



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: T2-04-003

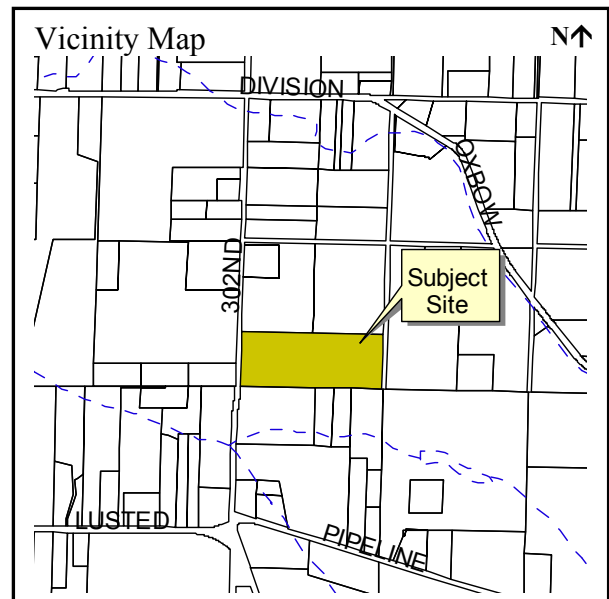
Permit: Verification Of Nonconforming Use

Location: 4340 SE 302ND Avenue
TL 200, Sec 8, T 1S, R 4E, W.M.
Tax Account #R75170-0920

Applicant: Claire Eischen

Owner: Claire Eischen
4340 SE 302ND Avenue
Troutdale, OR 97060

Zoning: Exclusive Farm Use



Summary: Property owner is requesting a determination that the existing 700 square foot building located behind the existing 1980 dwelling is a lawful established second dwelling on the property.

Determination: The 700 square foot structure located behind the existing dwelling does not qualify as a lawfully established nonconforming dwelling on the subject site. The request for Verification of a Nonconforming Use is Denied.

Unless appealed, this decision is effective Monday, June 28, 2004, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Monday, June 14, 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 Lisa Estrin, 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 Monday, June 28, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 36.0005 Definitions - (H)(1) Habitable dwelling, (L)(3) Lawfully established dwelling, (N)(2) Non-Conforming Use, MCC 36.7215 Verification of Nonconforming Use Status, Chapter 37 Administration and Procedures.

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.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

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

1.00 Administration and Procedures

1.01 Type II Decision Procedures

MCC 37.0530(B): ...Upon receipt of a complete application, notice of application and an opportunity 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.

Staff: The application was submitted April 30, 2003 and was deemed complete as of April 30, 2003. An “Opportunity to Comment” notice was mailed on May 7, 2003 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. One written comment was received (Exhibit B.2).

The expressed concerns in the comment letter of the neighbor are in regard to the building being vacant for over 2 years after one owner died and the other eventually went into a nursing home. These concerns are addressed under the Nonconforming criteria below.

1.02 Proof of Ownership

MCC 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: The proposed project is located on Tax Lot 200, Section 08CC, Township: 1 South, Range: 4 East. Assessment & Taxation records show that the land is owned by Claire Eischen. Claire Eischen has signed the General Application Form (Exhibit A.1). *This criterion has been met.*

2.00 General Provisions

2.01 MCC 36.0005 Definitions

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

(H) (1) Habitable dwelling - An existing dwelling that:

(a) Has intact exterior walls and roof structure;

Applicant: The building has intact exterior walls and roof structure.

(b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

Applicant: In May 2003 I was told by the MC Planning Office that my account had been “flagged as being not in compliance and that I would not be able to obtain any permits on my property until this was cleared up. I was told that I needed to complete the Covenant-Zoning Compliance Accessory Structure form and submit it to the MC Deed Office. At this point I was told that the building was for accessory use only. At the same point in time, my septic field failed and so I was talking to the sanitation inspector for MC. I was told that because the accessory building was no longer going to be considered by the County as a habitable dwelling, that the separate septic system that it currently had would need to be abandoned and tied back into the one which serves my home. This was done in the Summer 2003. So, misinformation on the part of the County has led to the destruction of the septic field/system that originally was specifically built for the building in question.

The indoor plumbing does include a kitchen sink, toilet, and shower.

(c) Has interior wiring for interior lights; and

Applicant: The interior wiring is up to code (checked by an electrician) and there are interior lights.

(d) Has a heating system.

Applicant: The building has in-wall heaters.

Staff: The applicant has submitted photographs which show that the structure has an intact exterior and roof structure (Exhibit A.5). In addition, photographs show that there is indoor plumbing which includes a kitchen sink, toilet and shower in the structure. The ages of these amenities are not discernable from the pictures (Exhibit A.4). The permit for the replacement septic system issued in July 2003 does not indicate that the old dwelling is hooked up to the new septic system as indicated by the applicant above. Staff contacted the City of Portland’s Environmental Soils Section and talked with Inspector Mike Ebeling who inspected the site under the replacement septic permit to determine if the structure is connected to the system. Mr. Ebeling indicated that the 700 square foot dwelling was not hooked up to the system under their permit. If it is hooked up, it was not done under permit and the septic system is only designed for one, 3 bedroom dwelling. The applicant has included photographs of the existing interior lights, electrical panel and the wall heating unit (Exhibit A.4). Based upon the 700 square foot dwelling not being lawfully connected to a septic system, the structure does not qualify as a habitable dwelling.

