

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application by Christopher)
Arthur for a Variance to Setbacks for an Indoor)
Marijuana Grow Operation in the Rural) FINAL ORDER NO. 6-2017
Residential RR-5 Zone in Warren, Oregon (V)
17-02))

WHEREAS, on August 11, 2016, Christopher Arthur (hereinafter “applicant”) submitted an application for a Major Variance (V 17-02) to reduce required side setback for a marijuana growing operation in the RR-5 Zone (Rural Residential – 5 Acres) from 55 feet to 8 feet. The applicant’s proposal also requires a variance to reduce the front yard setback from 80 feet to 70 feet. The subject property is located at 56431 Turley Road, in Warren, Oregon, and is identified as Tax Map ID No. 4223-030-00200; and

WHEREAS, County planning staff deemed the application complete on August 31, 2016, and on September 1, 2016, notified surrounding property owners and other affected parties of the Planning Commission public hearing on the application; and

WHEREAS, on October 3, 2016, the Planning Commission held a hearing on the application. At the applicant’s request, the Planning Commission left the record open for 14 days for additional written evidence and seven days for final rebuttal. Deliberations were continued to November 7, 2016; and

WHEREAS, during the period the record remained open, additional written evidence was submitted including evidence from the applicant. Staff addressed the additional evidence in an addendum to their report to the Planning Commission, dated October 28, 2016; and

WHEREAS, on November 7, 2016, the Planning Commission deliberated and voted to deny the application; and

WHEREAS, the applicant timely appealed the Planning Commission’s decision to the Board of Commissioners; and

WHEREAS, following proper notice, the Board of Commissioners held a hearing on the application on January 25, 2017. The Board accepted all written evidence submitted into the record prior to the issuance of the staff report, a list of which was entered into the record as Exhibit 1, as well as evidence received after the staff report and before the close of the hearing, which was entered into the record as Exhibits 2 through 4; and

WHEREAS, the Board then closed the hearing and continued deliberations to February 8, 2017. At the request of the applicant, the Board left the record open for 14 days for rebuttal and final argument. The applicant also consented to waive the 150-day deadline required by ORS 215.427; and

WHEREAS, the Board met on February 8, 2017, at which time they admitted the applicant's rebuttal and final argument into the record as Exhibit 5. The Board then deliberated and voted to tentatively deny the application (V 17-02);

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS HEREBY ORDERS:

- A. The findings and conclusions in the Staff Report, dated October 23, 2016, attached hereto as Attachment A and incorporated herein by this reference, as supplemented by the Staff Report Addendum, dated October 28, 2016, attached hereto as Attachment B and incorporated herein by this reference, are adopted to the extent those findings and conclusions are consistent with the Board's decision;
- B. The above recitals are also adopted and incorporated as findings in support of the Board's decision; and
- C. In addition to the foregoing, the Board adopts the following supplemental findings:
 1. Columbia County Zoning Ordinance (CCZO) Section 1504.1(A).1 provides that the "granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property." In addition to the reasons stated in the Staff Report and Addendum, the Board finds that granting the variance would be injurious to the neighboring property to the north. Although that RR-5 zoned property is currently vacant, it is developable for a single-family residential use. Having a 2,880 square-foot marijuana grow operation a mere eight feet from the property line of a residentially zoned property is a negative impact even if odor and noise can be mitigated. Although marijuana is legal under Oregon law, it remains illegal under federal law and objectionable to many people for that reason. The County's setback standard for marijuana grow operations in the RR-5 zone not only aims to minimize impacts such as noise and odor, but also to provide physical distance to separate marijuana operations from their neighboring properties. The physical separation allows the marijuana use to be less obtrusive to neighboring property owners. In this case, the 2,880 square-foot marijuana grow building would be 8 feet from the northern property line rather than the required 55 feet. That is simply too great of a variance from the standard setback for the Board to find that it would not be injurious to the neighboring residentially

zoned property to the north. The Board therefore finds that the application fails to meet this criterion.

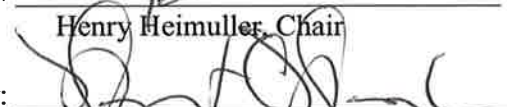
2. The application also fails to meet CCZO Section 1504.1(A).2, which provides that the “conditions upon which the request for a variance is based are unique to the property for with the variance is sought and not applicable generally to other property.” The applicant asserts that the site’s topography makes it “nearly impossible” to relocate the marijuana grow building. (Applicant’s Rebuttal, Feb. 7, 2017, at 4-5). The Board disagrees. In its report, staff identified building envelope of approximately 0.16 acres for the grow building, taking into consideration all required setbacks and required separation between foundations, septic tanks, distribution units and drain lines for onsite septic systems. (Staff Report at 6-7). The Staff Report also includes a photo of the site at the location of the building envelope. That photo shows that the building envelope area is fairly flat area with one fruit tree. The photo is consistent with the topographical map in the record. (Applicant’s Supplemental Evidence, Oct. 17, 2016, at 2). In addition to the photo, the Board heard testimony from a builder, Rich Bailey, who stated that it would be fairly easy to build within the identified building envelope. Based on the evidence in the record, the Board finds that the site’s topography easily allows for an indoor grow operation to be sited in conformance with setback requirements, and the property therefore has no unique conditions that warrant the requested variance.
3. Finally, CCZO Section 1504.1(A).4 requires that “[s]trict compliance with the Zoning Ordinance would create an unnecessary hardship.” The applicant reasons that strict compliance imposes an unnecessary hardship because “there exists a perfectly good building on the property already.” (Applicant’s Rebuttal, Feb. 7, 2017 at 5). The Board finds that the applicant’s reasoning falls short. As an initial matter, the Board does not agree that strict compliance with the setback creates an unnecessary hardship. Rather, the *applicant* created the unnecessary hardship by establishing the marijuana use and investing in improvements to a pole building after the County had advised him that the building would not comply with marijuana setback standards. As explained in the above finding, the site contains ample area to easily locate an indoor grow operation in conformance with the setback requirements. Accordingly, compliance with the setback requirement is not a hardship, and the Board therefore finds that the applicant has failed to meet this criterion.

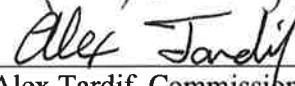
D. Based on the foregoing and the whole record on this matter, the application by Christopher Arthur for a Major Variance to the setbacks for an indoor marijuana grow operation in the RR-5 zone (Application No. V 17-02) is hereby **DENIED**.

DATED this 8th day of March, 2017.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 
Henry Heimuller, Chair

By: 
Margaret Magruder, Commissioner

By: 
Alex Tardif, Commissioner

Approved as to form

By: 
Office of County Counsel

ATTACHMENT A

COLUMBIA COUNTY BOARD OF COMMISSIONERS
STAFF REPORT
February 28, 2017

Major Variance to the Minimum North Side and Front Yard Setbacks for Indoor Marijuana Growing Facilities in the Rural Residential Zone

FILE NUMBER: V 17-02

HEARING DATE: January 25, 2017

APPLICANT: Christopher Arthur, 56431 Turley Road, Warren, OR 97053

OWNER: OHM Equity Partners, LLC, 33470 Chinook Plaza 213, Scappoose, OR 97056

PROPERTY The property is located at the applicant's residence addressed at 56431 Turley Road in Warren

MAP ID NUMBER: 4223-030-00200

ZONING: Rural Residential (RR-5) Zone

SIZE: 1.58 acres

REQUEST: The applicant is requesting a Major Variance that would correct a zoning violation involving the illegal establishment of an indoor marijuana growing operation in an accessory structure in the RR-5 Zone that is 8' instead of the minimum 55' from the side property line as required by Section 1803.2(C) of the Zoning Ordinance.

