



MULTNOMAH COUNTY OREGON

LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190TH Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

http://www.co.multnomah.or.us/dbcs/LUT/land_use

NOTICE OF DECISION

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

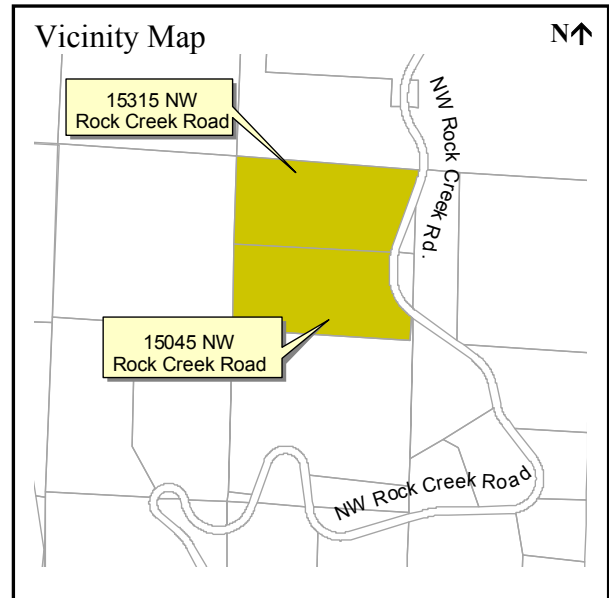
Case File: T2-03-043

Permit: Property Line Adjustment

Location: 15313 NW Rock Creek Road
TL 200 & 300, Sec 26, T2N, R2W, W.M.
Tax Account #R97226-0290 & 97226-0280

Applicant: Gary Kuntz
c/o Remi A. Baptiste
Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, OR 97205

Owner: Timothy and Vickie Coghill
15045 NW Rock Creek Road
Portland, OR 97231



Summary: A Property Line Adjustment to move a property line between two properties to transfer improvements and buildings from property known as 15045 NW Rock Creek Road to property known as 15315 NW Rock Creek Road.

Decision: Approved with conditions.

Unless appealed, this decision is effective Wednesday, March 24, 2004, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling - Planning
Director

Date: Wednesday, March 10, 2004

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Don Kienholz, Staff Planner at 503-988-3043.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, March 24, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 33.2260 Dimensional Requirements; MCC 33.2270 Lot Line Adjustment; MCC 33.2275 Lot of Record.; MCC 33.7970 Lot Line Adjustment.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at http://www.co.multnomah.or.us/dbcs/LUT/land_use.

Scope of Approval

1. 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.
2. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

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.

1. **The property owner, or representatives thereof, shall complete the adjustment per the attached "Applicant's Instructions for Finishing a Property Line Adjustment," and "Surveyor's Instructions for Finishing a Property Line Adjustment" included as Exhibit C. This will entail survey and monumentation of the new lot line by a registered surveyor and verification by survey of the location of the existing dwellings and other structures in relation to lot lines as required by MCC 33.7970(C).**

- 2. Prior to Land Use sign-off of the new deed descriptions, the applicant/owner shall permanently decommission all pipes in the garage structure except those for the sink and toilet in the restroom. The applicant/owner shall also obtain proper permits for any fixtures/plumbing infrastructure that are to remain prior to Land Use sign-off of the new deed descriptions, including the toilet and/or sink in the restroom. Proper permitting shall also mean obtaining approval or sign-off for the for the septic system associated with the garage structure [MCC 37.0560].**
- 3. Prior to Land Use sign-off of the new deed descriptions, new sheetrock or other wall coverings shall be placed over the kitchen pipe connections and the shower connection in the restroom [MCC 37.0560].**
- 4. Prior to Land Use sign-off of the new deed descriptions, the electrical outlets associated with the past kitchen area shall be removed and permanently capped [MCC 37.0560].**

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. Staff comments and analysis are identified as **Staff:** and follow Applicant comments identified as **Applicant:** to the applicable criteria. Staff comments include a conclusionary statement in *italic*.

1. **Project Description**

Staff: The tentative plan shows two properties, Tract 1 (tax lot 200 – 19.14 acres) and Tract 2 (Tax lot 300 – 18.50 acres). A copy of the tentative plan is attached as Exhibit A. The property line adjustment will transfer an equal amount of property between the two lots. They will exchange 69,080 square feet. The adjustment will move two structures from tax lot 300 to tax lot 200. No new development is included in this application. One of the structures was converted into a dwelling unit at some point in time in the past. As part of this application, the dwelling unit is being decommissioned and returned to an accessory structure as approved in 1991.

