

**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.

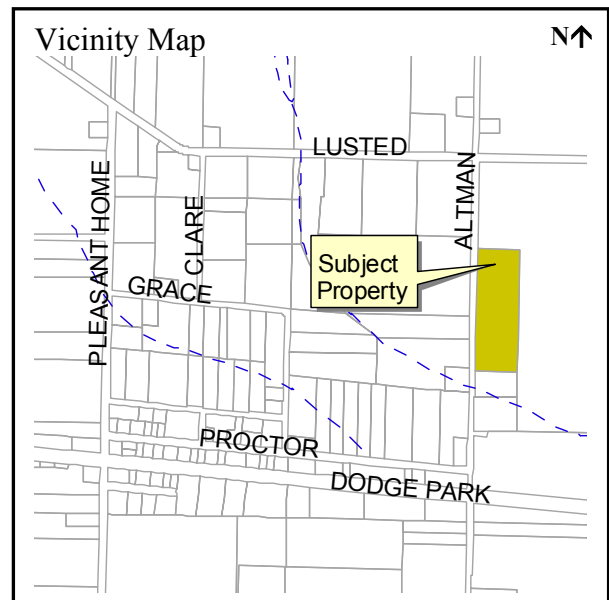
Case File: T2-04-048

Permit: Verification and Alteration of a
Nonconforming Use

Location: 6910 & 7000 SE Altman Road
TL 300, Sec 21, T 1S, R 4E, W.M.
Tax Account #R99421-0060

Zoning: Multiple Use Agriculture – 20 with
Significant Environmental Concern for
water resources (SEC-wr)

Applicant/ Jeff Knapp
Owner: 6910 SE Altman Road
Gresham, OR 97080



Summary: An application to verify that the 2 single family dwellings on the subject property are nonconforming uses. In addition, the property owner is proposing to alter a nonconforming use by expanding the dwelling located at 6910 SE Altman to approximately 4,020 square feet.

Decision: Approved with Conditions

Unless appealed, this decision is effective Wednesday, September 15, 2004, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, September 1, 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 Wednesday, September 15, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC):

General Provisions:

MCC 36.0005 Definitions – (L)(3) Lawfully established dwelling, and
(L)(13) Lot of Record, and
(N)(2) Nonconforming Use.

Multiple Use Agriculture – 20 Criteria:

MCC 36.2855 MUA-20 Dimensional Standards and Development Requirements

Nonconforming Use Criteria:

MCC 36.7200 Nonconforming Uses, and
MCC 36.7210 Alteration, Expansion or Replacement of Nonconforming Uses, and
MCC 36.7515 Verification of Nonconforming Use Status.

Administration & Procedures: Chapter 37 Administration and Procedures, specifically

MCC 37.0530(B) Type II Decisions, and
MCC 37.0550 Initiation of Action
MCC 37.0560 Code Compliance and Applications

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. Prior to land use sign-off for building permit plan check, the property owner shall record a Covenant stating that he recognizes and accepts that farm activities include tilling, spraying, harvesting, and farm management activities occur during irregular times...with the County Recorder. A copy of the recorded covenant shall be provided prior to land use sign-off. [MCC 36.2855(H)]
2. Prior to land use sign-off for building permit plan check, the property owner shall either obtain a permit from the Transportation Division to allow the disposal of the stormwater into the public right of way or alter the storm water system to discharge the overflow capacity to an adjacent field on the subject property. [MCC 36.2855(F)]

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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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*.

Project Description:

