understands the project, a hole will be dug in the ground and a septic tank placed in to it. This dirt will be placed along the fence line behind the accessory building. The dirt will be “feathered” over the area and replanted with grass seed. The soil from the trench will be placed back into the trench after the pipe is installed. *Criteria met.*

(F) Fill generated by dredging may be deposited on Sauvie Island only to assist in flood control or to improve a farm’s soils or productivity, except that it may not be deposited in any SEC overlay, WRG overlay, or designated wetland.

Staff: The subject site is not located on Sauvie Island. *Criterion not applicable.*

(G) On sites within the Tualatin River drainage basin, erosion, sediment and stormwater drainage control measures shall satisfy the requirements of OAR 340-041-0345(4) and shall be designed to perform as prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. Ground-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340-041-0345(4) is approved for alterations within the buffer area.

Staff: The subject site is located within the Tualatin River drainage basin. The area where the soil will be spread after being excavated has several acres of grass between it and the watercourse at the bottom of the property. The grass will work to capture any soil moving in a rain event. A condition of approval has been included that the trench and septic tank installation be completed during the dry season. *Criterion not met.*

(H) Stripping of vegetation, ground disturbing activities, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction.

Staff: The area of ground disturbance is approximately 1,432 sq. ft. (Exhibit A.23). The project will be broken into two phases: digging/re-filling of trench and the septic tank installation. Then the left over soil will be spread in an area of pasture and then re-seeded. *Criterion met.*

(I) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff.

Staff: The project will not alter the topography in the area of the project. *Criterion met.*

(J) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.

Staff: A condition of approval has required the use of straw on the disturbed area. *Through a condition, this criterion will be met.*

(K) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

(1) A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;

(2) The buffer required in subsection (K)(1) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment, and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041-0345(4).

Staff: The enlarged site plan (Exhibit A.2) indicates that the accessory building is approximately 183 feet from a small creek. If the septic tank is placed immediately to the south of the accessory building, there will be over 170 feet to stream. *Criterion met.*

(L) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical.

Staff: The area of ground disturbance will be re-seeded with pasture grass. *Criterion met.*

(M) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary.

Staff: The area of ground disturbance will be re-seeded with pasture grass and covered with straw until the vegetation is re-established. *Criterion met.*

(N) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized.

Staff: After the re-establishment of the pasture grass, there will be no run-off water generated as no new impervious surface are being created. *Criterion met.*

(O) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding.

Staff: The area of ground disturbance will be re-seeded with pasture grass and covered with straw until the vegetation is re-established. *Criterion met.*

(P) All drainage measures shall be designed to prevent erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system.

Staff: The proposed ground disturbance will not require any drainage measure as the area will remain pervious to rain. *Criterion met.*

(Q) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion.

Staff: No drainage swale will be used as part of the project. *Criterion met.*

(R) Erosion and sediment control measures must be utilized such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to:

- (1) Energy absorbing devices to reduce runoff water velocity;**
- (2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;**
- (3) Dispersal of water runoff from developed areas over large undisturbed areas.**

Staff: The project will utilize a large pasture area, re-seeding and straw to prevent erosion and sedimentation from reaching the watercourse on the property. *Criterion met.*

(S) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient distance from water bodies; or by other sediment reduction measures;

Staff: Left over soil will be spread along the fence right behind the accessory building. The soil will be “feathered” into the pasture area to ensure it does not enter the waterway. *Criterion met.*

(T) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.

Staff: A condition of approval has been included to ensure compliance with the above criterion. *Through a condition, this criterion will be met.*

(U) On sites within the Balch Creek drainage basin, erosion, sediment, and stormwater control measures shall be designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. All ground disturbing activity within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

Staff: The subject site is located within the Tualatin River drainage basin. *This criterion is not applicable.*

(V) Ground disturbing activities within a water body shall use instream best management practices designed to perform as prescribed in the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual.

Staff: The proposed development will be approximately 170 feet away from a water body as planning staff interprets the applicant’s submittal (Exhibit A.2). *Criterion met.*

(W) The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes, unless mitigated as approved by the County Transportation Division.

Staff: The applicant has not provided information regarding the placement of fill on the subject site. Based upon what planning staff understands of the project, this criterion does not appear to be applicable at this time. No fill will be transported to or from the site (Exhibit A.23). *Criterion met.*

(X) Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way.

(Y) No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill.

Staff: The applicant has not indicated that any fill will be brought to the site.

