



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.

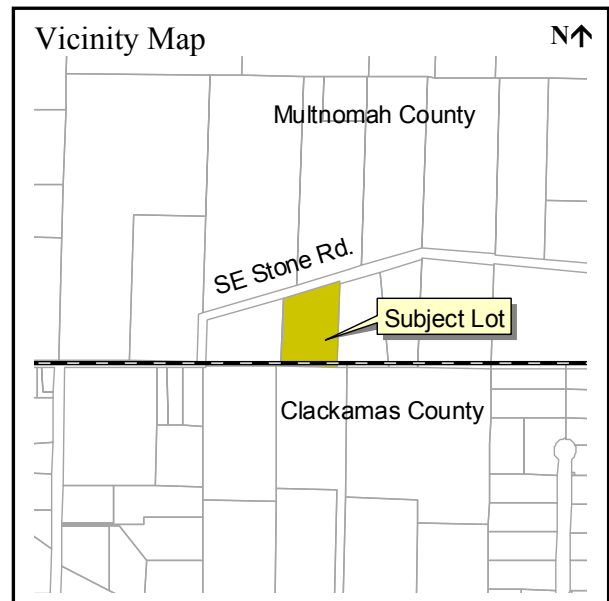
Case File: T2-04-067

Permit: Minor Variance to the rear yard setback

Location: 29142 SE Stone Road
TL 300, Sec19CD, T1S, R4E, W.M.
Tax Account #R994191420

Applicant: Ed Parsons
13783 S. Forsythe Road
Oregon City, OR 97045

Owner: Terry and Lou Ann Cathey
29142 SE Stone Road
Gresham, OR 97080



Summary: Request for a minor variance to reduce the rear yard setback up to 7.5-feet from the required 30-foot setback for an addition to the rear of the house. The addition consists of enclosing an existing porch and covering it.

Decision: Approved with Conditions.

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

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling - Planning Director

Date: Tuesday, November 16, 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 Tuesday, November 30, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 36.2815 Uses; MCC 36.2855 Dimensional Standards and Development Requirements; MCC 36.0005(L)(13) Lot of Record; MCC 36.2870 Lot of Record; MCC 36.7600 Variance Approval Criteria; and MCC 36.7605 Variance Classification

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/dscd/landuse>.

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. **This approval is based on the submitted narrative and plans. Prior to the issuance of building permits, the applicant/owner shall submit a labeled survey indicating the distance of the new addition to the rear property line is less than 7.5-feet [MCC 36.2850].**
2. **Once this decision becomes final, applications for building permits may be made with the City of Gresham. When ready to have building permits signed off, call the Staff Planner, Don Kienholz at (503)-988-3043, for an appointment for review and approval of the conditions and to sign the building permit plans. Multnomah County must review and sign off building permit applications before they are submitted to the City of Gresham. Three (3) sets each of the site plan and building plan are needed for building permit sign-off.**
3. **The Applicant/owner shall record a covenant that states they recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities take place during irregular times and may occur on adjacent property and in the general area [MCC 36.2855(H)(2)].**

NOTE:

Once this decision becomes final, applications for building permits may be made with the City of Gresham. **When ready to have building permits signed off, call the Staff Planner, Don Kienholz, at (503)-988-3043 to schedule an appointment.** Multnomah County must review and sign off building permit applications before they are submitted to the City of Gresham. Three (3) sets each of the site plan and building plans are required at the building permit sign-off.

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 conclusion statement in *italic*.

1. **Project Description**

Staff: The applicant is proposing to enclose an existing patio off the dining room in order to enlarge the dining area. The new enclosure would encroach into the rear setback 4.5-feet, requiring a minor variance to the dimensional requirement of 30-feet.

2. **Site Characteristics and Vicinity**

Applicant: This 2.0 acre site was created from a parcel owned by Roy Martz as recorded on April 27, 1965 (Survey No. 21640); a copy of the survey is attached to this narrative. Martz purchased the property from M/M Rutz April 1, 1965, copy attached. Our Lot 2 was created May 24, 1965, copy attached. This documentation of the creation of our lot was provided by Multnomah County Recorder's Office. We purchased the property in 1995; a copy of our deed is attached to this narrative. At the time of our purchase, existing real property consisted of a house with attached garage and separate shop building, which were constructed in 1983. We understand you have a copy of the relevant building permit in our case file.

We remodeled the house in 1998 and added a new 3-car garage and utility room. The utility room connects the new garage to the existing house. This remodel was under permits issued through the City of Gresham (MCELEC 98 1818, MCPLB 98 1817 and MCSFA 98 1435).

Staff: The subject property is located off of SE Stone Road and along the southern County line with Clackamas County. The property is zoned Multiple Use Agriculture-20 (MUA-20) and is two acres in size. The adjacent properties to the south of Stone Road are also zoned MUA-20 while the properties on the north side are zoned Exclusive Farm Use. All the properties to the south of Stone Road contain significant amounts of forest canopy while the properties to the north of the road are mostly cleared. The forested area of the properties is within the Significant Environmental Concern area for wildlife habitat.