2. **Site Characteristics**

Staff: Both sites are between 18 and 19-acres in size. Property known as 15315 NW Rock Creek Road (Tax Lot 200, 19.14-acres) is roughly 50% forested and 50% cleared. A dwelling sits roughly 2/3rds of the way back into the property and is accessed by a long driveway. The driveway continues on from that dwelling to two accessory structures in the rear of the property. One of the structures is a three sided lean-to/barn used in conjunction with the raising of the horses on site. The other structure contains a garage on the first floor and a living space on the second floor that was unapproved and is to be decommissioned as part of this permit. The topography around the approved dwelling and structures is relatively gentle and flat. The property outside of the cleared areas and developed sites is steeply sloped and forested.

Property known as 15045 NW Rock Creek Road (Tax Lot 300, 18.50-acres in size) is roughly 75% forested and 25% cleared. The area to the south of the dwelling and around the accessory structures adjacent to the road is not identified as slope hazard.

Both properties are in the West Hills Rural Plan Area.

3. **Public Comment**

MCC 37.0530(B) Type II Decisions

(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the

subject Tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Directors decision shall become final at the close of business on the 14th day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is signed.

Staff: An opportunity to comment was mailed to property owners within 750-feet of the property lines on January 23, 2004. No comments were received back.

Criterion met.

4. **Proof of Ownership**

37.0550 Initiation Of Action.

Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.

Staff: Multnomah County Assessment and Taxation records show Gary and Donna Kuntz as owners of property known as 15315 NW Rock Creek Road and Timothy and Vickie Coghill as owners of property known as 15045 NW Rock Creek Road. Vickie Coghill and Gary Kuntz have signed the General Application form. Both owners also signed the "Statement of Property Owner Consent" form. Gary Kuntz indicated in the "Applicant's Name and Signature" section of the General Application form that Remi Baptiste is acting on his behalf as applicant.

Criterion met.

5. **The Property can be Brought Into Full Compliance**

MCC 37.0560 Code Compliance And Applications.

The County shall not approve any application for a permit or other approval, including building permit applications, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County. A permit or other approval, including building permit applications, may be authorized if it results in the parcel coming into full compliance with all applicable provisions of the Multnomah County Code.

Staff: Currently, the property known as 15315 NW Rock Creek Road is not in full compliance with all applicable provisions of the Multnomah County Code. Issues that need to be brought into compliance include non-permitted additions to a previously approved structure that resulted in turning the second story into a living space/second dwelling. The issues with code compliance can be corrected by proper permitting with the City of Portland, ensured with Conditions of Approval, requiring the permits to be obtained prior to Land Use sign-off of the new property line adjustment descriptions. Considering the extent of the work, we expect that the structure will need

building permits to decommission and/or convert the structure back to the garage and usable space on the second level as originally approved.

Criterion met with condition of approval.

6. **Property Line Adjustments Are Allowed in the CFU-2 Zoning District**

MCC 33.2215 Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC 33.2220 through 33.2240 when found to comply with MCC 33.2245 through 33.2310.

* * *

MCC 33.2220 Allowed Uses

(C) Farm use, as defined in ORS 215.203

Staff: A second structure is present adjacent to the 1991 approved garage in the southwest portion of tax lot 200. No permits were found for the structure. However, as seen during the staff site visit on March 3, 2004, and identified in staff photos (Exhibit B), the structure is a three sided agricultural building used for the housing and caring of the horses on site. This is defined as a Farm Use under ORS 215.203 and, therefore, an allowed use.

MCC 33.2225 Review Uses

(H) Lot Line Adjustment pursuant to the provisions of MCC 33.2270.

Staff: The general application form indicates that this is an application for a property line adjustment. Property line adjustments in the CFU-2 district must satisfy the criteria listed under MCC 33.2270. Compliance with MCC 33.2270 is discussed with finding #7.

Criterion met.

7. **The New Property Line Meets the Dimensional Requirements of the CFU-2 Zoning District**

MCC 33.2260 Dimensional Requirements

(A) Except as provided in MCC 33.2265, 33.2270, 33.2275, and 33.2280, the minimum lot size for new parcels or lots shall be 80 acres.

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.

(C) Minimum Forest Practices Setback Dimensions from tract boundary – Feet:

Road Frontage	Other Front	Side	Rear
60 from centerline	130	130	130

of road from which access is gained			
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Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 33.2310, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 33.2305 (A) (5) (c) 2.