Staff: The property owner is requesting approval to construct an addition to an existing 672 square foot dwelling. The addition will be two stories and will consist of a new kitchen, living room, dining room, laundry, 1-1/2 bathrooms and 2 bedrooms (Exhibit A.24) and an unfinished 2nd floor area. The addition will be connected to the existing dwelling by a twenty – four (24) foot long hall way with open entrances on both ends. The openings allowing access to the existing dwelling and new addition are approximately 45 inches wide. The existing dwelling square footage (Exhibit A.18) will be remodeled to convert the kitchen / dining area into a Home Office/Study. The Living Room will be converted to a Master Bedroom. The existing bedroom will be converted to a walk in closet. At the end of the addition remodel, the dwelling will have 3 bedrooms & 2-1/2 bathrooms on the first floor. The second floor of the addition will be left as unfinished space (Exhibit A.3). In the future, the area will be converted to a reading room & library, children study and play area and miscellaneous storage for household items (Exhibit A.23). In addition to the habitable space, the remodel will include a 8 ft wide by 48 ft long Covered Porch on the front and back sides of the addition. A 8 ft 3.5 inch wide by 16 ft long Deck will be added to the existing dwelling off of the home office/study area. On the opposite end of the home office, a 6.5 ft wide by 14.33 long step/porch area will be constructed off of a side entrance. When the addition is complete, the dwelling with decks and porches will be approximately 4,700 square feet (habitable area 3,741 sq. ft) (Exhibit A.18 & A.24).

Property Description:

Applicant: I own the parcel of property identified as Multnomah County Tax Account R342465 and described as 6910-7000 SE Altman Rd. This parcel of land is 6.24 acres and it has two single family dwellings on this land; these properties having addresses 6910 and 7000. The name of the road that borders my property is Altman Road; it was named after the original family that homesteaded this area sometime in the 1880's. My piece of property is the last portion of the original homestead that was owned by a member of the Altman family. The last Altman family member who lived here was Kathryn Altman (now deceased). Kathryn Altman sold the property to Bruce and Debbie Plumer sometime in the 1980's and I later purchased this property from them in 1996. My property contains the structures used by the Altman family as residences (the houses) and for agricultural purposes (the barns). Essentially, my portion of land was the "headquarters" of the Altman family and homestead. As might be expected from a portion of land that began development over 100 years ago, a good deal of development and construction occurred here long before Multnomah County adopted zoning for this area in 1958 and prior to the requirement of permits; this is the case with the dwellings and structures on my property today.

The usage of my property is consistent with the surrounding area. The immediate surrounding area (1/2 mile radius or 1 mile radius), while nice, does not form an especially cohesive or distinct neighborhood (in comparison to highly homogenous neighborhoods in Portland such as the Alameda neighborhood) and I am unaware of any clear boundaries defining it as a particular neighborhood. The area is simply known as the Pleasant Home area. The immediate surrounding area is of highly varied

composition, ranging from large plots of acreage used for growing nursery stock to single family dwellings located on less than one acre of land and having no active agricultural use. Many of the properties in the immediate area have a residence, one or more out buildings, and have some portion of the land in some form of agricultural use. My property would also fall into that category; while some of my property is used for domestic living and contains outbuildings, approximately 4.5 of my 6.24 acres is in use for growing nursery stock.

Visual Reference of Neighborhood

The following aerial photo of my property and surrounding area helps to illustrate the nature of the "neighborhood" in which my property lies. (photo was taken in 2002).



Staff: The subject site contains two detached dwellings, 1 detached garage with a driveway leading to it from Altman Road, two barns which started life separately, but are now attached via a shed roof and eaves, a driveway leading to the barns and a silo. Approximately 2.16 acres is being utilized for either structures or residential landscaping. The remainder of the property (approximately 4.08 acres) is in nursery stock or associated farm use.

1.00 *Administration & Procedures*

1.01 Type II Process

MCC 37.0530(B): ...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...

Staff: The application was submitted May 28, 2004 and was deemed complete as of July 9, 2004. An "Opportunity to Comment" was mailed on July 13, 2004 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. No written comments were received.

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 300, Section 21B, Township: 1 South, Range: 4 East. Assessment & Taxation records show that the land is owned by Jeff Knapp. Mr. Knapp is processing the application himself as the applicant and has signed the General Application Form (Exhibit A.1). *This criterion has been met.*

1.03 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: Staff has not identified any unlawful activities or un-permitted structures on the subject site. The 2 dwellings were constructed prior to zoning and the barns and silo prior to the need for land use approval. The growing of nursery stock on the property is a farm use, which is an Allowed Use pursuant to the Multiple Use Agricultural – 20 zoning district (MCC 36.2820).

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.

(D)(6) Dwelling Unit - A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(D)(8) Dwelling (Single Family Detached) - A detached building designed for one dwelling unit including Mobile Homes under the provisions as specified within the district.