7.00 Significant Environmental Concern Criteria

7.01 MCC 39.5510 USES; SEC PERMIT REQUIRED.

(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.

(B) Any excavation or any removal of materials of archaeological, historical, prehistorical or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.

Staff: The entire property is located within the County's Significant Environmental Concern for wildlife habitat (SEC-h) overlay and is chiefly in the streams (SEC-s) overlay.

7.02 MCC 39.5515 EXCEPTIONS.

(A) Except as provided in subsection (B) of this Section, an SEC permit shall not be required for the following:

* * *

(8) Change, alteration, or expansion of a use or structure lawfully established on or before (November 17, 1994 , or lawfully established within the Sauvie Island Multnomah Channel Planning Area on or before January 7, 2010 provided that:

(a) Within the SEC, SEC-w, and SEC-v, there is no change to, or alteration, or expansion of, the exterior of the structure;

(b) Within the SEC-h and SEC-s, there is no change to, or alteration or expansion of, the structure's ground coverage in excess of 400 square feet. With respect to expansion, this exception does not apply on a project-by-project basis, but rather applies on a cumulative basis to all expansions occurring after the date above; and

(c) Within the SEC-h, there is no change to, or alteration or expansion of, a driveway in excess of 400 square feet.

Staff: In 1989, Planning approved the construction of a 24-ft by 36-ft exempt agricultural building (Exhibit B.10). There now exist two deck areas on either end of the barn. One is 12-ft by 24 ft. (288 sq. ft.) and the other is 7.08-ft by 12.33 (87.29 sq. ft.) plus 3.78-ft by 2-ft (7.5 sq. ft.) for a total of 382 sq. ft. The septic tank will add another 18 sq. ft. of new ground coverage. All future development will need to obtain a Significant Environmental Concern for wildlife habitat and streams. The project is exempt from obtaining a SEC permit at this time.

8.00 Dark Sky Lighting Standards

8.01 MCC 39.6850 DARK SKY LIGHTING STANDARDS.

(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

(1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding. Shielding must be permanently attached.

(2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.

Staff: The applicant has not provided the necessary information to find that the project meets the Dark Sky Lighting Standards. A condition of approval will be included requiring demonstration prior to building plan check. *Through a condition, criterion will be met.*

9.00 Accessory Structures – Conditions of Approval Criteria

9.01 MCC 39.8860 CONDITION OF APPROVAL --ACCESSORY STRUCTURES.

Prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use.

Staff: A condition of approval has been included requiring the covenant be recorded before the property owner is allowed into building plan check. *Through a condition, criterion will be met.*

10.00 Transportation Standards

MCRR 4.000 Access to County Roads

MCRR 4.100 Application for New or Reconfigured Access: Applicants for a new, altered or reconfigured access onto a road under County Jurisdiction are required to submit a site plan. Applicants may be required to provide all or some of the following:

- A. Traffic Study-completed by a registered traffic engineer;**
- B. Access Analysis-completed by a registered traffic engineer;**
- C. Sight Distance Certification from a registered traffic engineer; and**
- D. Other site-specific information requested by the County Engineer including a survey.**

Staff: In Multnomah County Land Use Case # T2-2019-12121, the property owner has proposed to convert the existing barn to an accessory structure. In the related Transportation Division Case # EP-2018-10698, it was found that the property had two existing driveways, which exceeds the County standard [MCRR 4.200]. The applicant's options included decommissioning the eastern driveway serving as a service access driveway, or demonstrating that the case for allowing the eastern driveway to remain could meet the approval criteria for a Road Rules Variance. Both driveways provide access onto NW Old Germantown Rd, which is a Local Road under County jurisdiction.

In the current application (Transportation Division Case # EP-2018-10698), the applicant has requested a Road Rules Variance for the eastern driveway that acts as a service driveway to remain, as well as the western driveway, which serves the dwelling. Since submitting the initial land use case, a driveway permit was submitted (# 81879). The driveway permits the existing western driveway which was shown on prior site plans. The road is classified as a Local Road. The access is shown on the applicant's site plan (Exhibit A.1). All required information has been submitted. *This criterion is met.*

MCRR 4.200 Number of Accesses Allowed: Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property is the standard for approval pursuant to the Multnomah County Code. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system. If more than one access is desired, a land use application must be submitted in compliance with applicable Multnomah County Codes.

Staff: The subject property is served by two driveways. This exceeds the standard for approval per this section.