2.02

(L)(3) Lawfully established dwelling - A dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include zoning, land division and building code requirements. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a

dwelling unit were obtained and all qualifying permitted work completed.

Staff: See staff's and applicant's response under MCC 36.7215(A)(1) below.

2.03

(N)(2) Non-Conforming Use - A legally established use, structure or physical improvement in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the use regulations of the zoning district in which it is located.

Staff: The subject property has had the following zoning districts over the years:

Effective Date(s)	Zoning District
7/18/1958 – 12/1975	F-2 (Dwelling or Dwellings...)
12/1975 – 10/5/1977	F-2 (One Primary Dwelling/parcel)
10/6/1977 – 8/13/1980	MUA-20 (One Primary Dwelling)
8/14/1980 to Present	EFU (One Primary Dwelling)

The property would have become nonconforming to Multnomah Codes in December 1975 as the F-2 zoning district was changed to allow only one primary dwelling per legal lot. Also, the MUA-20 zone and the Exclusive Farm Use zones only allow one primary dwelling. The Exclusive Farm Use zone does allow for farm help dwellings to be utilized for workers as part of a farm use. Based upon the history of the property and that no land use application have been requested for a farm help dwelling the structure if it qualifies as a dwelling would be nonconforming to present day codes.

3.00 *Nonconforming Use Criteria*

3.01 **MCC 36.7215 Verification of Nonconforming Use Status.**

(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:

(1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and

(2) Has not been abandoned or interrupted for a continuous two year period.

Applicant: The use of the building being discussed was first a chicken coop and then converted to a dwelling. Since this took place prior to the 1954 adoption of the building code regulations, there was no need for a permit and therefore, one does not exist.

The use of this building as a rental dwelling began before the 1950 adoption of the building code regulations.

Please see the attached letters from Mr. Jack Stafford, my next door neighbor, and from PGE, the electric utility provider.

I did have a renter living in the dwelling from December 2001 thru July 2002 but, due to misinformation from MC given directly to my insurance carrier, the building was said to be un-insurable and not allowable in the zoning area of my property. So, my renter was evicted.

Staff: Evidence in the record dates the structure from the 1930's with a conversion year of 1950 (Exhibit A, 10, A.13, A.14, B.1, B.4, B.5, B.7 & B.8). The applicant has submitted in an affidavit from her neighbor, Jack Stafford who lives immediately to the north of the property (Exhibit A.13). Mr. Stafford indicates that "Thru the years this house was rented to several long term tenants." In addition, the applicant has obtained from Portland General Electric a letter which indicates that their records show that the meter on the building was put into service at the above address on August 28, 1991.

There is also evidence in the record that the structure was converted to a storage use between 1975 and 1979 and remained so the 1980's (Exhibit B.3, B.5, & B.9). In 1979, Building Permit #791887 was issued for the construction of a new dwelling. At the bottom of the building permit (Exhibit B.3), a special condition of approval was added which specifies "Existing SFR to be demolished" and "(Existing SF/DF in 1975)" In addition, the permit indicates "Use of Building, Structure or Land Residence" and the number of dwelling units on the site was "1". On the Appraiser's Drawing Card for 1980 through 1982 (Exhibit B.5), the appraiser indicated for the year 1980 – 81 that the 847 square foot dwelling and the 700 square foot dwelling were both being used for storage. A&T records for the property from 1989 and 1990 only indicate one single family dwelling, not two. Finally, the A&T Property Information record for August, 2000 shows the 1980 (permitted 1979) dwelling, a 180 square foot deck, a 1,483 square foot shed and an 840 square foot building with no assignment of use. The 700 square foot dwelling is not listed (Exhibit B.9). While it is clear that the structure has been on the property since probably the 1930's in one form or another, it appears that the dwelling was abandoned between 1979 through at least 1989. Its use during this time period was as a storage building and was re-established as a dwelling after 1990. From 1980 forward to present, the zoning for the property has been Exclusive Farm Use (EFU).

In the EFU zoning district, the re-establishment of the structure as a 2nd dwelling on the property would have required from 1977 to the end of 2000, a PRE (Use Under Prescribed Conditions) land use permit for a Residence for the Housing of Help and an Administrative Decision (Type II) from 2001 to present. Staff did not find any approvals or applications to establish a farm help dwelling or to re-establish the 2nd dwelling on the site. Based upon the information in the record, it does not appear that the structure was lawfully re-established as a 2nd dwelling unit.