Staff: The property owner has submitted photographs showing the exteriors of Dwelling #1 and Dwelling #2 intact and weather tight (Exhibit A.16 & A.19). In addition, he has supplied photographs of the interior of each detached dwelling unit. Dwelling #1 has a kitchen, bathroom, dining room, living room and 2 bedrooms (Exhibit A.17). Dwelling #2, also, has a kitchen, dining room, living room, bathroom and a bedroom (Exhibit A.20). Both detached structures consist of independent living facilities. Currently, on the subject site, 2 detached single family dwelling units exist.

(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: Dwelling #1 is 972 sq. ft and was constructed on the site in 1946 (Exhibit B.2 & B.6). Dwelling #2 is 672 sq. ft. and was constructed on site sometime between 1938 and 1948 (Exhibit B.2 & B.6). The County adopted zoning regulations for this area in 1958. Since the

dwelling predate zoning, it appears that they are lawfully established dwellings. *This criterion has been met.*

2.02 (L)(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.)**

(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: Tax Lot 300 is currently 6.24 acres in size. In 1988, three houses existed on the property. The last modification of Tax Lot 300 area was in 1988. The property was and is

zoned MUA-20 at the time. Through the County's Land Division Ordinance, an Exempt Minor Partition to divide 1.286 acres from Tax Lot 300 was approved. Based upon the County's Exempt Minor Partition approval, it appears that Tax Lot 300 was lawfully established and is considered a Lot of Record (Exhibit B.7). *This criterion has been met.*

- 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: As discussed above under the findings for 36.0005(D)(6), (D)(8) and (L)(3), the 2 existing single family dwellings were legally established prior to enactment of the County's Zoning regulations in 1958. The property is currently zoned Multiple Use Agriculture – 20, which allows 1 single family dwelling per Lot of Record (MCC 36.2820(A) Allowed Uses). Since this Lot of Record has 2 single family dwellings, it is not presently in compliance with the use regulations of the MUA-20 zoning district. *It appears that the existing 2 single family dwellings are nonconforming use on this site.*

3.00 Multiple Use Agriculture – 20 Criteria

3.01 MCC 36.2855 Dimensional Standards and Development Requirements.

All development proposed in this district shall comply with the applicable provisions of this section.

(A) Except as provided in MCC 36.2860, 36.2870, 36.2875, and 36.4300 through 36.4360, the minimum lot size shall be 20 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 area of such lot.

Staff: Tax Lot 300 is 6.24 acres in size. The subject property is considered a Lot of Record pursuant to MCC 36.0005(L)(13) and MCC 36.2870 provisions. *These criteria have been met.*

3.02 (C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

Staff: Based upon the applicant's site plan (Exhibit A.2), Dwelling #1 is approximately 240 ft from the front property line, 40 ft from the northern side property line, over 810 ft from the southern side property line and 34 ft 8 inches from the rear property line. As proposed, Dwelling #2 is 111 ft from the front property line, 132 ft from the northern side property line, approximately 670 ft from the southern side property line and approximately 123 ft from the rear property line. The proposed addition to Dwelling #2 will be 30 ft, 6.0625 inches in height at the ridge line of the gable roof. Tax Lot 300 has a front lot line length of approximately

899 ft along Altman Road. *These criteria have been met.*

- 3.03 (D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The 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 requirement if located at least 30 feet from any property line.

Staff: Altman Road is categorized as a *Rural Local* Road on the Multnomah County's Functional Classification of Trafficways. The standard right of way width for a *Rural Local* Road is 50 ft in width. A&T map for the area shows that the subject property has previously dedicated all necessary right of way in 1989 as part of the Exempt Minor Partition process (Exhibit B.8). No additional right of way is required at this time. The maximum height of the house will be 30 ft, 6.0625 inches (Exhibit A.4). *These criteria have been met.*

