



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: T2-04-106

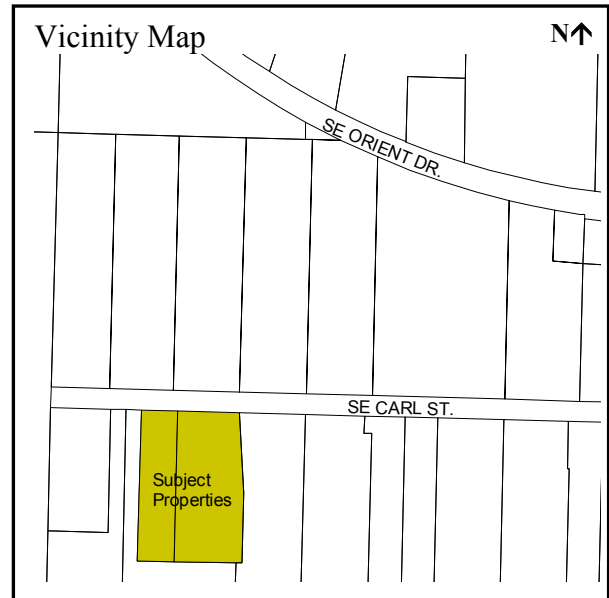
Permit: Property Line Adjustment

Parcel 1: 27256 SE Carl St.
TL 2900, Sec 24A, T1S, R3E, W.M.
Tax Account #R31640-4870

Parcel 2: 27260 SE Carl Street
TL 3000, Sec 24A, T1S, R3E, W.M.
Tax Account #R31640-4900

Applicant: Bruce Benadom
27256 SE Carl St.
Gresham, OR 97080

Owner: Bruce and Blanche Benadom
27256 SE Carl St.
Gresham, OR 97080



Summary: Property Line Adjustment to relocate the common boundary between 27256 SE Carl St. and 27260 SE Carl Street.

Decision: Approved with Conditions

Unless appealed, this decision is effective February 22, 2005 , at 4:30 PM.

Issued by:

By: _____
Tammy Boren-King, Planner

For: Karen Schilling- Planning Director

Date: February 8, 2005

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 Tammy Boren-King, 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, February 22, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 37.0560 - Code Compliance And Applications; MCC 36.0005(L)(13) – Lot of Record; MCC 36.2855 - Dimensional Standards and Development Requirements; MCC 36.2860 - Lots of Exception and Property Line Adjustments; MCC 36.2870 - Lot of Record; MCC 36.7970 - Property Line Adjustment.

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 property owner, or representatives thereof, shall complete the adjustment pursuant to the attached “Applicant’s Instructions for Finishing a Property Line Adjustment,” and “Surveyor’s Instructions for Finishing a Property Line Adjustment” included as Exhibits 15 and 16 respectively. This will entail survey and monumentation of the new lot line by a registered surveyor and verification by survey of the location of the existing dwellings and other structures in relation to lot lines as required by MCC 36.7970(C).**

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: 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 conclusionary statement in *italic*.

1. **Project Description**

Staff: The applicant is proposing to adjust the common property line between 27256 SE Carl St. and 27260 SE Carl St. by moving the boundary 45 feet to the East as shown on the applicant's site plan included as Exhibit 1. The transfer area is approximately 16,335 square feet. The property at 27256 SE Carl will be increased in size from approximately 1.25 acres to approximately 1.625 acres. The property at 27260 SE Carl St. will decrease in size from approximately 0.75 acres to approximately 0.375 acres.

2. **Site Characteristics**

Staff: The local area off of SE Carl Street is made up of smaller properties that are zoned Multiple Use Agriculture-20. The lots along this street were created by the Gillis Subdivision, which was platted in 1912. Several of the original subdivision lots have been further divided. Most lots have single-family dwellings on them and form a fairly dense rural area. Both parcels are flat and contain single family homes.

3. **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 Directors 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 December 21, 2004. No written comments were received.

Procedures met.

4. **Proof of Ownership**

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 Bruce and Blanche Benadom as owners of both pieces of property involved with the adjustment (Exhibit 2). Bruce Benadom signed the General Application Form authorizing an action to be taken on the property (Exhibit 3).

Criterion met.

5. **Both Properties Involved Are Lots Of Record**

MCC 36.0005(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.

