



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.

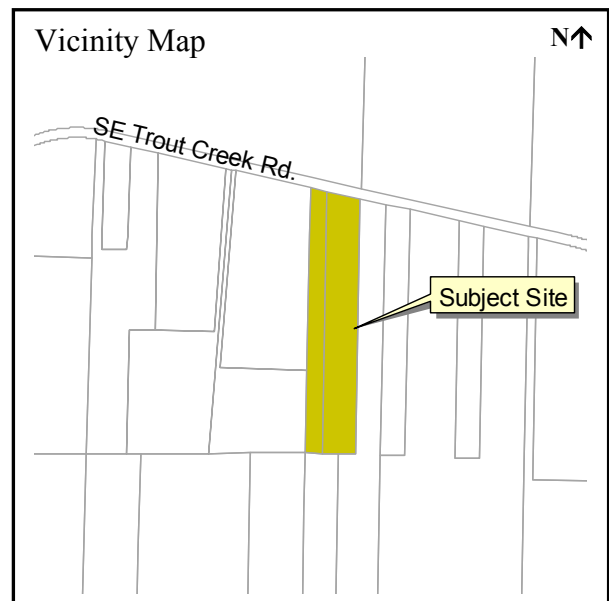
Case File: T2-04-084

Permit: Administrative Decision by the Planning Director for an Accessory Use in the CFU-4 zone

Location: 42320 SE Trout Creek Road
TL 2200, Sec 17, T1S, R5E, W.M.
Tax Account #R995170350

Applicant: Dan Harry
4447 SE Sweetbriar
Troutdale, OR 97060

Owner: Richard Weeks
42320 SE Trout Creek Road
Corbett, OR 97019



Summary: An Administrative Decision by the Planning Director for a garage 24 x 32-foot garage/shop accessory to the existing dwelling.

Decision: Approved With Conditions.

Unless appealed, this decision is effective Monday, December 27, 2004 at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Monday, December 13, 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, December 27, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 35.2215 Uses; MCC 35.2260 Dimensional Requirements; MCC 35.0005(L)(13); MCC 35.2275 Lot of Record; MCC 35.2305 Development Standards for Dwellings and Structures; MCC 35.2310 Exceptions to Secondary Fire Safety Zones and Forest Practices Setbacks.

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 owner of the property shall maintain the following primary and secondary fire safety zones for the barn:**

A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be

spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.

[MCC 35.2305(A)(5)(c)(1) & (2)]

2. The garage/shop shall have a fire retardant roof with the materials clearly listed on the building plans [MCC 35.2305(B)(3)]
3. The structure shall be constructed in accordance with the International Fire Code Institute Urban– Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended [MCC35.2310(B)(1)]
4. The structure shall contain a central monitored alarm system and be constructed of materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side [MCC 35.2310(B)(7)].
5. Prior to building zoning approval of the building permit, the applicant/owner shall submit information on which central monitored alarm system will be installed into the structure. [MCC 35.2310(B)(7)].

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.

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 construct a 24x32-foot garage/shop that would be connected to the existing dwelling by a breezeway. The garage/shop would be accessed by an existing driveway. The garage/shop would be 105-feet from the western property line and 12-feet from the existing dwelling.

2. **Site Characteristics and Vicinity**

Staff: The subject site is a long and linear 2.74-acre property in the East of Sandy River Rural Plan Area. The property is zoned Commercial Forest Use-4 along with the entire area off of Trout Creek Road. The subject site is relatively flat and mostly forested. The area near the existing dwelling is cleared and roughly 230-feet from the road. No watercourse is near the dwelling.

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 Richard Weeks as the owner of the subject property. Both Mr. Weeks has signed the General Application form (Exhibit 1) authorizing a land use action to be initiated on the subject property.

Criterion met.

4. **The Property Is In Full Compliance With All Applicable Codes**

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: No issues with compliance have been identified as a result of this permit. The property is a Lot of Record as determined in Finding #7.

Criterion met.

5. **A Garage/Shop Is An Allowed Use In The CFU-4 Zoning District**

MCC 35.2215 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 35.2220 through 35.2240 when found to comply with MCC 35.2245 through 35.2310.

* * *

MCC 35.2220 Allowed Uses

(U) Other structures or uses determined by the Planning Director to be customarily accessory or incidental to any use permitted or approved in this district.