- 3.04 (F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.**

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The applicant has submitted the Certification of On-Site Sewage Disposal form which indicates that a new drainfield has been approved for the addition and can be constructed on-site (Exhibit A. 9). The site plan shows that to handle the storm water a storm water pond will be constructed to the northwest of the addition (Exhibit A.2). The detention pond will have an overflow pipe which will take excess storm water out past the barns and down towards Altman Road. The applicant's site plan shows that the piped water will be released approximately 4 ft from the County's right of way on his property. The storm water certificate and design details (Exhibit A.11, A.12, & A.13) show that the water will be piped into the County's ditch within the public right of way. This conflict between the two plans needs to be clarified. It is not feasible to pipe the storm water to the public right of way without a permit from the Transportation Division. It is feasible to end the pipe within the farm fields and allow the overflow water to be absorbed across the field. A condition of approval requires that the property owner either obtain a permit from the Transportation Division to allow of the disposal of the overflow water into the public right of way or alter the storm water system to discharge the overflow stormwater to an adjacent field on the property.

- 3.05 (G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.300.**

Staff: The applicant has submitted a request for a Grading and Erosion Control (GEC) permit. A GEC permit will be issued in association with this decision. Through the GEC permit, which is a Type 1 permit (non-land use) this criterion will be met.

3.06 (H) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land by:

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

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

Staff: The properties to the north, east and west of the subject property are currently utilized for nursery stock or other farm uses. The applicant has submitted in a copy of the Conditions and Restriction form which has been notarized, but not recorded (Exhibit A.14). A condition of approval has been included requiring its recordation prior to land use sign off for building permit plan check. *As conditioned, this criterion has been met.*

4.00 Nonconforming Use Criteria

4.01 MCC 36.7200-Nonconforming Uses.

(A) The purpose of this section is to establish standards and procedures regulating the continuation, alteration, expansion, and replacement of nonconforming uses. The intent is to allow procedures for considering changes to nonconforming uses that do not increase the level of adverse impacts on the neighborhood, or changes required for the use to comply with State or County health or safety requirements.

(B) Nonconforming uses shall be allowed to continue without additional permission, except that such uses may be replaced, altered or expanded only as provided in MCC 36.7205 or 36.7210.

Staff: The property owner has asked to expand an existing 672 sq. ft dwelling by completing an addition to the structure. MCC 36.7210 is applicable to this project.

4.02 (C) If a nonconforming use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms with the requirements of this Zoning Code at the time of the proposed resumption.

Staff: Please see findings under MCC 36.7215(A)(2). Based upon the finding below, the 2 dwellings have not been abandoned or discontinued for any reason for more than 2 years.

4.03 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:

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

Staff: Multnomah County A&T property records show that the existing two houses were constructed in 1946 and 1948 (Exhibit B.1, B.2. & B.6). The addition is proposed on the 972 sq. ft. dwelling which was built in 1946. It was not until 1958 that the County zoned the area. First Interim Building Code requirements were placed in 1954. Based upon the evidence in the record, both dwellings were legally established and being utilized as dwellings at the enactment of this zoning code. *This criterion has been met.*

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

Staff: The applicant has submitted in a letter from Portland General Electric indicating that service has been provided to both dwellings for over 10 years (Exhibit A.7). The applicant has submitted in a letter from Tim Brusse who resides at 6943 SE Altman Road (directly across Altman Road) and states that he has lived at his residence since 1989 and has never observed either house abandoned or vacant for a continuous two year period (Exhibit A.6). In addition, the County's Tax records, aerial photos and Exempt Minor Partition (Exhibit B.1, B.2, B.4, B.5, B.6 and B.7) provide additional evidence that the 2 dwellings have been existing in their current state for over 10 years. *This criterion has been met.*

4.05 (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:

- (1) Description of the use;**
- (2) The types and quantities of goods or services provided and activities conducted;**
- (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**
- (4) The number, location and size of physical improvements associated with the use;**
- (5) The amount of land devoted to the use; and**
- (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.**
- (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.**

Staff: The nonconforming use is the occupancy of the subject property with 2 single family dwellings. One of the houses is currently rented and the other is occupied by the property owner. The area of land utilized for residential purposes will remain the same with the addition reducing only the residential landscaping area. The existing nursery stock farm use will not be impacted by the development and no additional land will be devoted to the residential use. The 2 houses are utilized on a daily basis for residential purposes and no reduction in scope or intensity can be quantified for this type of use. Based upon the above,

this criterion has been met.