APPLICATION COMPLETE: August 31, 2016 **150 DAY DEADLINE:** January 28, 2017

APPLICABLE REVIEW CRITERIA:	Page
<u>Columbia County Zoning Ordinance</u>	
Section 603 Rural Residential (RR-5) Zone - Conditional Uses	4
Section 1803 Marijuana Land Uses - Special use Standards	4
Section 1504 Major Variances	5

BACKGROUND:

On November 25, 2015 the Columbia County Board of Commissioners adopted Ordinance No. 2015-4 related to cannabis regulation in Columbia County, Oregon. The State of Oregon regulates cannabis by provisions in the Oregon Revised Statutes in ORS Chapter 475B. County Ordinance No. 2015-4 amends the Columbia County Zoning Ordinance and sets time, place and manner regulations for the growing, processing, and retailing of marijuana operations in the county's unincorporated areas.

ATTACHMENT A

The applicant (Christopher Arthur) and property owner (OHM Equity), are requesting approval to operate a Medical Marijuana Growing Operations on the ~1.58 acre property where the applicant receives mail.

On March 31, 2016 at 11:00 am the applicant and property owner had a Pre Application Meeting (Pre 16-24) with the County Planner and Building Inspector. The purpose of this Pre Application Meeting is to distribute, explain, and clarify the application/requirements for establishing a marijuana growing operation on the 1.58 acre RR-5 zoned subject property. During this meeting, the County provided the applicant and property owner with both a Marijuana Operation Permit Application, a Conditional Use Permit Application and copies of Sections 600, 1503, and 1803 of the Zoning Ordinance.

During this meeting, the county also explained the minimum siting requirements (55 feet from the side and rear property lines and 80' from the front property line) for any indoor marijuana production facilities in the RR-5 Zone. The county also emphasized that the site's existing 2,880 square foot pole building (shown on Page 3 and permitted by the County through BLD 2000-00375) would not comply with these minimum siting requirements. The County explained that although this existing structure could be used for any authorized RR-5 uses, the provisions in Section 1803.2(C) prohibited it from being converted to a new conditionally permitted indoor marijuana growing operation since it did not comply with these minimum setback requirements.

After receiving complaints from the neighbors, on June 30, 2016, Columbia County opened Code Enforcement Case (COD 2016-00121) for the illegal use (establishing an unauthorized marijuana growing operation) of the property's existing 2,880 sq ft pole building. According to the County Code Enforcement Officer's records, he met the applicant on site on July 6, 2016 and observed the applicant's indoor marijuana growing operation inside this structure. The Code Enforcement Officer then informed the applicant on July 11, 2016 that he was in violation of Sections 1803 and 603.6 of the Columbia County Zoning Ordinance related to Conditionally Permitted Marijuana Growing Operations in the RR-5 Zone. The County also required the applicant to remove all marijuana plants and suspend the growing operations in this structure until these land use authorizations/permits were approved by the county.

Consequently, on August 11, 2016 the applicant and property owner submitted both the Major Variance and Marijuana Operation/Conditional Use Permit Applications proposals requested for V 17-02 and MO 17-01. On September 6, 2016 both the Project Planner and Code Enforcement Officer conducted a site inspection and verified that all plants had been removed and growing operations had ceased in this structure as shown here.



ATTACHMENT A

Before the Planning Commission can review the requested Conditionally Permitted Indoor Marijuana Operation proposal (MP 17-01), the Board of Commissioners will need to review the Major Variance proposal (V 17-02) and approve it for compliance with the applicable criteria in Sections 1504.1. If the Board of Commissioners approves V 17-02, the Planning Commission will then be able to review the proposal after the applicant submits additional documentation (wastewater management plan, approved irrigation source, and documentation from OHA confirming approved registration etc.) with MO 17-01 for consistency with the provisions in Section 1503 and 1803 of the Zoning Ordinance.

EXISTING SITE CHARACTERISTICS:

The 1.58 acre RR-5 site is already developed with one residence and various accessory structures. This residential related development utilizes an approved onsite sewage disposal system and receives water for domestic purposes only from the Warren Water Association. The county's records indicate that the components of the site's existing septic system are located west of the residence as seen below. There are no flood hazards, waterways, steep slopes, or identified wetlands on the subject property according to the FEMA FIRM Map # 41009CO 435D and the NWI Map of Chapman, OR.

As shown below, the property is surrounded by other RR-5 properties to the north and west, RR-2 zoned properties to the east and south across Turley Road, and by Primary Agriculture (PA-80) zoned properties to the south.

Aerial View of subject 1.58 site and the locations of septic system and the existing 2,880 sq ft accessory structure



Zoning Map



Beginning with the

provisions in Section 603

ATTACHMENT A

of the Zoning Ordinance - RR-5 Uses

Section 600 RURAL RESIDENTIAL - 5 RR-5

603 Conditional Uses:

- .6 Marijuana growing and producing within an enclosed structure subject to standards in Section 1803.

[Amd. Ordinance 2015-4, eff. 11-25-15]

Finding 1: Marijuana growing and producing in an enclosed structure on RR-5 zoned properties are subject to conditional use standards in Section 1503 of the Zoning Ordinance. This detached 2,880 sq ft accessory structure does not comply with the minimum 55' side yard and 80' front yard siting requirements in Section 1803.2(C) for Indoor Marijuana Growing Facilities in the RR-5 Zone. At the time of permitting in 2000, this accessory structure's existing location complied with the RR-5 Zone's minimum 30' front yard and 5' side yard siting requirements for detached accessory structures. Because this structure does not comply with the additional 50' front and side yard setback requirements for its new conditionally permitted use, it necessitates the submittal of the Major Variance presented for V 17-02.

Continuing with the applicable provisions of the Zoning Ordinance in Section 1803 related to proposed Marijuana Operations:

1803 MARIJUANA LAND USES

- .2 Marijuana Growing or Producing Uses. The following standards shall apply to marijuana growing or producing uses:
- A. Co-location with a Dispensary. Medical grows may not be on the same site as a dispensary.
 - B. Within an Enclosed Building in Certain Zones. Growing and producing must be within an enclosed building in the RR-5, RC, M-3, M-2 and M-1 zones. For the purposes of growing and producing, an enclosed building includes an enclosed greenhouse.
 - C. Additional Setbacks for Indoor Grows in Certain Zones. In the FA-80, PF-80, and RR-5 zoning districts, minimum front, side and rear yard setbacks for buildings accommodating marijuana growing and producing shall be increased by 50 feet.
 - D. Additional Standards in the RR-5 Zone.
 1. Growing and producing uses shall be operated by a resident or employee of a resident of the property on which the uses are located.
 2. The growing and producing use shall employ on the site no more than five full-time or part-time persons.
 3. No more than one State issued growing or producing registration or licence is allowed for each parcel of record.

ATTACHMENT A

Finding 2: . The provisions in Section 1803.2(A) and ORS 475B both prohibit the co-location of dispensaries and growing operations on the same property. The application states that *“The proposed use is only as a Medical Marijuana Grow Operation, and not a dispensary. No dispensary will be located on the subject property.”* This satisfies the criterion in Section 1803.2(A) and will be required for the duration of the indoor marijuana growing operation on the subject site if the Planning Commission approves V 17-02 and the related MO 17-01.

Finding 3: If V 17-02 and subsequent MO 17-01 are approved , the applicant shall submit adequate documentation for the necessary Change of Occupancy of the 2,880 sq ft structure that was permitted by the County through the issuance of BLD 2000-00375. This Change of Occupancy/conversion will ensure this Indoor Marijuana Growing Facility complies with the required provisions of the Oregon Structural Speciality Code for indoor marijuana growing operations and the provision in Section 1803.2(B).

Finding 4: The submitted site plan, county building permit records, and the Project Planner’s 9/6/16 field visit confirmed the existing 2,880 sq ft structure does not meet the proposed marijuana facility’s 50 additional feet of the standard 30’ front yard setback as well as the 50 additional feet of the standard 5’ north side yard setback. The subsequent material submitted for V 17-02 will need to be reviewed and approved by the Board of Commissioners prior to the county’s review of the existing agricultural structure’s Change of Occupancy Permit. Otherwise, the conditional use for the Marijuana Operation presented for MO 17-01 must be denied.

Finding 5: The additional standards for new marijuana operations in the RR-5 Zone shall be conditions that the resident applicant must comply with for the duration of this operation at this location. If approved, the county reserves the right to review the application again in the future if it determines that the resident applicant no longer complies with any of these additional standards in Section 1803.2(D).