Multnomah County Road Rules (16.100) provides for a variance from the county standards and requirements when written documentation substantiates that the requested variance is in keeping with the intent and purpose of County Code and adopted rules, and the requested variance will not adversely affect the intended function of the County road system or related facilities. Multnomah County Road Rules Section 16.225 specifically outlines the variance process for multiple accesses. A variance approval may include mitigation measures as condition of approval. The applicant has submitted a Road Rules variance and provided all associated materials. *As conditioned, criterion is met.*

MCRR 4.300 Location: All new access points shall be located so as to meet the access spacing standards laid out in the Design and Construction Manual.

Staff: For a road classified as a Local Road serving single-family residential uses, there is no minimum spacing standard. *This criterion is met.*

MCRR 4.400 Width: Driveway, Private road and Accessway widths shall conform to the dimensions laid out in the Design and Construction Manual.

Staff: For a single-family use, a new or reconfigured driveway must be 12 to 25 feet wide. Applicant has and will continue to gate both driveways and keep them closed at all times that they are not in use. Applicant will also need to provide a site plan showing the width of both driveways. *As conditioned criterion is met.*

MCRR 5.000 Transportation Impact

MCRR 5.100 To determine if a Transportation Impact is caused by a proposed development, the County Engineer will determine the number of new trips generated by a site by one of the following methods:

- A. Calculations from the most recent edition of the Institute of Transportation Engineers' Trip Generation (ITE); or
- B. A site development transportation impact study conducted by a professional engineer registered in the State of Oregon and accepted by the County.

MCRR 5.200 The County Engineer will use the information obtained pursuant to sub-section 5.100 and/or the frontage length of the subject property to determine the pro-rata share of the requirements set forth in Section 6.000. The County Engineer determination of pro-rata share of improvements will expire twelve months from the date of the County Engineer's determination or after the associated land use permit is granted or closed. If expired, a review process and new determination will be required.

MCRR 5.300 Except where special circumstances require the County Engineer to make an alternate determination, any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour shall be found to have a *Transportation Impact*. A minimum increase of 10 new trips per day is required to find a transportation impact.

Staff: The Multnomah County Road Rules defines a Transportation Impact as the effect of any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour [MCRR 3.000]. A minimum increase of 10 new trips per day is required to find a transportation impact. The current proposal is to allow a second driveway on a site with an existing dwelling. The proposal does not expand the existing use or add a new use. *Therefore, the proposal does not generate a transportation impact.*

MCRR 6.000 Improvement Requirements

MCRR 6.100 Site Development: All subject parties with respect to any property proposed for development, including but not limited to the owner of the site and the applicant (if different than the owner), will be responsible for improvements to the right-of-way for any said development of the property which is found to cause a Transportation Impact, those improvements shall include:

- A. **Dedication of Right of Way Requirement:** The subject parties are responsible for a pro-rata share, as determined by the County Engineer, of right-of-way and easement dedications necessary to bring the affected, existing, created or planned public streets and other facilities within and abutting the development to the current County standard. The

dedication of the required easements and right-of-way may be conditions of approval of Design Review or any other development permit related to the proposal.

Staff: The County standard right of way width for a Local Access Road facility is 60 feet. The right-of-way width of NW Old Germantown Rd appears to be over 60 feet. Because the proposal does not involve a transportation impact, the property owner will not be required to dedicate additional right-of-way to achieve a proportional share of this standard.

B. Frontage Improvement Requirements: Frontage Improvement Requirements: In addition to easement and right-of-way dedication requirements, a prorate share may include half-street improvements along all of the site's County Road frontage(s). Right of Way improvements shall satisfy the standards of the County Design and Construction Manual based upon the functional classification of the road(s). The commitment to improve the affected streets or other facilities to the required standards shall be conditions of approval of Design Review or any other development permit related to the proposal. Half-street improvements can include all of the following:

- a. Street widening/improvement
- b. Utility cut restoration
- c. Curb and sidewalk
- d. Driveway relocation/replacement/removal
- e. Traffic controls
- f. Drainage facilities
- g. Lighting facilities
- h. Bicycle facilities
- i. Signal conduit facilities
- j. Street trees
- k. Other appropriate facility or right of way requirements as required by applicable statutes, codes and regulations.

Staff: The proposal does not generate a transportation impact, therefore, no improvements to NW Old Germantown Rd are required at this time.

C. Required Submissions by Subject Parties. Subject parties shall submit to the County Engineer the following: engineered plans, traffic studies, traffic analysis, reports, surveys or similar documents as requested or required by the County Engineer under this Subsection 6.100 or as may additionally be required under Section 18.