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 Terry and Lou Cathey as the owners of the subject property. Both Terry and Lou Cathey signed the General Application form (Exhibit 1) authorizing a land use action to be initiated on the subject property. Ed Parsons 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 September 17, 2004. No comments were received.

Criterion met

5. **An Addition Is An Allowed Use**

MCC 36.2815 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 36.2820 through 36.2830 when found to comply with MCC 36.2855 through 36.2885.

* * *

MCC 36.2820 Allowed Uses.

(A) A single-family detached dwelling on a Lot of Record, including a home built on or off-site. A home that has been constructed off-site shall meet the following requirements

Staff: Lawfully established single family dwellings are allowed uses on property in the MUA-20 zoning district. Additions to those dwellings are thus allowed as an outright use.

Criterion met.

6. **The Addition Meets The MUA-20 Dimensional Requirements**

MCC 36.2855 Dimensional Standards and Development Requirements.

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

A. **(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.

Applicant: We understand the rear Minimum Yard Dimension (setback) is 30 feet. The proposed addition, including eave overhang, will encroach into the 30 foot setback by approximately 4'6" making the new setback of ~25'6". Property corners monumented with the 1965 registered survey are still in place and were used to establish the reference line for the setback.

Staff: The applicant is requesting a minor variance to the rear setback. With this approval, the setback is met. Elevations show the addition at one story and under the 35-foot maximum height limitation.

Criterion met.

B. **(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 sanitarian has indicated on the On-Site Septic Review Form that the addition will not impact the existing septic system.

Criterion met.

C. **(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**

Staff: The property is not zoned EFU.

Criterion met.

2. (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: This shall be required as a condition of approval.

Criterion met.

7. The Property Is A Lot Of Record

MCC (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: The property was created in 1972 through a one lot subdivision in case M 43-64-I. The property is currently in the same configuration.

Criterion met.

8. The Proposal Qualifies As A Minor Variance

MCC 36.7605 Variance Classification.

(B) A Minor Variance is one that is within 25 percent of an applicable dimensional requirement. The approval authority is authorized to grant a Minor Variance in accordance with the following conditions:

(1) Application shall be accompanied by the written consent of the owner or owners of each lot adjoining and across any street from the subject property;

(2) The form to be presented to each owner must include the zoning requirement, the amount of relief requested by the applicant and a declaration by the owner that the granting of the variance shall not harm the value and livability of his property

Applicant: ...we are applying for a Minor Variance that will allow us to proceed with the permit process. All abutting property owners were given a packet which included an explanation letter, copies of 36.2855 Dimensional Standards and Development Requirements and 36.7605 Variance Classification codes, a survey of the lots and a plot map indicating how this remodel would impact property lines. All abutting owners signed this letter, copies of which have already been placed in our case file.

Staff: The distance from the new addition to the property line is shown as 25.5-feet. A variance up to 7.5-feet is under the 25% threshold and considered a minor variance. Prior to the issuance of building permits, a survey shall be conducted to ensure the addition does not encroach any further than 7.5-feet. The consent of the adjacent property owners has been obtained (Exhibit 3). The signed consent form indicated the zoning, the variance request, and the required declaration.

Criteria met.

9. The Proposal Satisfies The Minor Variance Approval Criteria

MCC 36.7600 - Variance Approval Criteria.

(A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall meet criteria (3) and (4).

(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.

(4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.

Applicant: The original construction included a 12x12 concrete brick-covered patio connected to the south side of the house as an exterior extension to an enclosed "sunroom". The room is currently used as a dining area. We wish to remove the glass structure and enclose part of the patio area to enlarge the dining area.

The proposed addition to the house will not change the use of the land surrounding the existing residence nor are any trees, vegetation, etc. being removed

In summary, we wish to enclose part of an existing patio to enlarge our dining room. We do not feel granting of the Minor Variance will harm the public, have any visual or physical impact on any adjoining property owners or other properties in the vicinity or negatively affect development or use of any adjoining properties. Due to the secluded location of our house on the property, this change will be visible only to us.

Staff: The practical difficulty on the subject property is that because of the location of the kitchen and dining area, the proposed dining room expansion can only be placed where proposed. The location of the kitchen and dining area (shown on the submitted floor plan as Exhibit 4) are on the south part of the home and can not reasonable moved. Adding to the kitchen area can only occur on the south side and encroach into the required setback.

No adverse impacts have been identified with the addition as proposed. Noise levels and pollution levels will not increase. The area of the addition is flat and will not become unstable with the addition. No streams are on the subject property. There is no measurable impact on the adjacent property owners and all adjacent property owners have signed the consent form indicating they are aware of the proposal.

Dwellings are allowed uses in the MUA-20 zoning district and the Comprehensive Plan does not prohibit additions to dwellings in the MUA-20 zone.

Criterion met.

Conclusion

Based on the findings and other information provided above, this application for a Minor Variance satisfies, with appropriate conditions, the applicable Multnomah County Zoning Code requirements.

Exhibits

1. General Application Form
2. Planning Commission Concurrence on Subdivision Approval
3. Neighboring Property Owners' Consent
4. Floor Plan