

**MULTNOMAH COUNTY****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.

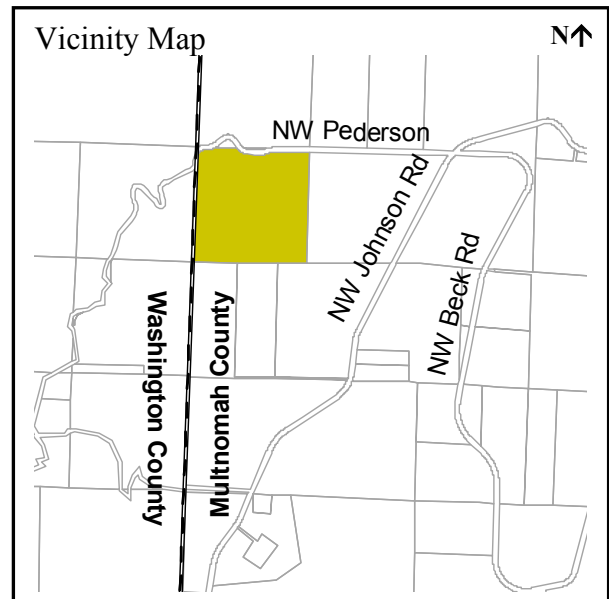
Case File: T2-04-039

Permit: Significant Environmental Concern

Location: 24100 NW Pedersen Road
TL 1600, Sec 15, T2N, R2W, W.M.
Tax Account #R97215-0070

Applicant: Carter Case
6200 SW Virginia
Portland, OR 97201

Owner: Gary Sears
24100 NW Pedersen
Portland, OR 97231



Summary: A two story 28x50-foot addition to an existing single-family dwelling

Decision: Approved With Conditions

Unless appealed, this decision is effective Monday, November 1, 2004, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Monday, October 18, 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 Monday, November 1, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 33.0005(L)(130 - Lot of Record; MCC 33.2220(D) - Allowed Uses; MCC 33.2260 - Dimensional Requirements; MCC 33.2275 - Lot of Record; MCC 33.2305(A)(5) and (B) - Development Standards; MCC 33.4570 - Criteria for Approval of SEC-h Permit -Wildlife Habitat

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 applicant/owner shall remove and clear and maintain the development area free of the nuisance plants listed under MCC 33.4570(B)(7).**

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: Written findings are contained herein. The Multnomah County Code criteria 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 applicant is proposing to add a 1400 square foot addition measuring 28x50 feet immediately to the north of the existing dwelling. The space would add two stories to expand bedrooms and additional living space. The project will not require extensive excavation or yard alterations. There will be no expansion of the driveway or parking area. The applicant is proposing to plant 40 new trees on the western end of a large cleared area to mitigate for trees that are to be removed from the development area.

2. **Site Characteristics and Vicinity**

Staff: The 38.86-acre property is located deep in the West Hills of Multnomah County and adjacent to Washington County where parcels are typically large. The majority of properties in the area are 15-40-acres in size and heavily forested. The topography varies greatly and contains many steep slopes. The property to the east is owned by the US Bureau of Land Management and is part of an active forest practice. The subject property is heavily forested with a large cleared area in the southeast portion of the lot that contains the dwelling and residential area.

3. **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: Multnomah County Assessment and Taxation records show Gary Sears as the owner of the subject property. Gary Sears has signed the General Application form (Exhibit 1) authorizing a land use action to be initiated on the subject property. Carter Case has signed the application as the applicant.

Criterion met.

4. **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 Director's 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 July 23, 2004, 2004. No comments were received.

Criterion met

5. **An Addition To An Existing Lawfully Established Dwelling Is An Allowed Use**

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

(D) Alteration, maintenance, or expansion of an existing lawfully established *habitable dwelling* subject to the following:

(1) The dimensional standards of MCC 33.2260 are satisfied; and

(2) The development standards of MCC 33.2305(A)(5) and (B) are satisfied if the expansion exceeds 400 square feet of ground coverage

Applicant: The proposed addition meets the dimensional standards of MCC 33.2260. The proposal exceeds 400 square feet of ground coverage and satisfies the development standards of MCC 33.2505(A)(5) and (B).

Staff: In order to approve the addition, staff must make a finding that the dwelling was lawfully established and is habitable. The County defines "habitable dwelling" as follows:

"MCC 33.0005(H)(1) Habitable dwelling – An existing dwelling that:

(a) 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;

(c) Has interior wiring for interior lights; and

(d) Has a heating system."