The remainder of this report will address the extent that the request presented for V 17-02 satisfies the Major Variance requirements in Section 1504.1. All of these Major Variance criteria must be satisfied before the county can review the necessary land use (MO 17-01) permit and subsequent necessary building permit documentation. All of these permits shall be obtained before the county can authorize the new use of this authorized agriculture structure as an indoor marijuana operation in the RR-5 Zone.

Continuing with Section 1504 of the Zoning Ordinance - Major Variances:

1504 VARIANCES: Except as provided in Section 1504.4 below, there are 2 classes of variances to the standards established in this ordinance. A Minor Variance is defined as a request for a variance of less than 25% from a dimensional requirement such as setbacks, height, lot or parcel coverage, lot or parcel width, or lot or parcel depth, or a request for a variance of less than 10% from a minimum lot or parcel size requirement. All other variances are defined as Major Variances. Use variances are not permitted under this ordinance except as permitted under Section 1505.1 “Temporary Permits: Use Not Allowed in District”.

Finding 6: The request for a proposed 8’ north side yard is defined as Major Variance since it is greater than 25% (13.75 feet) of the minimum 55’ side yard setback required for this accessory

ATTACHMENT A

marijuana structure per the provisions in Section 1803.2(C) of the Zoning Ordinance. Although the applicant did not request a Minor Variance for the structure's 70' instead of 80' minimum front yard setback, the county can evaluate both variances simultaneously.

1.58 acre Site's **Building Envelope** in relation to minimum MO structure's setbacks to property lines and the existing septic system



Key - 1983 As Built Septic System, 55' and 80' MO setbacks

1 **Major Variances:** The Planning Commission may permit and authorize a variance from the requirements of this ordinance when unusual circumstances cause undue hardship in the application of it. The granting of such a variance shall be in the public interest.

A. A variance shall be made only when all the following conditions and facts exist:

- 1 The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property.

Discussion: The Aerial view above and the picture below depicts the 1.58 acre RR-5 site's approximate 'Building Envelope'. This area has no topographical limitations that will prohibit the siting of an indoor marijuana growing facility (pole barn) in compliance with Section 1803.2(C) minimum property line setbacks. A new "Building Envelope" area can be also be designed to comply with the minimum 10' separation distances between foundations, septic tanks, distribution units and drain lines required in Table 1 of the Oregon Administrative Rules (OAR) 340-071-0220 (Attached) for onsite sewage disposal systems.



Finding 7: Staff finds that constructing another similarly sized structure (rather than relocating the existing 2,880 sq ft structure) within this "Building Envelope" will satisfy both the county's

ATTACHMENT A

minimum setbacks for indoor marijuana operations as well as the State of Oregon's minimum setbacks necessary to help protect sewage disposal systems provided all building permits are obtained.

20 residences within 750 feet of subject property



Nearby residences along and across Turley Road



The

Board of Commissioners adopted the additional yard setbacks for commercial marijuana operations in the RR-5 Zone in order to help minimize impacts that commercial marijuana growing operations could have on the surrounding rural residential neighborhoods. According to the County Assessor's records, there are 20 residences within 750' of the subject site, some of which are shown on the pictures on Page 7.

Although the county did not limit the size of any future commercial marijuana operations in the RR-5 Zone, it mandated the Planning Commission's review and approval of these conditionally permitted commercial operations at a public hearing. Mandating public hearings for commercial marijuana operations in the RR-5 Zone moreover is another mechanism the county has chosen to use to help protect the public's health, safety and welfare of its rural residentially developed areas. It was the neighbors' complaints about the marijuana production facility's smell that initiated the County Code

ATTACHMENT A

Enforcement Officer's investigation and confirmation of the site's illegal indoor marijuana operation.

The County Road Department has no objections to the approval of V 17-02 since it does not impact the Turley Road right-of-way. Likewise the County Building Official has no objections provided the applicant obtains valid licensing from the State of Oregon and obtains all necessary building permits for the 2,880 sq ft structure's Change of Occupancy.

The attached Oregon Department of Water Resources brochure dated 10/09/2015 "*Understanding Water-Use Regulations: Medical and Recreational Marijuana*" states that marijuana related water uses are subject to the same water-use regulations as any irrigated crops and all water sources. This brochure also states that potential irrigation sources must comply with the provisions in ORS 537.141 related to the State of Oregon's appropriation of water rights.

The Warren Water Association's attached comments dated 9/6/16 states that although they provide domestic water to the site's existing residence, their Board has not approved water for commercial agricultural operations to occur on this site. Without any additional documentation confirming the commercial marijuana operation has an irrigation water source approved by the County Watermaster, staff finds the proposal requested for V 17-02 could be compromising the public's health, safety and welfare. The Warren Water Association Board encourages a commercial agricultural operation within their service area to drill a private well

Similarly, the provisions in OAR 340-071-0130(4) prohibit any sort of processed wastewater resulting from the cultivation of marijuana from being discharged into an onsite septic system. In addition, any agricultural process wastewater must be managed according to the Oregon Department of Agriculture standards in OAR 603-095-00800 related to the Water Quality Management Plan for the North Coast Basin; i.e riparian streambanks maintained, erosion sediment controlled and nutrients/pesticides managed. The applicant shall submit a plan to the County demonstrating appropriate disposal/reuse of wastewater generated from its proposed marijuana growing operation. This wastewater plan shall be reviewed and approved by the County Sanitarian as one condition of building permit issuance

Finding 8: For the above reasons, staff finds the proposal requested for V 17-02 has not made any plans to ensure the site's wastewater management as well as irrigation water source has appropriate provisions that will help protect the public safety, health or welfare of nearby residents and property owners. For these reasons, staff finds the resident applicant has not satisfied the first criterion for Major Variances in Section 1504.1(A).1.

The applicant provided the following response to this criterion. *This particular case is factually unique. The applicant is seeking a major variance for the setback relative to the norther property line. The parcel located to the north of the subject property is an open wheat field. There are no residences or other structures on the property. In fact, the nearest residence is over 1000 feet to the north of the pole barn. The granting of the various in this unique case will not be injurious to the northern property, and will not interfere with any uses of the property"*

Finding 9: Although the applicant explains that the adjacent RR-5 property is currently vacant, consists of a wheat field, and will not be injured by the requested indoor marijuana commercial operation, this response is limited to only this single adjacent RR-5 property. Although this property is currently vacant, it is a lawfully established RR-5 property that is eligible for authorized RR-5 site

ATTACHMENT A

development and a future home that could be only 38 feet north of the commercial marijuana operation at this location.

Staff finds the application submitted for V 17-02 does not address the necessary precautions that a commercial marijuana operator could implement to ensure this kind of enterprise will be able to minimize potential detrimental impacts to the surrounding rural residentially developed properties and residents as well as to the Warren Water Association's water supply. For these reasons and without any additional documentation, staff finds the criterion in Section 1504.1(A).1 has not been met.

Continuing with Section 1504 of the Zoning Ordinance:

2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.

Discussion: As demonstrated in this report's pictures, the 1.58 acre subject site does not have any unique physical conditions, topographical limitations, or existing site development within the "Building Envelope" that prohibit the location of an indoor marijuana production facility in compliance with the State DEQ's and County Zoning Ordinance's minimum setbacks. The only potential "obstruction" to supporting a marijuana facility in this location appears to be the site's existing septic system. Constructing another structure in this area would require the applicant to obtain the necessary building permits that must comply with the applicable provisions of the Oregon Structural Speciality Code and the siting standards in Table 1 of the OAR 340-071-0220. Staff acknowledges that meeting the RR-5 Zone's minimum setbacks may be challenging to satisfy on the subject 1.58 acre, but this is not a unique characteristic for many of the county's other lawfully established "undersized" RR-5 zoned properties.

Finding 10: For the above reasons, staff finds that the variance requested for V 17-02 is not based on any unique physical conditions of the lawfully created, already developed, and undersized RR-5 property. There appears to be sufficient area within the site's identified Building Envelope to support an indoor marijuana growing operation that complies with the County's and State's minimum setbacks as already covered for Finding 6. Staff finds the request proposed for V 17-02 does not satisfy the second criteria of Major Variance Approval. The variance request is not based on unique characteristics of the property which precludes another authorized accessory structure from meeting these minimum property line setbacks.