- 4.06 (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 2 dwellings were established on the subject property prior to zoning being enacted in the 1950's. The first zoning adopted for the area was Suburban Residential. Allowed uses in the zone were single family dwellings. On October 6, 1977, the zone was changed to Multiple Use Agriculture which allowed 1 single family dwelling per lot. At the time, the property had at least 3 dwellings. In 1988, the County approved an Exempt Minor Partition (Exhibit B. 7) allowing a separate parcel to be created for the southern dwelling. Two dwellings will left on the subject property and remained lawfully established. *This criterion has been met.*

- 4.07 (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: Two conditions of approval have been applied to this decision. These conditions address criteria required subject to the MUA-20 zone and are not imposed due to the verification of the nonconforming use.

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

Staff: This application has been processed through the County's Type II procedures (see Exhibits C.1 through C.5).

- 4.09 (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.**

(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: The applicant has proven the existence and continuity of the 2 existing dwellings on the subject property for the 10 year period immediately preceding the date of application. The Planning Director has not required verification for the 20 year period. *These criteria have been met.*

- 4.10 MCC 36.7210 Alteration, Expansion or Replacement of Nonconforming Uses.**

(C) After verification of the status of a nonconforming use pursuant to the applicable

provisions of MCC 36.7215, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider all of the criteria listed below. Adverse impacts to one of the criterion may, but shall not automatically, constitute greater adverse impact on the neighborhood.

- (1) The character and history of the use and of development in the surrounding area;**
- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;**
- (3) The comparative numbers and kinds of vehicular trips to the site;**
- (4) The comparative amount and nature of outside storage, loading and parking;**
- (5) The comparative visual appearance;**
- (6) The comparative hours of operation;**
- (7) The comparative effect on existing flora;**
- (8) The comparative effect on water drainage or quality; and**
- (9) Other factors which impact the character or needs of the neighborhood.**

Applicant: The proposed addition that I intend to build will have no greater adverse impact on the surrounding area for the following reasons.

1. The addition will not alter the character of the neighborhood; the neighborhood is already highly varied and I am merely expanding an already existing residence.
2. An addition to my residence will not alter the noise, vibrations, dust, odor, fumes, glare, or smoke detectable within the neighborhood as the nature of the use of the property will not change after the addition compared to prior to the addition.
3. The comparative numbers and kinds of vehicular traffic will not change after the addition is complete because the usage (residential with agriculture activities) will be similar to the current usage.
4. No changes to the comparative outside storage, loading, or parking will occur relative to the existing level of these activities.
5. The addition will look like typical residential construction and thus will be of similar visual appearance to the residences in the area.
6. This is a residence and does not have hours of operation.
7. There will be no comparative effect on existing flora as no trees or shrubs will be removed to complete this addition.
8. Water drainage and water quality will be consistent with the existing usage of this property.
9. No known other factors which may impact the character or need of the neighborhood will be adversely impacted.

Staff:

1. The property is currently occupied with 2 dwellings, 2 barns, 1 garage and a silo. The property, in the past and present, is being utilized for a farm use (growing of nursery stock). The surrounding area is in a mixture of commercial nursery farms and rural residential uses. The area to the southwest is divided into chiefly $\frac{3}{4}$ of an acre lots. Dwellings exist on properties as small as a half acre or combined lots of 1.5 acres. Properties to the north and east are chiefly large parcels of over 20 acres in size with some of these parcels containing dwellings. To the south and southeast, the properties are range between 1.24 acres up to 9+ acres. Many of the smaller parcels in this area also contain dwellings. While the MUA-20 zone has a 20 acre minimum lot size, few properties actually are that size within the area and the residential density in the area reflects the older subdivision pattern established prior to zoning. The proposed expansion leaves the existing dwelling intact and adds an addition connected by a hallway. The look is quite comparable to old farm houses that expand in phases and fits with the character of the existing buildings on site and in the area.
2. The property currently contains 2 dwellings, 2 barns, 1 garage and 1 silo. After the addition, one of the dwellings will be larger, but should not increase the volume of noise, vibration, dust, odor, fumes, glare or smoke coming from the property.
3. Typically the vehicle trips generated by a single family dwelling are 9.57 trips per day. The number is not usually based on the size of the unit, but the type of dwelling such as apartment, condo, townhomes, etc. The property currently has 2 single family dwellings which would contribute approximately 19 trips per day to the County road system. After the addition is complete, there will still only be two dwellings on the site, so additional vehicle trips should not be generated.
4. Each single family dwelling is required to provide 2 parking spaces per MCC 36.4205(A)(1). No additional spaces will be needed due to an increase in size of a dwelling as the County's parking requirement does not increase with the size of the dwelling.
5. The applicant has submitted elevations showing the addition in relation to the existing dwelling. The addition and the existing dwelling will utilize similar materials and architectural qualities for siding, roofing and design (Exhibit A.4).
6. Single family dwellings are not like a business with hours of operation. A dwelling is utilized for sleeping, living and other family functions based upon a property owners work schedule and time off. After the addition, the dwelling will continue to be used as a dwelling and its hours of operation will not change due to the addition.
7. The area of the addition is currently located in residential landscaping. No impacts will be created to any sensitive flora or fauna in the area.
8. Currently the rain gutters from the dwelling sheet flow out around the existing dwelling. After the completion of the dwelling, water from the rain gutters will be directed to a detention pond and managed on site. The addition will improve the situation from a non-regulated to regulated system.
9. The proposed addition and remodel will be consistent with the character of the area and will not create any additional impacts.
These criteria have been met.