Applicant: The existing residence is a legal dwelling and was built with permit in 1976. The Weeks (Mr. and Mrs.) have been the primary residents since the dwelling was built. See attached photographic record and copies of original permit. Part U of this section allows for accessory structures.

Staff: Staff concurs with the applicant. A building permit was located for a single family dwelling for Mr. Weeks (Exhibit 2) and the Multnomah County Assessment and Taxation form shows the dwelling as being built in 1977 (Exhibit 3). The applicant has submitted photographs that demonstrate the structure is a habitable dwelling.

A 24x32-foot structure is roughly equivalent to a two bay garage and quite common in the rural areas of Multnomah County as seen in the permit archives. Multnomah County policy is that structures that are commonly found in the rural areas and that are smaller in floor area and height than the dwelling are considered accessory to the dwelling. The proposed garage/shop meets those guidelines.

Criterion met.

6. The Structure Meets The Dimensional Requirements Of The CFU-4 Zone

MCC 35.2260 Dimensional Requirements

A. (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 35.2310, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 35.2305 (A) (5) (c) 2.

Staff: The applicant owns two adjacent lots that are aggregated together to form one lot of record (see Finding # 7). This lot of record is 300-feet wide. However the property line between the two properties is only 5-feet to the west of the proposed structure. But, because the properties are aggregated, the structure only needs to meet the setback to the side yards of the lot of record and tract. With that in mind, the new structure is over 200-feet from the front property line, over 160-feet to the west property line, over 500-feet from the rear property line and is shown as being 105-feet from the west property line. Since the west property line is less than 130-feet away, the structure will need an exception under MCC 35.2310, which can be reasonably obtained.

The structure is less than 30-feet in height as measured on the building plans.

Criterion met.

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

Staff: The structure is more than 200-feet from the front lot line on a road that has more than the 50-feet of required right-of-way width. No increase in the yard is required.

Criterion met.

7. The Subject Property Is A Lot Of Record

MCC 35.0005(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.)

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.**

Staff: Deeds (Exhibit 4) were submitted by the applicant for the two subject lots (properties identified as #'s R995170290 and R995170350) that show they were both created prior to December 28th, 1973 (date of the newest deed) and have been in continuous ownership by the Weeks since they were purchased. Both properties were zoned F-2 when the properties were created. At that time, the zoning district only had a requirement of a 2-acre minimum lot size. Both properties met the minimum lot size and therefore met the zoning requirements.

No partitioning rules were in place for a division of land of three or fewer lots in a calendar year until October 19, 1978. Therefore, the property met the land division requirements at the time they were created.

The two lots are contiguous to each other, both under 19-acres in size and were under the same ownership on February 20, 1990. Therefore, they are aggregated together for the purposes of a Lot of Record.

Criteria met.

8. The Proposed Development Meets The Development Standards

MCC 35.2305 Development Standards for Dwellings and Structures

Except as provided for the alteration, replacement or restoration of dwellings under MCC 35.2220 (D) and (E); and 35.2225 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

A. **(A) The dwelling or structure shall be located such that:**

1. **(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of 35.2260 (C) through (G);**

Staff: The structure is located adjacent to the dwelling in a cleared area used for residential purposes and with direct access to the existing driveway. No forest land will be impacted by the placement of the structure in the proposed site.

Criterion met.

2. **(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

Staff: Locating the structure directly adjacent to the existing dwelling will minimize any forest or farming practices by reducing the amount of forest land taken out of production on the site the absolute minimum. The building area is clear and already in residential use.

Criterion met.

3. **(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

Staff: The area for the proposed structure is already cleared and is accessed by an existing driveway.

Criterion met.

4. **(4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

Staff: No new access road is proposed as part of this application.

Criterion met.

5. **(5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

1. **(a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;**

Staff: No dwelling is proposed in this application.

Criterion met.

2. **(b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC 35.2305 (D) with permanent signs posted along the access route to indicate the location of the emergency water source;**

Staff: As per the County's GIS mapping system, no perennial water sources are identified on the site.

Criterion met.

3. **(c) Maintenance of a primary and a secondary fire safety zone on the subject tract.**

1. A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

2. On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	Not required
Less than 20	50
Less than 25	75
Less than 40	100

3. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 35.2260 (F) and 35.2310.