Continuing with Section 1504 of the Zoning Ordinance:

3. Approval of the application will allow the property to be used only for purposes authorized by the Zoning Ordinance;

Finding 11: Should the Board of Commissioners approve the requested variance, it will authorize only the location of the 2,880 sq ft structure that is intended to be used as an indoor marijuana growing operation. The establishment of the Conditionally Permitted Marijuana Operation submitted for MO 17-01 will still need to be reviewed and approved by the Planning Commission for consistency with the provisions in Sections 1803.2 and 1503 of the Zoning Ordinance. The applicant acknowledges this when his response states" *"The requested variance will only allow the pole barn to be used for currently permitted uses, as well as one conditionally permitted use: as a medical marijuana grow site."*

ATTACHMENT A

No uses or site development other than those stated in the applications for the Major Variance and Conditionally Permitted Indoor Marijuana Growing Operation will be permitted or authorized with the Board of Commissioners' and Planning Commission's approval of both land use decisions. The marijuana operation authorized by MO 17-01 further, does not run with the land and cannot be automatically granted to any subsequent residents unless they are also licensed by the State of Oregon to grow marijuana at this location. Future residents will also be required to obtain all necessary future building and land use permits for all future site development. Finally the applicant and all future residents shall be required to comply with all the conditions of approval for V 17-02 and MO 17-01 for the life of this proposal on this RR-5 property. With these conditions for the approval of MO 17-01 staff finds the third criteria of Major Variance Approval can be satisfied.

Continuing with Section 1504 of the Zoning Ordinance:

4. Strict compliance with the Zoning Ordinance would create an unnecessary hardship;

Discussion: Strict compliance with the Zoning Ordinance would require the applicant to either move the ~2,880 square foot detached shop to another location within a designated and approved "Building Envelope", or construct a new structure within this new area in compliance with the applicable provisions of the Oregon Structural Speciality and the County's Zoning Codes. The applicant's response to this question (No.4 in the attached application) response contends:

"The pole barn was lawfully sited on the subject property in approximately 2000. The property owner has invested a substantial amount of money in the pole barn. In addition, the applicant has invested a substantial amount of money in the pole barn to mitigate any noise and/or odor impacts to the neighbors... It would create an unnecessary hardship on the owner and/or the applicant if they were required to (a) move the pole barn further south or (b) build an entirely new pole barn on the subject property when there already exists a perfectly good pole barn for the proposed use. The existence of the current pole barn, coupled with the fact that allowing the requested variance would not frustrate the purpose of the Marijuana Setback" with respect to the property north of the subject property, would make strict compliance with the Zoning Ordinance an unnecessary hardship on the applicant and property owner."

Evaluation: As the applicants stated, relocating this structure further south could be cost-prohibitive due to its size and the fact that the applicant and property owner have already spent money on building and electrical permits. The county issued one electrical permit (ELE 2016-00755), one building permit (BLD 2016-00202 for the special final inspection of the 2000 permitted structure), and one plumbing permit (PLM 2016-00056) in March and April of 2016 and collected \$495 in fees. None of these building permits led the county to believe any change of occupancy would be required for the new use of this permitted accessory structure in the RR-5 Zone. Extending a 320 amp service and installing a water line and hose bib to the existing 2880 sq ft structure did not warrant any unauthorized use of this authorized accessory structure on the subject property. It was the neighbors who called Land Development Services and complained about the smell from the suspected marijuana operation that led the Code Enforcement Officer to call the applicant and open the Code Enforcement Case.

As already stated in the Background, at the 3/31/16 Pre Application meeting the Project Planner provided the applicant and property owner with copies of Sections 1503 and 1803 of the Zoning

ATTACHMENT A

Ordinance and emphasized the additional setback requirements for marijuana production facilities in the RR-5 Zone. The fact that the property owner was concurrently applying for these building, electrical and plumbing permits all indicate the substantial financial “hardship” was self-imposed.

Finding 12: Staff finds that the case presented for V 17-02 does not demonstrate justifiable reasons why it is essential for this future marijuana growing facility to be located at this location rather than 47 feet further south within the identified Building Envelope Area as already covered for Finding 6. There are no site specific limitations to constructing a new pole barn further south and west provided it does not compromise the site’s existing residential septic system. Neither the Oregon Structural Speciality Code, Oregon Fire Code, or provisions of the Onsite Wastewater Treatment Systems require this structure to be constructed at this non-compliant location, nor will the pole barn’s future use be compromised if it was built within the building envelope. Any financial hardship created by the applicant’s investments in the illegally established indoor marijuana are self-imposed. Consequently, staff finds the request proposed for V 17-02 does not satisfy the fourth criteria of Major Variance Approval, that there is an unnecessary hardship in complying with the requirements for an indoor marijuana grow

Continuing with Section 1504 of the Zoning Ordinance:

5. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor violate any other provision of the Zoning Ordinance.

Finding 13: This granting of the request for a variance from the side and front yard setbacks will not adversely affect the realization of the Comprehensive Plan nor violate any other provision of the Zoning Ordinance provided it is determined in the subsequent review of MO 17 -01, that the application meets all other applicable review criteria for the indoor marijuana grow. Staff finds this fifth criteria for Major Variance would be met if variance is approved and the application for the indoor marijuana grow by MO 17-01 is found to meet all applicable review criteria other than the setback requirements of Section 1803.2C.

Continuing with Section 1504 of the Zoning Ordinance:

- B. A variance so authorized shall become void after the expiration of 1 year if the next step in the development process has not been applied for.

Finding 14: If the final decision of approval for V 17-02 is granted, the applicant will have one year within which to complete the proposal in accordance with conditions imposed and obtain all necessary building and land use authorization and permits. This approval will expire after one year if all permits have not been issued. Staff finds this criterion will be met with conditions.

Continuing with Section 1504 of the Zoning Ordinance:

- C. The Planning Commission may impose whatever reasonable requirements it feels will fulfill the intent of this ordinance.

Finding 15: If the Board of Commissioners review indicates that additional reasonable requirements are necessary for the proposed development that have not been covered in this report, they have the authority to condition approval with such requirements Staff finds this criterion can be met if the Board of Commissioners deems additional requirements are necessary to fulfill the intent of the county’s Zoning Ordinance provisions for Major Variances.

ATTACHMENT A

COMMENTS:

CRF&R: As of the date of this report, no comments have been received for V 17-02.

Warren Water Association: Has not approved water for a commercial agricultural/marijuana operation on the subject property and encourages the applicant/property owner to utilize a private well.

Scappoose-Spitzenberg CPAC: No comments have been received as of the date of this report.

County Roadmaster: Has no objections to the proposal since it does not impact the Turley Road right of way.

County Building Official: Has reviewed the submitted proposal and has no objections to its approval as submitted, provided all necessary building permits and licenses are obtained.

County Sanitarian: Has not submitted any comments as of the date of this report but will require the request proposed for V 17-02 to comply with the applicable provisions for onsite sewage disposal systems in OAR 340-071-0130(4).

Columbia County Assessor: No comments or concerns have been received by the County as of the date of this report.

Various correspondence LDS has received from neighbors either electronically and standard mail as well as at the Planning Commission's October 23, 2016 public hearing. All of these comments are attached.

No other comments have been received by Land Development Services.

STAFF CONCLUSION AND RECOMMENDATION:

Based on the Findings and Facts contained in this Staff Report, Staff recommends that the Board of Commissioners deny the appeal of the Planning Commission Final Decision for V 17-02 because the requested major variance (1) is not consistent with three of five necessary criteria for Major Variance Approval identified in Section 1504.1 of the Zoning Ordinance.