Staff: Below are the findings for each involved property:

- 5.1 **Property at 27256 SE Carl St. (R#31640-4870)** – The applicant has provided deed records for the property at 27256 SE Carl showing its creation and the transfer of ownership to the current owner. This property was created by a deed on 5-22-1964 recorded in Book 47, Page 207, which is included as Exhibit 5. This deed describes the property in its current configuration. In 1964, the property was subject to the SR zone as shown on the 1962 zoning map attached as Exhibit 6. The SR zone in place at that time allowed the creation of lots with a minimum lot size of 20,000 square feet if the lot had a public water supply, an individual sewage disposal system, and approved access. The site has public water, an on-site sewage disposal system, and direct access to a public road. The lot is 32,670 square feet as described in the 1962 deed, making it in excess of 20,000 square feet. The lot met the lot size requirements established in the SR zone in effect on 5-22-1964. Land division rules for a partition of three or fewer lots in a calendar year were not in effect until October 19, 1978. As such, no land division rules were in place when the property was created. The property met all zoning requirements at the time it was created.

The applicant has also submitted the current deed for the subject property dated December 27, 1977 and recorded in Book 1230, Page 2149 (Exhibit 7). This deed transfers ownership of the lot to the current owner and describes the property in its current configuration, which is the same as the configuration described in the deed from 1964.

The property at 27256 SE Carl St. (R31640-4870) is a lot of record.

5.2 **Property at 27260 SE Carl St. (R31640-4900)** –

The applicant has provided deed records for the property at 27260 SE Carl showing its creation and the transfer of ownership to the current owner. This property was created by a deed on 5-19-1966 recorded in Book 504, Pages 134 and 135, which is included as Exhibit 8. The following bulleted list describes the history of how this parcel was created followed by an explanation of how it has been reconfigured over time:

- The Gillis subdivision is platted in 1912.
- Instrument recorded in book 2085 page 102 transfers ownership of Lot 13 Gillis and portions of lot 14 and 15 on 10-10-1961. (Exhibit 9)
- Instrument recorded in book 47 page 207 transfers ownership of the westerly 11 feet (more or less) of Lot 13 for a distance of 363 feet from the southern boundary of Carl Street on 5-22-1964. (This is the portion of lot 13 currently contained in 27256 SE Carl Street).
- Instrument recorded in book 504 pages 134 and 135 transfers ownership of the southerly 283.75 feet of Lot 13 on 5-19-1966, creating the subject lot in a configuration that ended at the easterly line of Lot 13, Block 9 Gillis.

In 1966, the property was subject to the SR zone as shown on the 1962 zoning map attached as Exhibit 6. The SR zone in place at that time allowed the creation of lots with a minimum lot size of 20,000 square feet if the lot had a public water supply, an individual sewage disposal system, and approved access. The site has public water, an on-site sewage disposal system, and direct access to a public road. As originally created, the lot was square feet as described in the 1962 deed, making it in excess of 20,000 square feet. The lot met the lot size requirements established in the SR zone in effect on 5-22-1964. Land division rules for a partition of three or fewer lots in a calendar year were not in effect until October 19, 1978. As such, no land division rules were in place when the property was created. The property met all zoning requirements at the time it was created.

The applicant has also submitted a deed for the subject property dated December 27, 1977 and recorded in Book 1230, Page 2149 (Exhibit 7). This deed transfers ownership of the lot to the current owner and describes the property in the same configuration as described in the deed from 1966.

Adverse Possession Boundary Determination

In 1998, a boundary dispute involving this property was litigated. The dispute was regarding the location of the east boundary. The dispute was heard in Multnomah County Circuit Court case number 9803-02060. A copy of the Final Decree and Money Judgment is attached as Exhibit 18. This judgment found that the east line of 27260 SE Carl St “is coincident with the ancient fence line...” as described in a survey attached to the judgment not coincident with the platted lot line. The survey and a deed were recorded to establish the location of the line coincident with the fence rather than the platted lot boundary. A copy of the survey showing the reconfiguration is included as Exhibit 4. This created the lot in its current configuration.