Staff: The applicant will be required to submit site plan showing both access points, gates, and right of way line in order to bring the permits into compliance. *As conditioned, criterion is met.*

D. Transportation Demand Management Options that address strategies to reduce travel demand generated by the proposed development.

Staff: The proposal does not result in a transportation impact, therefore, this section does not apply.

11.000 Local Access Roads

11.100 Improvement Requirements:

- A. For any proposed development where access is to be through a Local Access Road and the development is found to have a Transportation Impact, the owner, applicant or other party responsible for the development (the “Developer”) shall be required to improve or cause to be improved the Local Access Road to standards as further provided in this Section.
- B. Right of way and or easement dedications shall be required where the existing right of way is of a substandard width or condition.
- C. The County Engineer may impose requirements for right of way improvements as necessary to address factors including but not limited to: traffic safety, traffic conditions, bicycle access, pedestrian access and vegetation.
- D. Developer shall make required improvements at the County Engineer’s request if the transportation impact warrants additional road improvements. Such additional improvements shall not extend beyond the nearest intersection with the publicly maintained road. Improvements will be constructed in a manner consistent with the standards provided in the Design and Construction Manual.
- E. All costs relating to Local Access Road improvements shall be borne by the Developer including all administrative and other costs incurred by the County including but not limited to the oversight, review, inspection, etc, with respect to design, installation, and construction of any improvements on any Local Access Road under County jurisdiction. County shall not begin any work under this Section unless and until an adequate deposit as determined by the County Engineer has been received by the County to cover these costs.
- F. Notwithstanding any required improvements or other installations done in the public right of way of a Local Access Road under this Section 11 of these Rules, the County does not maintain such Local Access Road.

Staff: A Local Access Road is a public road under Multnomah County jurisdiction that is outside a city and is not a county road, state highway, or federal road. According to State law, the County is not responsible to maintain, repair or improve a Local Access Road. Any proposed development on a property which creates a transportation impact on a local access road must provide a road that conforms to the requirements of the Design and Construction Manual from the frontage of that property to the nearest publicly maintained road.

NW Old Germantown Road is not a Local Access Road. This criterion does not apply.

18.250 Access/Encroachment Permit:

- A. An Access/ Encroachment Permit (A/E Permit) shall be required for the following activities within the right-of-way:
 - 1. New or altered access to roads under County jurisdiction. An access is considered altered when a change in the development that it serves has a Transportation Impact as defined in section 6.000 of these rules;
 - 2. New or reconstructed driveway approaches, private road approaches, curb cuts, or sidewalks;
 - 3. Structures in the right-of-way, such as signs, posts, fences, flags, non-standard mailboxes, etc.; or
 - 4. Any other minor physical alteration of the County right-of-way, including but not limited to any altered landscape design, vegetation planting or placement.

Staff: The driveways the applicant is proposing are not new accesses to NW Old Germantown Rd. NW Old Germantown Rd is a public road under Multnomah County's jurisdiction. The applicant already submitted a permit for the driveway between western property line and house (# 81879).

11.00 Road Rules Variance Findings

MCRR 16.200 General Variance Criteria: In order to be granted a variance, the applicant must demonstrate that:

- A. Special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. The circumstances or conditions may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses;**

Staff: The property owner has requested a variance from the County standard of a single access (driveway) per site. The property owner has indicated that the western driveway is the main access. This access has been found to be shown on prior site plans. The property owner has indicated that the eastern driveway is used infrequently to access and service the well water pump, irrigation system, water softener and filtration system, pressure tanks and soil amendment deliveries for the garden. The driveway is in use and would not require any grading to maintain use.

- B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards;**

Staff: Delivery and service access to the well water pump, irrigation system, water softener and filtration system, pressure tanks and soil amendment deliveries for the garden would not be possible without the eastern access. Given the infrequency of the use of this driveway, and the importance of being able to access these, the applicant will maintain a closed gate to this access at all times.

- C. The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties;**

Staff: Authorization of this variance request for multiple accesses would not have negative effects on public welfare or properties in the vicinity. The variance would not limit or otherwise adversely affect development on adjoining properties. There are no minimum access spacing requirements on local roads. Therefore, neither of the two accesses would limit placement of accesses on neighboring properties. Local roads do not have a driveway spacing standard for residences due to the low volume nature of these roads.