The applicant submitted photos into the record that demonstrate the required elements are present in and on the dwelling. The exterior elements were intact as required and confirmed during the staff site visit.

The second step of this finding is to ensure that the dwelling was lawfully established. Multnomah County records indicate a new single-family dwelling was approved on July 21, 1991 (Exhibit 2). This approval indicates the dwelling was properly established.

The dwelling was established within the current 130-foot dimensional setback as required under MCC 33.2260. However, because it was established lawfully in 1991 to a lesser standard, the addition does not have to meet the 130-foot setback determined in Finding #6.

Criteria met.

6. **The Addition Meets The CFU-2 Dimensional Requirements**

MCC 33.2260 Dimensional Requirements

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

Road Frontage	Other Front	Side	Rear
60 from centerline of road from which access is gained	130	130	130

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.

(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.

Applicant: The proposed addition meets the dimensional standards of MCC 33.2260 for front and rear yards. The side yard setback is 40-feet which does not meet the required setback, however since the propose expansion is in line with the the existing building the exception is MCC 33.2265(B) applies.

Staff: The proposed addition meets the front, rear and west side-yard setbacks. But it does not meet the east side-yard setback. But, the current distance of 65-feet as shown on the applicant's submitted air photo site plan (Exhibit 3) was approved by the County in 1991 under a lesser standard in 1991. Because the setback was previously approved, the proposed addition does not

need to meet the current standard of 130-feet. Nor does the proposed addition need to meet the development standards of MCC 33.2305.

Criterion met.

7. **The Subject Property Is A Lot Of Record**

A. **MCC 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.)**

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

1. **Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**

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

Staff: The property is currently listed as 38.86 acres and is shown on the 1962 zoning map and subsequent tax lot maps in its current configuration. Since it appears on the 1962 map and has not undergone any changes in its shape, staff analyzed the status of the property based upon rules in place in 1962 to determine if the property met all zoning rules and land division rules.

In 1962, the property was zoned F-2 and the district only required a 2-acre minimum lot size. Since the property was over 38-acres, it met the only zoning requirement. Partition requirements for the creation of three or fewer lots in one calendar year were not in place until 1978. Therefore, the property met all zoning requirements and land division requirements at the time it 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, or

(2) A group of *contiguous* parcels or lots:

(a) Which were held under the *same ownership* on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record.

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

Staff: The subject lot is over 19-acres in size and is not adjacent to any lots 19-acres or less in size and was not adjacent to a lot in contiguous ownership on February 20, 1990.

Criterion met.

8. The Proposed Addition Meets The SEC-h Requirements

(B) Development standards:

1. **(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.**

Applicant: Proposed development is in a previously cleared area only.

Staff: As seen on the applicant's air photo and confirmed during a staff site visit, the area of the proposed addition is a 95% non-forested area. There are a few small trees that are proposed to be removed but they do not create a forest canopy and are not adjacent to the existing forest canopy.

Criterion met.

2. **(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**

Applicant: Proposed development is further than 200-feet from a public road but is in the previously developed portion of the site.

Staff: The proposed development takes place roughly 950-feet from the public road. Therefore, a Wildlife Conservation Plan shall be required as outlined under MCC 45.4570(C) below.

Criterion met with Wildlife Conservation Plan.

3. **(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

Applicant: The existing access roadway is longer than 500-feet long but serves the previously developed portion of the site.

Staff: The road already exists and does not require modification. Therefore, this criterion does not apply.

4. **(4) The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary.**

Applicant: The existing access roadway is located within 100 feet of the property boundary.

Staff: The access road is existing and is not being modified. It is located along the property line.

Criterion met.

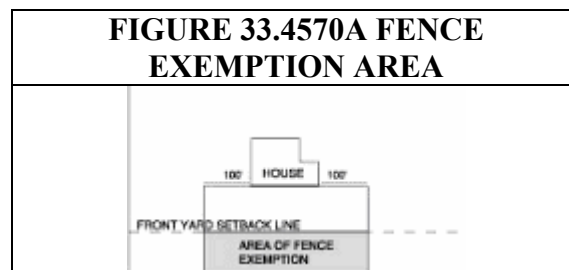
5. **(5) The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.**

Applicant: NA

Staff: The adjacent property is vacant. However, the new development is proposed to be located within 300-feet of the property boundary.