The boundary dispute was not a property line adjustment. A property line adjustment as defined in MCC 36.7970 is “the relocation of a common property line between two abutting properties.” The boundary dispute was not an attempt to relocate a property line. The boundary dispute was an attempt to clarify the location of the property line. The award did not move the line but established where the line legally existed. As such, no property line adjustment application was required to be processed by this office. A new deed was then recorded with a legal description matching the description of the legally correct location of the line. The property is in the same configuration today as was found to be correct in the judgment award.

The property at 27260 SE Carl St.(R31640-4900) is a lot of record.

Criteria met.

6. **Property Line Adjustments Are Allowed In The Multiple Agricultural Use Zoning District.**

MCC 36.2825 Review Uses.

Uses listed in this section may be permitted after required review as Type II decisions pursuant to MCC 37.0510 through 37.0800, or as specified for the use.

(D) Property Line Adjustment pursuant to the provisions of MCC 36.2860.

Staff: Property line adjustments are a listed Review Use allowed in the district.

Criterion met.

8. **The Proposed Configuration Meets The Property Line Adjustment Approval Criteria.**

MCC 36.2860 Lots of Exception and Property Line Adjustments.

(B) Property Line Adjustment

Pursuant to the applicable provisions in the Multnomah County Land Division Ordinance, the approval authority may grant a property line adjustment between two contiguous Lots of Record upon finding that the approval criteria in (1) and (2) are met. The intent of the criteria is to ensure that the property line adjustment will not increase the potential number of lots or parcels in any subsequent land division proposal over that which could occur on the entirety of the combined lot areas before the adjustment.

(1) No additional lot or parcel is created; and

- 8.1 **Staff:** The proposed Property Line Adjustment begins with two tracts and ends with two tracts as seen on the submitted site plan (Exhibit 1). No new parcel is created.

Criterion met.

(2) One of the following situations occurs:

(b) The lot or parcel proposed to be enlarged in area is less than 40 acres in area prior to the adjustment and remains less than 40 acres in area after the adjustment.

- 8.2 **Staff:** 27256 SE Carl, the parcel to be enlarged, is 1.25-acres prior to the adjustment and 1.625-acres after the adjustment.

Criterion met.

MCC 36.7970 Property Line Adjustment (Lot Line Adjustment)

A property line adjustment is the relocation of a common property line between two abutting properties.

(B) The Planning Director may approve a property line adjustment between two properties in the Rural Area where an additional lot or parcel is not created but where one or both of the adjusted properties are below the minimum lot size established by the applicable zoning district designation. Such an adjustment shall comply with any applicable zoning district standards for a Property Line Adjustment or Lot Line Adjustment.

- 8.3 **Staff:** The two subject properties have a common property line as shown in the site plan attached as Exhibit 1. No additional lot is created as a result of this property line adjustment. Both properties involved are well below the 20-acre minimum lot size prior to the adjustment and after the adjustment.

Criterion met.

(C) Property line adjustments approved under subsections (A) and (B) above shall meet the following additional standards:

(1) No additional lot or parcel shall be created from any parcel by the property line adjustment; and

- 8.4 **Staff:** No additional lot is being created as a result of this property line adjustment.

Criterion met.

(2) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and

- 8.5 **Staff:** Bruce and Blanche Benadom own both properties involved. Bruce Bendaom has signed the General Application form and the Statement of Property Owner Consent form (Exhibits 3 and 12).

Criterion met.

(3) The adjusted properties shall meet all dimensional requirements in the underlying zoning district designation except for lot area.

Staff: The dimensional requirements of the zone require a 30 foot setback from the front and rear property lines and a 10 foot setback from the side property lines pursuant to MCC 36.2855. The analysis of how each lot complies with the dimensional standards are presented individually below.

- 8.6 **27256 SE Carl St.**

The house at 27256 SE Carl St is currently 13 feet from the front property line, which does not meet the current front setback standard. This house was constructed under Multnomah County Building Permit number 36118 issued in 1965. An addition to this house was constructed in 1976

under Multnomah County Building Permit number 760702. Both of these were constructed under the SR zone. The back of each of these two building permit cards has an approval line for setbacks. Both permits were inspected for setbacks and approved. The house and addition were deemed to be in compliance with the setbacks as evidenced by the approved inspection cards, copies of which are included as Exhibit 17.