Attachments:

V 17-02 submitted application, documentation & proposed site plan

Address, Zoning and Vicinity Maps

"Understanding Water-Use Regulations: Medical and Recreational Marijuana"

Table 1 of OAR 340-071-0220

Warren Water Association's comments

cc: Ross Day, Day Law & Associates, 15055 SW Sequoia Parkway, Suite 170, Portland OR 97205

ATTACHMENT B
ADDENDUM TO V 17-02 AND MO 17-01
From The Land Development Services Department

TO: Columbia County Planning Commission

FROM: Deborah S. Jacob, Planner II

RE: **FINDINGS FOR SUPPLEMENTAL EVIDENCE RECEIVED ON
OCTOBER 17, 2016**
MAJOR VARIANCE CASE: V 17 - 02 for Christopher Arthur
Application by Christopher Arthur for an Indoor Marijuana
Grow On A 1.58 Acre Site in the Rural Residential(RR-5) Zone.
Tax Map No. 4223-C0-00200/56431 Turley Road, St Helens.

DATE: October 28, 2016

At the October 3, 2016 Public Hearing the Planning Commission approved the applicant's request to leave the record open for 14 days until October 17, 2016. This would allow the applicant time to submit additional evidence to the County related to V 17-02 in response to the issues included in the 10/23/16 Staff Report presented to the Commission at the October 3, 2016 Public Hearing.

Within this 2 week period between 10/3/16 through 10/17/16, Land Development Services received additional comments from 4 neighbors of the subject property, the Scappoose - Spitzenberg CPAC, and Supplemental Evidence dated 10/17/16 submitted by Ross Day. All of these comments are attachments to this Memorandum and are included in the county's Files for V 17-02 and MO 17-01.

The remainder of this Addendum will evaluate the Supplemental Evidence submitted by the applicant's legal counsel, Ross Day in relation to the applicable provisions of Section 1504 of the Zoning Ordinance related to Major Variances. This evaluation is an Addendum to the Staff Report dated 9/23/16 for V 17-02.

The submitted 10/17/16 **Declaration of Christopher Arthur** includes 27 items that begins with the statement that "*I, Christopher Arthur, do hereby declare the following (27 items) to be true*". Although the applicant signed this Declaration, his signature was not notarized.

ISSUE # 1: Items 3, 15 & 16 state the applicant's lawful residence to be at the subject property addressed at 56431 Turley Road in Warren, Oregon.

Exhibits 11 and 12 are copies of Mr. Arthur's OMMP issued Grower and Patient Cards issued on 9/29/16. Both Cards list the applicant's address at 1271 NE Highway 99W in McMinnville, Oregon and the Growsite Location at 56431 Turley Road in Warren, Oregon.

ATTACHMENT B

Finding 1 Since McMinnville Oregon is approximately 60 miles away from the subject site, the county will require the applicant to submit a current Drivers License issued by the State of Oregon Department of Motor Vehicles as evidence to ensure compliance with the residency requirement in Section 1803.2(D)(1) for proposed marijuana operations/operators in the RR-5 Zone. Although this Issue does not address any Major Variance criterion in Section 1504.1, staff finds that if the Planning Commission approves V 17-02, this issued Drivers License be one condition of final approval for the subsequent review and approval of MO 17-01.

Finding 2: The applicant's submitted OMMP Grower and Patient Identification Cards confirm that the applicant is licensed to only grow for himself within this 24,000 sq ft structure. Although the applicant mentions his other patients, he has not submitted OMMP Patient and Grower Identification Cards for anyone other than himself. Without this additional documentation from the OMMP, staff finds the applicant has not demonstrated the need to establish a commercial medical marijuana growing operation in the RR-5 Zone in the existing 24,000 sq ft structure that does not meet the minimum property line setbacks.

ISSUE # 2: For Item Numbers 4 through 11 and 17; the applicant describes the (a) results of a series of tests with sound level meter readings that he conducted on 10/16/10 to determine existing noise levels on the subject property and (b) a Loudness Comparison Chart from the California Department of Transportation.

Various readings were taken from the site's driveway, inside the 24,000 sq ft accessory structure and inside the residence and the applicant compared readings taken when the 24,000 sq ft structure's equipment were turned off and on. The noises on the site ranged between 36.0 to 40.1 dBa (weighted decibels). The applicant captured the sound from large truck on Turley Road which measured a reading of 70.4 dBa.

Finding 3: Although the county acknowledges this information, the Zoning Ordinance does not include the measurement of a dBA threshold in its evaluation of potential marijuana operations in the RR-5 Zone,. This information documents that, without any marijuana growing onsite, the noise generated from the existing equipment is not as loud as a large truck driving on Turley Road. Although this documentation is related to the criterion in Section 1504.1 (A) that requires Major Variances to not be detrimental to the public's welfare, there are other potential detrimental impacts covered in the 9/23//16 Staff Report that have yet to be addressed and met. This documentation can be included as a partial fulfillment of the criterion in Section 1504.1(A).

ISSUE # 3: Items 12 - 14 describe the Carbon air filters and air infiltration equipment the applicant has installed in this 24,000 sq ft structure. Similarly, Items 18 and 19 describe the specifications and dimensions of the 24,000 sq ft structure in which the applicant has conducted an unauthorized indoor marijuana growing operation on site.

Finding 4: Installing these features in the existing 24,000 sq ft structure was initiated by the applicant before the county had approved its new use as potential indoor marijuana growing facility. These items document the unauthorized internal modifications that the applicant installed in this 24,000 sq ft structure. Similar to Finding 3 above, although these installations are related to the public welfare Major Variance criterion in Section 1504.1(A), they can be used as a partial fulfillment of this criterion.

ATTACHMENT B

ISSUE # 4: Item 20 describes that the applicant intends to purchase irrigation water from an outside source and will not be using Warren Water. Likewise Item 21 states that all waste water will be absorbed by plants. The applicant has not identified the alternative water supplier that will be used to irrigate the medical marijuana growing operation nor submitted documentation for the county to verify this supply complies with the provisions in ORS537.141 related to the State of Oregon's appropriation of water rights.

Finding 5: If the Planning Commission approves V 17-02, this information will be included in the related request submitted for MO 17-01. Additional documentation would be required to be submitted and approved by the County Watermaster and/or County Planner in relation to ORS 537.141 as well as by the County Sanitarian for appropriate wastewater management plan prior to final approval of MO 17-01.

ISSUE #5: For Items 22, 23 and 24 the applicant questions the feasibility of the subject site being able to support another structure in the newly identified 'building envelope' as determined by the County in the 9/23/16 Staff Report. The applicant states the county's evaluation "is wrong and misrepresents the topographical conditions of the property". He also states that he "believes the slope is anywhere between 10 to 20 feet from where the shop is currently located down to where the driveway for the residence is located." and that a number of fruit trees would need to be removed if a new structure was built in the new building envelope.

Finding 6: As already covered for the 9/24/16 Staff Report, the Soil Survey of Columbia County identifies the subject property's soils as Aloha silt loam (Type 1B) with slopes between 3% - 8%. The Project Planner's site visit confirmed that no portion of the new building envelope area exceeds a 8% slope as identified in the Soil Survey of Columbia County. Constructing a new facility in this new location does not appear to merit an engineered Geotechnical Report and/or Evaluation. Although some fruit trees may need to be removed for the new building, this 1.58 acre subject property is not in farm deferral and has been in residential use for the past two decades. For these reasons, staff finds this additional information does not demonstrate the subject property contain 'unique topographical characteristics' that do not apply to other RR-5 zoned property. The criterion in Section 1504.A(2) has not been met.

ISSUE # 6: For Items 25, 26 and 27 the applicant reiterates the applicant's statement that he proceeded with his unauthorized medical marijuana growing operation based on incorrect legal advice. This advice was obtained after the Pre Application Meeting with the applicant on March 31, 2016 where the county informed him that the existing 24,000 sq ft structure did not comply with the minimum 80' front and 55' side property line setback requirements for indoor medical marijuana operations in the RR-5 Zone.

Finding 7: The Zoning provisions in Section 1803 of the County's Marijuana Zoning Ordinance does not distinguish between medical or recreational marijuana operations. Any marijuana operation established in Columbia County after the November 25, 2015 effective date of the Board of Commissioners' adoption of Ordinance 2015-4 requires compliance with the applicable provisions of Section 1803. This statement and explanation from the applicant does not address any Major Variance criteria in Section 1504.A.