(D) The minimum forest practices setback requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

(E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

(F) Yards for the alteration, replacement or restoration of dwellings under MCC 33.2220 (D) and (E) and 33.2225 (B) need not satisfy the development standards of MCC 33.2305 if originally legally established to a lesser standard than that required by MCC 33.2305, but in no case shall they be less than those originally established.

(G) Agricultural buildings, as specified in ORS 455.315 (2) and allowed under MCC 33.2220 (C), may have minimum side and rear yard setbacks of 30 feet, but in no case shall any setback be less than the minimum primary fire safety zone required by MCC 33.2305 (A) (5) (c) 2.

Applicant: The Site Map illustrates that all of the structures related to the new lot line meet or exceed the prescribed Minimum Forest Practices Setback.

Staff: Staff concurs. As identified on the submitted site plan (Exhibit A), the proposed lot line is at least 130-feet from the two closest structures, meeting the required setbacks. The area is flat with a slope under 10% as seen during a staff site visit and identified on the County's GIS system with contour lines showing.

8. Both Properties are Lots of Record in the CFU-2 Zoning District

A. (13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. 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: Staff will look at both properties separately to determine if each one meets the definition of Lot of Record:

Tax Lot 200/Tract 1/North property – The applicant submitted a deed signed on March 30, 1955 and recorded on what appears to be April 11, 1955 (Difficult to read) [Book 1749, Page 411]. The County did not have zoning on the property until April 19, 1955 when the area was zoned F-2 with a two-acre minimum lot size. Since there was no zoning in place, the property did not have any requirements to meet, and therefore met all requirements in place at the time it was created. The County did not have land division rules for partitions in place until October 19, 1978 and therefore the property did not have land division rules to abide by. As such, the property met the land division laws in place at the time the property was created.

Tax Lot 300/tract 2/South Property – The applicant submitted a deed signed on May 21, 1943 and recorded on May 25, 1943 [Book 751, Page 292]. The County did not have zoning on the property until April 19, 1955 when the area was zoned F-2 with a two-acre minimum lot size. Since there was no zoning in place, the property did not have any requirements to meet and, therefore, met all requirements in place at the time it was created. The County did not have land division rules for partitions in place until October 19, 1978 and therefore the property did not have land division rules to abide by. As such, the property met the land division laws in place at the time the property was created.

Criterion met.

B. MCC 33.2275 Lot of Record

(A) In addition to the *Lot of Record* definition standards in MCC 33.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not *contiguous* to any other parcel or lot under the *same ownership* on February 20, 1990.

Staff: The two properties being considered for the property line adjustment were in separate ownership on Feb 20, 1990 as indicated by the applicants submitted Chain of Title (Exhibit D). On September 29, 1989, property known as Tax Lot 200 was sold by the Websters' to the Fishers' by warranty deed in Book 2242, Page 527. The property was then sold on November 15, 1990 to The Wards'. On February 3, 1981, property known as Tax Lot 300 was sold to The Coghills' by warranty deed in Book 1501, Page 409. The property has remained in the same ownership ever since.

Tax Lot 200, at 19.14 acres, is a stand alone Lot of Record since the only contiguous property under 19-acres in size is Tax Lot 300, which was in separate ownership on February 20, 1990. After reviewing County Taxation and Assessment microfiche, Staff found that the properties surrounding Tax Lot 300, which is under 19-acres in size, were owned by the Van Raden's, Johnson's, and the Roach's on February 20, 1990. Therefore, the property is not aggregated to any contiguous properties and is a stand alone Lot of Record.

Criterion met.

9. **Compliance with Lot Line Adjustment Criteria For CFU-2 Zoning.**

MCC 33.2270 Lot Line Adjustment

(A) An adjustment of the common lot line between contiguous Lots of Record based on a finding that:

A. **(1) The permitted number of dwellings will not thereby be increased above that otherwise allowed in this district;**

Applicant: Subject to a determination that the accessory structure located on Tract 1 and identified on the enclosed maps as Building 2 is not a habitable dwelling, the number of dwellings on both affected properties will not be changed as a result of the lot line adjustment.

Staff: Both tracts involved with the property line adjustment have single family dwellings according to Multnomah County Assessment and Taxation and the County air photo (Exhibit E). The property line adjustment does not create a new lot and does not move a property line so that both dwellings are contained on one lot and the other is a vacant lot. As such, no other dwelling could be permitted on either lot.

Criterion met.