4.11 (D) Any decision on alteration, expansion or replacement of a nonconforming use

shall be processed as a Type II permit as described in MCC Chapter 37.

Staff: This application has been processed through the County's Type II procedures (see Exhibits C.1 through C.5).

5.00 **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the alteration and expansion of one out of two existing single family dwelling on the subject property in the MUA-20 zoning district. This approval is subject to the conditions of approval established in this report.

6.00 **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	5/28/04
A.2	1	Site Plan	5/28/04
A.3	1	Floor Plan – Crawl Space, 1 st & 2 nd Floor	5/28/04
A.4	1	Elevations	5/28/04
A.5	3	Narrative of History and Character of Neighborhood & Narrative Statements	5/28/04
A.6	1	Continuous Occupation Statement	5/28/04
A.7	1	PGE Letter	5/28/04
A.8	1	Legal Description – Exhibit A	5/28/04
A.9	2	Certificate of On-Site Sewage Disposal	5/28/04
A.10	1	Certification of Water Service	5/28/04
A.11	1	Drainage Certificate	6/8/04
A.12	2	Drainage Plan	6/8/04
A.13	5	Drainage Calculations	6/8/04
A.14	1	Unrecorded Conditions & Restrictions Form	6/24/04
A.15	1	Existing Dwelling 1 Floor Plan	6/29/04
A.16	2	Existing Dwelling 1 Exterior Pictures	6/29/04
A.17	3	Existing Dwelling 1 Interior Pictures	6/29/04
A.18	1	Existing Dwelling 2 Floor Plan	6/29/04
A.19	1	Existing Dwelling 2 Exterior Pictures	6/29/04
A.20	3	Existing Dwelling 2 Interior Pictures	6/29/04
A.21	2	Windows/Doors	6/29/04
A.22	1	Written Description of Uses of Proposed Office Area	6/29/04
A.23	1	Stair Location & Tentative Layout of 2 nd Floor	6/29/04
A.24	1	Amended 1 st Floor, Floor Plan	7/1/04

'B'		Staff Exhibits	Date of Document
B.1	1	A&T Property Record	5/28/04
B.2	4	A&T Appraiser Card	6/24/04
B.3	2	A&T Property Card	5/18/04
B.4	1	1998 Aerial Photo	8/31/04
B.5	1	2002 Aerial Photo	8/31/04
B.6	1	A&T Improvement Information	8/11/04
B.7	1	Exempt Minor Partition	4/27/1989
B.8	1	Assessor Map for 1S4E21B	04/14/04
'C'		Administration & Procedures	Date
C.1	3	Incomplete Letter	6/25/04
C.2	1	Acceptance of 180 Days Response	6/29/04
C.3	1	Complete Letter – Day 1	7/9/04
C.4	6	Opportunity to Comment	7/13/04
C.5	16	Administrative Decisions – Day X	9/1/04