ATTACHMENT B

Planning Staff Recommendation:

Based on the Findings and Facts contained in 9/23/16 Staff Report and the additional information presented in the 10/28/16 Addendum, Staff continues to recommend that the Planning Commission **DENY** the proposed Major Variance since the requested variance is not consistent with all of the five necessary criteria for Major Variance Approval identified in Section 1504.1 of the Zoning Ordinance

Attachments:

Supplemental Evidence dated 10/17/16 sent by Ross Day
Additional comments received from 4 neighbors and the Scappoose-Spitzenberg CPAC



Clay, Kay <kay.clay@co.columbia.or.us>

Easement for Marijanua grow In Warren OR

1 message

Thu, Oct 6, 2016 at 9:03 PM

c >
To: "kay.clay@co.columbia.or.us" <kay.clay@co.columbia.or.us>

Hello Kay, I do not want my e-mail address shared for public records. If this is the case please let me know and disregard this e-mail. Do we need to state our name and address for this to be valid? t, Warren, OR. I do not want retribution and would not like my name, e-mail or address shared. Please advise before doing so but I believe I am entitled to all the responses from both sides correct?

I am asking that you deny the requested variance for all the reasons mentioned the night of Monday, October 3rd that everyone in Woods Court stated. Security, smell, location, and the biggest factor of all. **THEY DID NOT DO ANYTHING LEGALLY** from the beginning in fact put their nose in the air regarding all rules with a lame answer that an attorney told them to precede. Everyone knows that the Kesey's knew all along what they were doing.

The fact that they are claiming a hardship is not true they proceed with full knowledge they were in the right and can not possibly prove other wise.

A few questions should be addressed if this variance is approved.

#1, on what grounds did the County give them an extension which everyone knows was to finish the harvest that was deemed illegal, and why were they not charged with a crime?

#2, if you approve this variance with all the history stated by the "staff", and all the valid concerns by almost the entire neighborhood, why should we not have an ethical investigation done on the entirety of the "staff".

#3, If the Kesey's decide to build a building in the back of the property, shouldn't the county deny their application based on their proven history of not playing by the very same rules every other tax paying citizen has to pay. If they do not obey the code now, why

ATTACHMENT B

would anyone expect that they would in the future.



Clay, Kay <kay.clay@co.columbia.or.us>

Variance V17-02 for Marijuana Grow Operation at 56431 Turley Road Warren Oregon

1 message

Fri, Oct 14, 2016 at 9:36 AM

To: "Kay.Clay@Co.Columbia.Or.Us" <Kay.Clay@co.columbia.or.us>

Distinguished Commission Members,

We are writing to you to express our Strong Opposition to approval of the Variance for said property. The facts in this case clearly show no hardship on the applicant's request that is sufficient to grant a variance. The facts are as follows:

- 1) The applicant had a meeting in March with the county and was supplied with all of the requirements necessary to meet the legal requirements for a Grow operation on the property or any other property for that matter.
- 2) The applicant and thus owner of their own accord decided to remodel an existing agricultural Pole barn to a commercial grow operation adding interior structures, closing off exterior exit points, adding electrical, plumbing and mechanical. This was all done illegally without any planning approval or permits. They then proceeded to illegally grow marijuana, again without proper planning approval of the site, waste water plan, building permits or a valid medical marijuana card for the location. The applicant and property owner have acted with a complete lack of regard for the laws of this county which is criminal in and of itself.
- 3) The current location of the Building does not meet the required side or front setbacks and is thus illegally located for a grow operation. The applicant knew this after the meeting with the county and says he contacted a lawyer who supposedly told him he did not need to follow those requirements. If this really happened which seems unlikely, any applicant/owner should have followed through with that lawyer contacting the county to verify that "the rules/laws did not apply to them". This was not done and thus is no excuse for a variance to what are and have always been the requirements for the building location to be used as a grow operation.
- 4) The applicant and thus owner state that they have spent a lot of money in the current location of the building and it would cause them a financial hardship to change. Again the applicant knew from the initial meeting that the location of the building did not meet the requirements and then proceeded to illegally retrofit and install equipment. It was their decision to ignore the laws/rules and does not constitute a hardship to grant a variance.
- 5) The applicant and thus the land owner state that the slope of the land in other areas where a building could be located would be too expensive to build on such that it would create a financial hardship. The Slope of the land is in no way more and in many ways less than any other properties all over Columbia County and there are many structures built on those sloping lands. The initial lower cost of the land is what offsets the cost of adding structures to it. The owner could have easily purchased any one of many other properties in Columbia County to locate this Grow on. In fact, the owner Joe Kessi's own residence is on 5 acres of land that is approximately 1 mile away and has plenty of room for a Grow operation to be placed on. He could have spent substantially less money by building it on his property that he already owned. Again, the cost to put the building in the right place is offset by the initial cost of the land and is not a hardship that is sufficient to grant a variance. The decision to purchase this land was solely that of the owner and of his own choice and not a hardship.

ATTACHMENTS

Based on all of the above facts we believe it is clear that the Variance should not be approved and we are strongly opposed to it being granted.

Sincerely,

Warren OR, 97063

ATTACHMENT B

MICHAEL F. SHEEHAN
33126 S.W. CALLAHAN ROAD
SCAPPOOSE, OREGON 97056
503-543-7172 FAX: 503-543-7172

October 13, 2016

FAX COVER SHEET

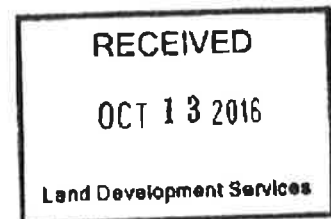
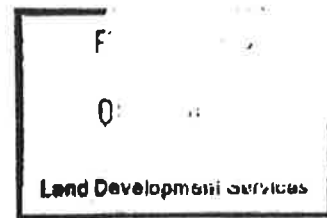
TO: Deb Jacobs

FR: Mike Sheehan

RE: Scappoose-Spitzenberg CPAC

Here's this for the Christopher Arthur application for a major variance
V 17-02. Give me a call if you have questions.

Mike



Pages(including this cover sheet): 2

ATTACHMENT B

SCAPPOOSE-SPITZENBERG
CITIZEN PLANNING ADVISORY COMMITTEE
33126 GALLAHAN ROAD ** SCAPPOOSE, OREGON 97056
503-543-7172 FAX 503-543-7172

Eddie Cook--(Chair) Dikelands
Thelma Bonar--(Treasurer) South Women
Carol Sweet--Dutch Canyon
Vacant--West Scappoose

Rosemary Lohrke--Chapman
Michael Sheehan--(Secretary) South County
Joel Haugen-- Scappoose City

MINUTES

Telephone Survey Date: October 13, 2016

Members Responding:

Bonar	Yes	No
Cook	Yes	No
Haugen	Yes	No
Lohrke	Yes	No
Vacant	Yes	No
Sweet	Yes	No
Sheehan	Yes	No

Staff: Deb Jacob

Visitors:

Application

- I. Applicant: Christopher Arthur File No. V 17-02
Application for a Major Variance from the setback requirement in CCZO
1803.2(C).

Having reviewed the application and the relevant CCZO sections the CPAC votes
to recommend denial of the application.

Basis for the CPAC decision: The application does not meet the criteria set forth
in CCZO 1504.1:

"The Planning Commission may permit and authorize a
variance from the requirements of this ordinance when
unusual circumstances cause undue hardship in the
application of it."

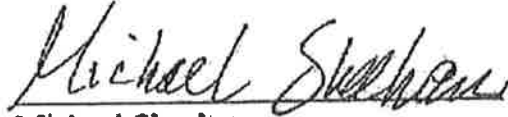
and Section 1504.1.A.2,

"The conditions upon which the request for a variance are
based *are unique to the property* . . ."

ATTACHMENT B

Vote: Bonar, Cook, Haugen, Lohrke, Sheehan, and Sweet vote to deny.

DATE: October 13, 2016.

A handwritten signature in cursive script that reads "Michael Sheehan". The signature is written in black ink and is positioned above the printed name and title.