B. **(2) The resulting lot configuration is at least as appropriate for the continuation of the existing commercial forest practices in the area as the lot configuration prior to adjustment;**

Applicant: The resulting lot configuration is no less appropriate for the continuation of commercial forest practices in the area of the lot configuration prior to adjustment because the resulting lot configuration will not change or interfere any existing forest practice.

Staff: The area being exchanged as per the tentative plan and air photo is an equal area exchange, does not change the acreage of either property and does not disrupt the forested area on either property. There will be no clearing of forest lands as part of this application. The forested area will still be contiguous and contain a large area that would allow the falling of trees without damage to structures. The proposed PLA will move the property line to meet the forest practice and fire safety setbacks of existing structures.

Criterion met.

C. **(3) The new lot line is in compliance with the dimensional requirements of MCC 33.2260 (C) through (E); and**

Applicant: See discussion of 33.2260 (C) through (E) below.

Staff: A structure that should have been built on property known as 15315 NW Rock Creek Road was mistakenly built on property known as 15045 NW Rock Creek Road. It was not located properly and currently encroaches on existing required setbacks as outlined in the Dimensional requirements of MCC 33.2260(C) through (E). The new lot line is proposed to be amended in a configuration that meets the 130-foot required setback and dimensional requirements of MCC 33.2260 as shown on the submitted site plan (Exhibit A).

Criterion met.

D. **(4) Neither of the properties is developed with a dwelling approved under the provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use.**

Applicant: There are no dwellings on either property that are approved under provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use.

Staff: Both lots have dwellings on them but neither is a health hardship according to Multnomah County records. No health hardships or farm/forest dwellings have been approved for the properties involved. The dwelling built in 1953 preceded zoning requirements. The dwelling built in 1992 is a stick built permanent dwelling as seen in the air photo (Exhibit E) and during the staff site visit.

Criterion met.

10. **Compliance with Property Line Adjustment Criteria in Land Division Code**

MCC 33.7970 Property Line Adjustment (Lot Line Adjustment)

A property line adjustment is the relocation of a common property line between two abutting properties.

- A. **(B) The Planning Director may approve a property line adjustment between two properties in the Rural Area where an additional lot or parcel is not created but where one or both of the adjusted properties are below the minimum lot size established by the applicable zoning district designation. Such an adjustment shall comply with any applicable zoning district standards for a Property Line Adjustment or Lot Line Adjustment.**

Staff: Both parcels included in the proposal are below the minimum lot size as per the submitted tentative site plan and comply with the zoning district standards for property line adjustments as discussed under Finding 8(C).

Criterion met.

- B. **(C) Property line adjustments approved under subsections (A) and (B) above shall meet the following additional standards:**

1. **(1) No additional lot or parcel shall be created from any parcel by the property line adjustment; and**

Staff: No additional parcels are being created. See Exhibit A (tentative site plan).

Criterion met.

2. **(2) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and**

Staff: Both property owners have signed the required *Property Line Adjustment Statement of Property Owner Consent* form (Exhibit F). The applicants will be required by a condition of approval to complete the conveyances as per the enclosed instruction sheets to finish a property line adjustment.

Criterion met.

3. **(3) The adjusted properties shall meet all dimensional requirements in the underlying zoning district designation except for lot area.**

Staff: Both proposed Tracts meet the dimensional standard of having at least 50-feet of front line length and access to a street. The PLA will bring the properties into compliance with the required setbacks of MCC 33.2260 as shown on the site map.

Criterion met.

4. **(4) The right-of-way width between the front line of each adjusted property and the centerline of any adjacent County road shall comply with the**

applicable provisions of the Street Standards Code and Rules as determined by the County Engineer.

Staff: The County's minimum right of way requirement for all public roads is 50-feet. NW Rock Creek Road has 60-feet of right-of-way (30-feet from the property line of both proposed Tracts to the centerline as per the site plan) which is more than the 50-foot required by County Code.

Criterion met.

Conclusion

Based upon the findings contained herein, the applicant has carried the burden necessary to demonstrate that, with conditions, the criteria for a Property Line Adjustment contained in the Zoning and Land Division codes have been met.

Exhibits

- A. Submitted Tentative Site Plan
- B. Staff Photos
- C. Applicant's Instructions for Finishing a Property Line Adjustment," and "Surveyor's Instructions for Finishing a Property Line Adjustment"
- D. Applicants Submitted Chain of Title
- E. County Air Photo
- F. Owners Consent Form

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.
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