4. No requirement in 1., 2., or 3. above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

5. Maintenance of a primary and a secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the home owner.

Staff: The primary and secondary fire safety zone creation and maintenance shall be a condition of approval. The area of the proposed garage/shop has a slope of under 10% according to the County's GIS topographic information. The elevation changes roughly five feet over a distance of 225-feet.

Criteria met.

4. (d) The building site must have a slope less than 40 percent.

Staff: The slope of the site is under 10% as seen on the County's GIS topographic system.

Criterion met.

B. (B) The dwelling or structure shall:

1. (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

Staff: The proposed structure is not a mobile home.

Criteria met.

3. (3) Have a fire retardant roof; and

Staff: A fire retardant roof shall be a condition of approval.

Criterion met.

4. (4) Have a spark arrester on each chimney.

Staff: The building plans submitted do not indicate any chimney's are included in the structure.

C. (C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.

(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal

easement has been obtained permitting domestic water lines to cross the properties of affected owners.

(2) Evidence of a domestic water supply means:

(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

(b) A water use permit issued by the Water Resources Department for the use described in the application; or

(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

Staff: The applicant has submitted a well drillers log from 1976 showing a well is on site (Exhibit 5).

D. (D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:

(1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;

(2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;

(3) Provide minimum curve radii of 48 feet or greater;

(4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;

(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:

(a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;

(b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;

(6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;

(7) Provide for the safe and convenient passage of vehicles by the placement of:

(a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or

(b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.

Staff: The proposal does not include a dwelling and the driveway to the proposed garage already exists.

Criteria met.

9. **The Proposal Qualifies For An Exception To The Fire Safety Zones And Forest Practices Setbacks**

MCC 35.2310 Exceptions to Secondary Fire Safety Zones and Forest Practices Setbacks

A. (A) The secondary fire safety zone and forest practices tract setbacks for dwellings and structures may be reduced pursuant to the provisions of 35.2310 (B) when:

(1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or

(2) The dwelling or structure is proposed to be located within 130 feet of the centerline of a public or private road serving two or more properties; or

(3) The proposed dwelling or structure is proposed to be clustered with a legally existing dwelling or structure.

Staff: The Lot of Record is only 300-feet wide and qualifies for an exception under #1 above.

Criterion met.

B. (B) Exceptions to secondary fire safety zones and forest practices setbacks shall only be granted upon satisfaction of the following standards:

1. (1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban– Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or

Staff: Because the secondary fire safety zone is 75-feet, it falls under the requirements of the Class 2 Ignition code as outlined above. The garage/shop shall be constructed in accordance to that code as a condition of approval.

Criterion met.

2. **(3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and**

Staff: No fences are included as part of this application.

Criterion met.

3. **(4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of MCC 35.2310 (B) (1) are utilized, or**

Staff: The structure is not a dwelling.

Criterion met.

4. **(5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of MCC 35.2310 (B) (2) are utilized. Exception: Expansions of existing single family dwellings as allowed by MCC 35.2220 (D) shall not be required to meet this standard, but shall satisfy the standard of MCC 35.2305 (B) (3) above.**

Staff: A dwelling is not apart of the proposal.

Criterion met.

5. **(6) All accessory structures within the fire safety zone setbacks required by MCC 35.2305, and all accessory structures within 50 of a dwelling, shall have a central monitored alarm system.**

Staff: The structure will be within 50-feet of a dwelling so a central monitored alarm system shall be a condition of approval.

Criterion met.

6. **(7) All accessory structures within 50 feet of a building shall:**

(a) Have a central monitored alarm system;

(b) Have exterior walls constructed with materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.

Staff: A central monitored alarm system is a condition of approval and the building shall be constructed with building materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.

Criterion met.

7. **(8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban– Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication.**

Exception: The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour-rated fire-resistive construction or heavy-timber construction.

Staff: The structure is located on a flat area under 10% slope as measured on the County's GIS topographical information.

Criterion met.

Conclusion

Based on the findings and other information provided above, this application for an Administrative Decision by the Planning Director for an Accessory Use in the CFU-4 zone satisfies, with appropriate conditions, the applicable and Multnomah County Zoning Code requirements.

Exhibits

1. General Application Form
2. Building Permit For Single Family Dwelling
3. Multnomah County Assessment and Taxation Form
4. Deeds For Both Subject Lots in the Lot of Record
5. Well Drillers Report
6. Site Plan
7. Building Plans