**Michael Sheehan
Secretary of the CPAC**

ATTACHMENT B



Clay, Kay <kay.clay@co.columbia.or.us>

Dispute of Marijuana Growth Dwelling/Variance at 56431 Turley Rd, Warren, OR 97053

1 message

Tue, Oct 4, 2016 at 9:48 AM

To: Kay.Clay@co.columbia.or.us

To the Columbia County Planning Commission:

My name is A. [redacted] and I live at [redacted] Warren, OR 97053 with my husband and our two minor children [redacted]. We were in attendance at the Planning Commission meeting held on Monday, October 3rd, 2016 where public comment was being taken in relation to the request for variance for a Marijuana Operation located at 56431 Turley Rd, Warren, OR 97053. I am submitting this letter to you to show that my family and I stand in support of the (4) representatives who spoke on behalf of the residents of Woods Drive, Turley Rd. and Woods Ct. and our objection(s) to the idea of a variance being granted for the Marijuana facility that has been built in our neighborhood.

I find it hard to offer any testimony to you against the variance that was not already expressed to you at Monday's hearing. I know there was considerable testimony offered regarding the residents' strong opposition of this variance request and I would just like to point out and bring to the Commission's attention once again that the structure in question was knowingly erected incorrectly by a very "questionable" State Licensed Contractor who by License Agreement is bound to know not only building codes and rules but also County rules regarding Siting. The question of hardship becomes a moot point when any builder in this State is required to carry bond insurance and the property owner / Marijuana grow operator has recourse through litigation and/or mediation to resolve the issue to comply with current county rules without special concessions being necessary. I would also like to point out once again that all of the neighborhood children (including my own 2) have a designated School Bus stop literally on the property in question. The sheer fact that the facility is not adhering to basic State requirements regarding keeping their grow activities separated and away from exposure to children gives rise to a larger concern. Our children have to wait at this stop some mornings longer than 20 minutes. There have been a number of incidents whereby our children have walked to the bus stop only to find mysterious cars sitting along the side of the road near this house/dwelling that obviously aren't the normal neighbors which in turn brings up, once again, the question of safety for not only our children but our homes as well.

In closing, I would like to point out yet again as it was clearly communicated at the Public Meeting that this "supposed" grower was illegally growing marijuana in violation of State & County Statute, unbeknownst to law enforcement and the neighborhood residents, for several months during the summer! What kind of message does this send to our children? What it tells them is that it's okay to break the law, no one will hold you accountable! How is this safe to allow my children to breathe these fumes in daily, for ten straight months while having to wait for the school bus each morning? Would you be able to sleep at night knowing you subjected them to this by allowing this special circumstance, would you want your own children and/or grandchildren to be subjected to this daily? We implore you to please not allow for this special variance/allowance and changing of the law by allowing this dwelling to stay and continue!

ATTACHMENT B

Thank you for your time!



Clay, Kay <kay.clay@co.columbia.or.us>

Fw: Turley Road Opposition

1 message

Mon, Oct 17, 2016 at 11:07 AM

Reply-To:

To: "Kay.Clay@Co.Columbia.Or.Us" <Kay.Clay@co.columbia.or.us>

To whom it may concern,

Brian and I are new residents to Warren, Oregon and Columbia County. We spent numerous months researching the area and resulted in purchasing a home on Woods Drive. It is a beautiful neighborhood out in the country where the homes range from \$500,00 to \$700,000. It is a well-established neighborhood where most of the residents have been here since it was developed 20 years ago. There is a lot of pride in the neighborhood and it shows. Allowing a marijuana grow facility at the Turley location (entrance into neighborhood) will be detrimental to the value of our homes and property.

Shortly after we purchased our home, we began working with the county to build a shop/garage. My husband has spent many hours conversing with different individuals at the county to ensure that he understood the county rules and regulations as it relates to building such a structure. We have abided by those rules and regulations regardless of the cost. We were initially told that the building permit would be about \$1,000.00, it cost us just under \$1,500.00. We were also informed that the concrete had to be engineered (a cost we were not expecting) which was \$1,500.00. And then having to modify the building, excavating and cement to adhere to the engineering, all at much higher costs than initially estimated by each contractor. Not to mention the placement of the shop/garage not being ideal, but having to work with required setbacks from street, house, property lines, septic, drain field, etc., and having to complete all the paperwork and creation of required drawings in order to submit for the permit. We, as a responsible homeowner and resident of the county went through all of this and continue to do so to ensure we are in compliance with all the requirements in order to have subject building permitted and approved.

We attended the meeting on October 3rd and listened to the clerk read the case for the activities going on at the property on Turley Road directly across the entrance into our residence on Woods Drive. We had been in contact with a couple of the neighbors so we were aware of its activities. However, we were appalled to hear that so much had occurred even though the party was made full aware of what could and could not be done in that building. The party blatantly moved forward making modifications to the building in order to grow crops even though they were not permitted to do so, therefore, total disregard for the county rules and regulations and possibly even state laws.

We strongly oppose a marijuana grow facility at this location. The party involved should not be allowed to use the building for such activity now or in the future as it does NOT meet the county requirements. The party already grew a crop (for profit) in this building even though they were not permitted and approved to do so. There is also question as to whether or not the party was licensed at the time the grow took place. If not, the party should be facing criminal charges, as well.

We appreciate your time and hope the decision made takes into consideration what has occurred up to this point, all the opposition made by concerned residents, and is in the best interest of all parties involved which specifically includes the county and all the residence of this Woods neighborhood. We will be present on November 7th to hear the outcome.
Respectfully,

Columbia County Mail - Fw: Turley Road Opposition

ATTACHMENT B

<https://mail.google.com/mail/?ui=2&ik=d1fee6b3bf&view=pt&s>

Warren, OR 97053

ATTACHMENT B

October 3, 2016

My name is Rod Myers. I live at 56484 Turley Rd, Warren, Oregon. I am representing my wife and myself as well as Glen and Sally Miller of 32570 Woods Dr and Kiley and Amy Ross of 32610 Woods Dr. I'm here today to voice my opposition to the proposed marijuana grow and major variance to the set back requirements. I have attended several planning commission meetings in the last few months dealing with both indoor and outdoor grows. There have been two constant themes throughout these hearings.

Theme one: The applicant has followed the applicable laws and ordinances as required. For example, getting the required licenses from the controlling state agency and meeting the requirements of Columbia Counties Marijuana ordinance. Then when these conditions were met, they were allowed to apply for permits and start the construction phase of the project. When all these items were signed off they could plant their marijuana crop!

Theme two: the opposition has complained of the odor, the noise, the security, the proximity to schools or children and property values.

The applicant, Christopher Arthur, the tenant, and his landlord and property owner, OHM Equity Partners, LLC whose incorporation documents are signed by Joe Kessi, call this application a UNQUE case. I think that is an understatement. As noted in the staff report, the pre-planning meeting was held March 31, 2016 and was attended by the above parties where they were advised of the requirements. They then should have known the site did not meet the minimum setbacks and could not be used for the requested operation.

By the time this meeting was held they had already contacted the CRPUD and had a larger electrical transformer installed.

Is this what makes this case unique? The applicant must not believe they have to follow the same laws as everyone else. From March through June they converted an agricultural building to a commercial building. All this was accomplished with few if any building or specialty permits. To further show their disdain for the laws, the County and the neighbors, they planted a marijuana crop in the building.

Then after neighbors complained, the county code enforcement officer conducted an investigation finding that they were indeed growing medical marijuana for four (4) patients. A cease and desist letter was issued on July 11, 2016 requiring that all marijuana plants and related growing equipment be removed by July 25, 2016 at 5 p.m. Shortly thereafter, the County issued an extension of this order to September 4, 2016 allowing the applicant to finish growing and harvesting their crop. By all appearances, they did so on Labor Day weekend. So by the September 6 planning Department inspection, the building had been sanitized.

The Applicant is claiming that he should be given the variance because there are no residences located on the North side of the building for at least 1000 feet, so there can be no detriment to the public. Please refer to exhibit one (1) variance fact sheet as that is the applicants claim in 4 out of the 5

ATTACHMENT B

questions. He also claims that it would create a financial hardship because they have invested so much money into this project and they do not want to lose it.