- 3.02 (B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:**

(l) Description of the use;

Applicant: Single-family dwelling

Staff: Since it has been determined that the structure is not a 2nd lawfully established single family dwelling on the subject lot, no additional investigation on scope and intensity of the use will be made at this time.

3.03 (2) The types and quantities of goods or services provided and activities conducted;

Applicant: Rental Unit

3.04 (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

Applicant: The house would be available for year round rental. Vacant between renters.

3.05 (4) The number, location and size of physical improvements associated with the use;

Applicant: There is a 20' wide gravel driveway along the North property line that leads to this building. See site map.

3.06 (5) The amount of land devoted to the use; and

Applicant: The exterior measurements of this building are 50' X 14'.

3.07 (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.

Applicant: This building along with having had it's own septic system, also has it's own Electrical meter and billing account.

3.08 (7) A reduction of scope or intensity of any part of the use as determined under MCC 36.7215 (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

Applicant: The letters supplied by Jack Stafford and PGE are evidence of the duration and specific use of the building as a rental property. PGE records are not kept back any further than noted in their letter. As I mentioned, I also had a renter by the name of Jenny Pole from December 2001 through July 2002. The reason the building now sits vacant is due to misinformation on the part of MC. Fluctuation in the amount of time the building has been, and will be, rented would reflect the time between one renter moving out and another moving in.

3.09 (C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.

Staff: The code revisions to the F-2 zoning district in December 1975 changed the status of

the dwelling from a conforming use to a nonconforming use in 1975. Planning staff was unable to find a final and effective County decision allowing the re-establishment of a 2nd dwelling on the property. The only final and effective County permit found was for a replacement dwelling. The permit indicated only 1 dwelling on the property.

- 3.10 (D) Except for nonconforming uses considered under MCC 36.7210 (B), the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification.**

Staff: No conditions have been imposed as part of this determination. The applicant will need to obtain a land use permit to establish an accessory use in the structure and building permits for any modifications to the building for that use.

- 3.11 (E) Any decision on verification of nonconforming use status shall be processed as a Type II permit as described in MCC Chapter 37.**

Staff: The application has been processed as a Type II decision.

- 3.12 (F) An applicant may prove the existence, continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application.**

Staff: See findings for (A)(1) and (2) above.

- 3.13 (G) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately proceeding the date of application.**

Staff: See findings for (A)(1) and (2) above.

4.0 Conclusion

Based on the findings and other information provided above, the request for verification of a 2nd dwelling on the subject property has been denied.

5.0 Exhibits

‘A’ Applicant’s Exhibits
‘B’ Staff Exhibits
‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	1/23/04
A.2	2	Narrative Statements	1/23/04
A.3	1	Site Plan	1/23/04

A.4	10	Photographs of Interior of 2 nd Dwelling	1/23/04
A.5	3	Photographs of Exterior of 2 nd Dwelling	2/10/04
A.6	1	Report of Subsurface Sewage Systems Dated 7/7/03	3/9/04
A.7	1	Report of Plumbing Inspection Card and Drawing from 9/29/1975	3/9/04
A.8	2	Additional Written Information	3/25/04
A.9	1	Floor Plan	3/25/04
A.10	1	Supplemental Income and Loss	3/25/04
A.11	1	Site Evaluation Report for Repair of Existing On-Site Septic Systems – Dated 5/13/03	3/25/04
A.12	1	Certificate of Satisfactory Completion	3/25/04
A.13	1	Letter from Neighbor Jack Stafford Regarding 2 nd Dwelling	1/23/04
A.14	1	Letter from Portland General Electric Company Regarding Age of Meter for 4300 SE 302 nd Avenue	1/23/04

‘B’	Staff Exhibits	Date of Document
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B.1	2	Assessment & Taxation Property Records for TL 200, 1S4E08CC	1/26/04
B.2	1	Letter Received from Neighbor During Opportunity to Comment	4/28/04
B.3	2	Building Permit Application for Replacement Dwelling in 1979 – Permit #791887	08/19/03
B.4	2	Computer Printout of Property Remarks and Physical Improvements	8/08/03
B.5	2	Appraiser Drawing Card for 1980 through 1982	1980 – 1981
B.6	1	Copy of Building Card for Dwelling in 1979 – Permit No. 791887	9/13/1979
B.7	1	Appraiser Drawing Card – Partial for 1980, Appraiser Drawing Card – 1975 (#1 of 2) for 1942, 840 sq. ft Dwelling, Appraiser Drawing Card – 1975 (#2 of 2) for 1950, 700 sq. ft Dwelling	various
B.8	3	Multnomah Assessor Property Information	8/8/03
B.9	1	Multnomah County Property Information	8/17/00

‘C’	Administration & Procedures	Date
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C.1	1	Incomplete Letter	2/20/04
C.2	1	Response from Applicant Accepting 180 Day Time Period and Indicating She Will Submit Additional Information	2/26/04
C.3	1	Complete Letter – Day 1 (March 25, 2004)	4/13/04
C.4	2	Opportunity to Comment	4/15/04
C.5	10	Administrative Decision	