Criterion met.

6. **(6) Fencing within a required setback from a public road shall meet the following criteria:**
- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**
 - (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**
 - (c) Cyclone, woven wire, and chain link fences are prohibited.**
 - (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**
 - (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.**



Applicant: NA

Staff: There is no fencing within the required setback and no fencing proposed by the applicant.

7. **(7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:**

Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine
<i>Cirsium arvense</i>	Canada Thistle
<i>Cirsium vulgare</i>	Common Thistle
<i>Clematis ligusticifolia</i>	Western Clematis
<i>Clematis vitalba</i>	Traveler's Joy
<i>Conium maculatum</i>	Poison hemlock
<i>Convolvulus arvensis</i>	Field Morning-glory
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory
<i>Convolvulus sepium</i>	Lady's nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann's Lace
<i>Elodea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail
<i>Equisetum telemateia</i>	Giant Horsetail
<i>Erodium cicutarium</i>	Crane's Bill
<i>Geranium roberianum</i>	Robert Geranium
<i>Hedera helix</i>	English Ivy
<i>Hypericum perforatum</i>	St. John's Wort
<i>Ilex aquafolium</i>	English Holly
<i>Laburnum watereri</i>	Golden Chain Tree
<i>Lemna minor</i>	Duckweed, Water Lentil

Scientific Name	Common Name
<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Rhus diversiloba</i>	Poison Oak
<i>Rubus discolor</i>	Himalayan Blackberry
<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Solanum dulcamara</i>	Blue Bindweed
<i>Solanum nigrum</i>	Garden Nightshade
<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Urtica dioica</i>	Stinging Nettle
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinosum</i>	Spiny Cocklebur
<i>various genera</i>	Bamboo sp.

Staff: Maintaining the yard free of the above listed nuisance plants is feasible through a condition of approval.

Criterion met with Condition of Approval.

9. **The Proposal Meets The Wildlife Conservation Requirements of MCC 33.4570(C)**

(C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

(1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use;

Staff: Due to the physical location of the existing lawfully established dwelling deep in the property, a new addition cannot meet all of the development standards of the SEC-h overlay. This is considered a unique physical characteristic to the property. If the dwelling were constructed today, it would be able to meet the development standards but since it was established further in, the addition cannot possibly meet today's requirements.

Criterion met.

(3) The wildlife conservation plan must demonstrate the following:

- A. **(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**

Applicant: Erosion control will be in place.

Staff: Locating the new development in the existing cleared area will reduce the amount of forest land taken out of possible production for forest uses as much as is possible. The area of the addition is in a residential area that already is out of production and contains no actual forest canopy, thus there will be no net loss in forest land. A few smaller trees will be removed but they are not a part of the forest canopy.

Criterion met.

- B. **(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**

Applicant: The expansion area will be 1,400 sq. ft.

Staff: There will be no clearing of the forest canopy. The area of development is currently grass, compacted dirt and landscaping. A few small trees are in the proposed development area but they are not a part of the forest canopy.

Criterion met.

- C. **(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

Applicant: There is no fencing on the property.

Staff: No new fencing is proposed on the property. A fence does exist around the owners' garden area. The garden area is cleared and is used for agricultural purposes and therefore the fence may remain.

Criterion met.

- D. **(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.**

Applicant: We will revegetate the area cleared for the expansion at a 2:1 ratio.

Trees to be removed:

(8) 3" caliper Douglass Fir, (4) 8" caliper Douglas Fir, (1) 10" Caliper Douglass Fir.

Total: 78 caliper inches.

Trees to be planted:

(40) 4" caliper Douglas Fir, see site plan for location.

Staff: The applicant will be removing 78 caliper inches of trees from the development site that are not apart of the forest canopy. He will replace those trees with 40 new Douglass Firs on the western edge of a large cleared area that will become part of the existing forest canopy.

Criterion met.

E. (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

Applicant: There are no streams or drainage areas on the property.

Staff: There are no identified streams or drainage areas on the property on the County maps.

Criterion met.

Conclusion

Based on the findings and other information provided above, this application for a Significant Environmental Concern for Wildlife Habitat, with appropriate conditions, meets the applicable Multnomah County Zoning Code requirements.

Exhibits

1. General Application Form
2. Single-Family Dwelling Approval from 1991
3. Applicant's Submitted Air Photo
4. Floor Plans
5. Elevation Plans

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