The proposed property line adjustment will move the east line of this property further away from the house, resulting in a side setback of 58 feet from the house and 55 feet from the shop according to the applicant's site plan (Exhibit 1). This is in compliance with the current setbacks.

8.7 **27260 SE Carl St.**

The house at 27260 SE Carl St. is currently six feet from the east property line according to information provided by the applicant. This house was built in 1943 before any setbacks were in effect and does not appear to have changed location since it was constructed. A court action in circuit court case No. 9803-02060 gave an award of adverse possession to the Benadom's which clarified the location of the east lot line as being in its current location as shown on a Survey 56469 included as Exhibit 4. As shown on the applicant's site plan, the house is 6 feet from the east lot line as located by the adverse possession award. No changes are proposed on this side of the property. The existing house may retain its current relationship to the east property line. Any new construction, including additions, must meet the current setbacks or be approved for lesser setbacks through a Verification and Expansion of a Non-Conforming Use. The west property line will be moving closer to the structures on this lot, but will be 58 feet from the closest structure, which is well in excess of the required 10 foot side setback. Both the house and garage exceed the front and rear setbacks on this lot.

Criterion met.

(4) The right-of-way width between the front line of each adjusted property and the centerline of any adjacent County road shall comply with the applicable provisions of the Street Standards Code and Rules as determined by the County Engineer.

- 8.8 **Staff:** SE Carl Street contains 50 feet of right-of-way. This right-of-way width is adequate for a local street as documented in an email from Alan Young, the County's Right-of-Way specialist which is included in the file.

Criterion met.

9. **The Proposal Meets The Comprehensive Plan Policies**

Policy 37 Utilities

Water and Disposal Systems

A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or

B. Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or

C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or

D. Shall have an adequate private water system, and a public sewer with adequate capacity.

Drainage

E. Shall have adequate capacity in the storm water system to handle the run-off; or

F. The water run-off shall be handled on the site or adequate provisions shall be made; and

G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

- 9.1 **Staff:** The subject application is for a property line adjustment. There is an existing septic system on each site. The sanitarian has determined the existing septic systems are adequate for the and that the property line adjustment will not have a negative impact on those systems (Exhibits 10 and 11). The dwelling is served by an adequate private well producing 7.5 gallons per minute as indicated in the applicant's Certification of Water Service (Exhibit 13) signed by the manger of the Lusted Water District. No new construction is proposed as part of the subject application, thus no new water run-off will be created. If at a future date new construction is proposed, the applicant will be required to provide a statement from a Registered Professional Engineer that an adequate system exists on site to handle the drainage from a 10-year, 24-hour storm.

Criteria met.

Policy 38

It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:

Fire Protection

B. There is adequate water pressure and flow for fire fighting purposes; and

C. The appropriate fire district has had an opportunity to review and comments on the proposal.

- 9.2 **Staff:** Gresham Fire and Emergency Services was given the opportunity to review and comment on the proposal. The applicant has submitted a service provider letter signed by Mike Kelly, Deputy Fire Marshall of Gresham Fire and Emergency Services determining that the existing accesses are adequate (Exhibit 14).

Criterion met.

Conclusion

Based upon the findings contained herein, the applicant has carried the burden necessary to demonstrate that, with conditions, the criteria for a Property Line Adjustment contained in the Zoning and Land Division codes have been met.

Exhibits

1. Site Plan
2. Assessment and Taxation Information showing current ownership (2 pages)
3. Application form signed by Bruce Benadom
4. Survey 56469 showing adverse possession reconfiguration
5. Deed recorded in Book 47 page 207
6. Copy of 1962 zoning map
7. Deed recorded in Book 1230 page 2149
8. Deed recorded in Book 504 pages 134 and 135 (2 pages)
9. Deed recorded in Book 2085 page 102
10. Service provider letter for septic system at 27256 SE Carl St.
11. Service provider letter for septic system at 27260 SE Carl St.
12. Statement of Property Owner Consent
13. Service provider letter from Lusted Water District
14. Service provider letter from Gresham Fire and Emergency District
15. Applicant's Instructions for Finishing a Property Line Adjustment
16. Surveyor's Instructions for Finishing a Property Line Adjustment
17. Permits records showing setback inspections for 27256 SE Carl (2 pages)
18. Adverse Possession Award Final Decree and Money Judgement (6 pages)