- D. The circumstances of any hardship are not of the applicant's making.**

Staff: If the County would not grant the requested variance, and the existing driveway were closed, the service access trips would not be possible.

12.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Accessory Use Determination to convert an agricultural building to an accessory

building in the Rural Residential zone. In addition, Transportation Planning finds that the applicant has carried the burden necessary for a Road Rules Variance to allow a second driveway on the subject site. This approval is subject to the conditions of approval established in this report.

13.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

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 T2-2019-12121 and EP 2018-10698 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	06/13/2019
A.2*	1	Overall & Enlarged Site Plan (11’ x 17’)	06/13/2019
A.3	1	Floor Plans and Elevations of exterior additions (11’ x 17’) dated 4/20/2019	06/13/2019
A.4	1	Warranty Deed from Book 1472, Page 328 recorded on April 24, 1951	06/13/2019
A.5	2	Warranty Deed from Book 2678, Page 1231-1232 recorded on April 21, 1993	06/13/2019
A.6	4	Hillside Development Permit (HDP) Application (HDP Form 1): Geotechnical Reconnaissance and Stability Preliminary Study completed by Britton W. Gentry on October 1, 2018	06/13/2019
A.7	8	Geotechnical Evaluation - HDP Application completed by Britton W. Gentry on September 25, 2018	06/13/2019
A.8	3	Septic Review Certification	06/13/2019
A.9	2	Fire Service Agency Review	06/13/2019
A.10	1	Water Well Report	06/13/2019
A.11	1	Portlandmaps.com Print Out of 13816 NW Old Germantown Road	06/13/2019
A.12	2	General Application reflecting new application request	07/31/2019
A.13	1	Main Floor Plan / Ground Floor Chapman Barn	07/31/2019
A.14	1	Building Elevations and Main Level Barn Revised 8/20/2019	9/19/2019
A.15	1	Barn Basement Level Dirt Floor Plan	11/26/2019
A.16	1	Floor Plan – Main Floor (11” x 17”) Revised 10/20/2019	11/26/2019

A.17	1	Site Plan and Elevation Plan (11" x 17")	09/19/2019
A.18	4	Application Narrative – Variance Request MCRR 16.300 (T2-2019-12121	11/26/2019
A.19	2	Email from Ava Chapman to Rithy Khut regarding Completeness of Application	12/04/2019
A.20	7	Application Narrative – Accessory Use Determination (T2-2019-12121	12/04/2019
A.21	1	Full Site Plan with Geologic Hazard Information	4.07.2020
A.22	1	Geologic Hazard Notes	4.07.2020
A.23	1	Ground Disturbance Information	4.07.2020
'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1N1W09C -02200 (R#026702900)	06/13/2019
B.2	1	Department of Assessment, Records and Taxation (DART): Map with 1N1W09C -02200 (R#026702900) highlighted	06/13/2019
B.3	1	Aerial Photo from 2018 of entire property	06/13/2019
B.4	1	Aerial Photo from 2018 of northern portion of the property	06/13/2019
B.5	1	Andrew's Tract Subdivision (reduced to 11" x 17")	06/13/2019
B.6	1	Andrew's Acres Subdivision (reduced to 11" x 17") approved on September 25, 1911	06/13/2019
B.7	4	RR Zone in effect from 2.20.1990 until 1995	3/23/2020
B.8	5	Gate House approval dated November 11, 1993	3/23/2020
B.9	4	Dwelling Addition dated May 26, 1989	3/23/2020
B.10	2	Planning's Approval of the Exempt Farm Structure dated September 18, 1989 &	3/23/2020
B.11	1	Plumbing and Electrical Permit for Basement Improvements dated 9/14/1989 from the City of Portland	3/23/2020
B.12	1	Foundation Plan, Lower Level Plan, Main Level Plan and Loft Plan from 1989	3/23/2020
B.13	1	Building Elevations for Barn dated 9/14/89	3/23/2020
B.14	1	Site Plan from 1989	3/23/2020
B.15	4	Accessory Use Covenant	03/23/2020
B.16	5	Transportation Division Memorandum for EP 2018-10698 dated March 18, 2020	3/24/2020

'C'	#	Administration & Procedures	Date
C.1	8	Incomplete letter	07/12/2019
C.2	1	Applicant's acceptance of 180 day clock	07/19/2019
C.3	11	Incomplete letter (Second Letter)	11/20/2019
C.4	1	Complete letter (day 1)	12/10/2019
C.5	9	Opportunity to comment	03/4/2020
C.6	35	Administrative decision	05/22/2020