Now let's look at theme two, the opposition's arguments against. My residence sits 204 feet North/Northeast from the grow building. Previous testimony in other marijuana planning commission meetings has been theoretical in nature because those individuals had not actually experienced a grow operation. I have lived through one (1) complete grow cycle and I am here to tell you it was not a pleasant experience. My wife and I are the ones who are going to take the brunt of all the following items. Odor and noise know no direction. They do not just disappear in to the air. For us there is no escape.

The odor: My wife and I have been awoken by an absolutely obnoxious skunk like smell in the middle of the night. On more than one occasion we have also noticed it at various other times throughout the day. An odor so strong and pervasive as to wake someone from a deep sleep causing them to run around the house closing windows is detrimental to one's health. It surely is not beneficial!

The noise: The North side set back is currently 8 feet per the staff. But is it really? The following equipment has been installed in this space at a point 3 feet off the property line. There are three (3) large air handlers and one heat pump on the North side of the grow building that they claim will not affect anyone. To date they have only run the two (2) units located in the back 1/3 of the building. We generally keep our windows open most of the time for ventilation and fresh air. If we are watching a movie or television, we must turn up the volume to overcome the noise. I had some surgery this summer that forced me to sleep upstairs. I found it impossible to sleep without closing the windows due to the constant noise, let alone the increased sound during start-up and shutdown of the units. So just how much more noise will occur when they start using the front air handler and heat pump? The applicant has also played music so loudly inside his building that it could be heard inside our house.

The security: Turley Rd dead-ends into private property (southeast corner applicant's property) and our development (Woods DR). Since this project has begun, we have seen an increase in traffic that visits our neighborhood. We have come home to find cars parked in front of our house or the grow site. When approached most say they were just talking or looking around but all seem to depart rapidly. Because they have motion lights on the North side of the building they are illuminated every time the cows walk by day or night.

Children and schools: Since Turley Road dead ends in front of the grow site, that is where the bus stop is. Seventy feet from the grow building. They should not be exposed to this adult themed venture.

Property Values: I have talked to the Assessor's office about this. They agree that the Woods Heights sub-division is the most valuable in Warren and if the situation warranted they would consider the devaluation question. The staff report indicated that there are twenty (20) homes within 750 feet of the grow site, not including the approximately seven future sites located in the hay field to the North. The twenty homes have valuations ranging from 500 to 800 Thousand Dollars. If they were to be devalued by an average of \$200,000, that would be a loss of 4 million dollars to the County Tax base. Eye opening

ATTACHMENT B

is it not? Medical marijuana is a non taxed item. Are you ready to trade a non-revenue crop for that lost guaranteed income?

The applicant has maintained throughout the staff report that since there are no homes to the North there is no harm, no foul. The odor is not going away. The noise is not going away. In fact, they will become constant because there will be multiple stage crops going on at one time. The security of our neighborhood will only get worse.

It will be a detriment to the neighborhood. The applicants other claim is monetary loss. I agree with the staff report that this was "self-imposed" in large part due to poor business decisions and not following the law. But let me also remind the Commission, were it to approve this variance and the "grow" eventually approved, it could never be taken back. And if there was an initiative and public vote to ban marijuana production or selling in the county, this site would be grandfathered in.

I strongly urge you, the Planning Commission, to deny this request for the variance! It is not good for the neighborhood! It is not good for the County!

ATTACHMENT B

Frank R. Adams

56405 Woods Court Warren, Oregon, 97053

DATE: October 3, 2016 - 6:30 PM

Columbia County Planning Commission Meeting

SUBJECT: **Request for a Variance to Setbacks, and a Marijuana Growing Permit @ 56431 Turley Rd, Warren, OR 97053**

Ladies and Gentlemen of the Planning Commission

On July 11th in this very room you had before you an application for a "Marijuana Indoor Grow Operation", and an Applicant, that according to the Staff report did everything by the book. I observed as some of you struggled to approve the application.

Today you have before you an Applicant that has done nothing by the book and in conjunction with his landlord and owner of the property, Mr. Joe Kessi, otherwise known as OHM Equity Partners LLC, has willfully and patently ignored all county standards, ordinances and building codes; all the while renovating a storage barn with open sides, gravel floor, no water or electricity into a fully operational "Commercial Building".

ATTACHMENT B

- First, a full concrete floor was installed
- Next the open side was enclosed
- Stacks of 2"x6" construction material was delivered and installed together with stacks of plywood sheeting.
- Electrical and Plumbing contractors followed
- Installation of ridged and flexible duct work together with air handling and condensing units.

Ladies and Gentlemen, this is not hearsay. On a daily basis I was an eyewitness during this time frame (February – June 2016). A number of inquiries were made to the County Land Development Services questioning if building permits had been issued or applied for and what was being done? Each time their response was: "We have nothing on our books."

In early July, a Citizen Complaint to the County Land Development Services was filed regarding a possible Marijuana Grow Operation in progress.

On July 6th, 2016, the Code Enforcement officer did a property inspection and found an ILLEGAL grow operation, which then was followed with the issuance of a certified letter to the Applicant on July 12th, 2016, indicating a cease and desist of all grow operations and removal of all related plants and growing equipment no later than July 25, 2016, at 5:00 PM. An extension to September 4th followed that date.

WHY WERE THESE EXTENSIONS ISSUED AND WHO NEGOTIATED THESE? OR, WAS THERE A POTENTIAL ILLEGAL HARVEST AT PLAY? ILLEGAL IS ILLEGAL!!!!

ATTACHMENT B

The document in my hand clearly shows that the Applicant had a **pre-application meeting** with Land Use Planner Mrs. Jacob on March 31, 2016. At that meeting the land use process, land use ordinances, codes and the required property setbacks were clearly explained and yet the Applicant went ahead and ignored all the above and continued with the renovation. Now the Applicant is claiming a financial hardship if the application is not approved. To that I say this is "self-inflicted"!

The request for a variance to setbacks and application to grow marijuana must be **denied!!**

This barn is in one of the nicest residential neighborhoods in Columbia County with 20 residences within 750' of this barn.

On a daily basis, the neighborhood children are standing within 60' of this building, waiting for their school bus. Buses stop 4 times daily

We are already experiencing more traffic through our neighborhood. One can only assume that a criminal element is not far behind. This raises great concern for all the residents.

We are very much concerned that a Marijuana Grow Operation will have a devastating effect on all of our property values!

Ladies and Gentlemen, I urge you to consider that the Applicant has demonstrated a total lack of compliance and cannot meet any required setbacks. Therefore **deny, deny** the application!!!

Thank you.



ATTACHMENT B

Jacob, Deborah <deborah.jacob@co.columbia.or.us>

Re: comments from Day

1 message

Clay, Kay <kay.clay@co.columbia.or.us>
To: Deborah Jacob <deborah.jacob@co.columbia.or.us>

Fri, Oct 21, 2016 at 4:07 PM

I have forwarded your email to the planner.

On Fri, Oct 21, 2016 at 4:06 PM, Clay, Kay <kay.clay@co.columbia.or.us> wrote:
Please review the following email.

----- Forwarded message -----

Fi
Date: Fri, Oct 21, 2016 at 3:09 PM
Subject: Re: comments from Day
To: "Clay, Kay" <kay.clay@co.columbia.or.us>, d

So what do we do next, I 200% oppose this! Nothing in this documentation would be a reason to allow them the variance they are requesting. If they had no ethics from day one, there's no stopping them once this is approved. They have already paid for their equipment from the sale of their first crop. If they claim their mail is delivered to McMinnville but they live here, THEN CORRECT this discrepancy. They have told neighbors that attended their "meet and greet" that should the laws change, they plan to expand which I'm sure is why they have the second part of the shed available.

We have a neighbor building a LEGAL shop, by the books every permit needed. The County is putting him through the ringer on permits, requiring extra engineering which he has paid which is also costing him more in supplies because of the engineering. How can you even think about approving this request when they do not own their house and WILL reduce the values of tax paying people that moved to a very nice neighborhood for some illegal pot growers?

If approved the county is setting a very bad precedent. I do not want this e-mail to be shared with the attorney or the Arthurs please.

From: Clay, Kay <kay.clay@co.columbia.or.us>
Sent: Tuesday, October 18, 2016 7:45 AM
T: