

**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.

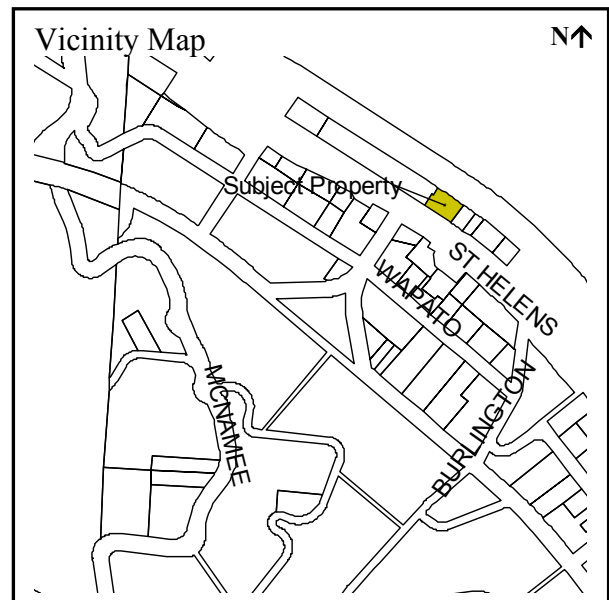
Case File: T2-05-012

Permit: Category 3 Land Division And Minor Variance

Location: 16950 NW St Helens Road
TL 500, Sec 20, T 2N, R 1W, W.M.
Tax Account #R11990-0390

Applicant: Steven Eudaly

Owner: Greenwall LLC
C/O Brian King



Summary: The applicant is requesting the following actions:

1. Replat existing lots into a single parcel;
2. Convert a commercial building to a single family building; and
3. Reduce the rear yard from 30 to 23 ft through a minor variance request to allow the construction of a detached 25 ft wide by 45 ft long accessory structure to be used for a garage and storage in association with the single family dwelling in the West Hills Rural Center zone.

Decision: Approved with conditions.

Unless appealed, this decision is effective Monday, September 26, 2005, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Monday, September 12, 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 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 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, September 26, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): *Rural Center*: MCC 33.3320 Allowed Uses, MCC 33.3355 Dimensional Requirements, MCC 33.3370 Lot of Record, MCC 33.3380 Off-Street Parking and Loading, MCC 33.3385 Access; and

Variance: MCC 33.7600 Variance Approval Criteria, MCC 33.7605 Variance Classification; and

Land Division: MCC 33.7775 Category 3 Land Divisions, MCC 33.7855 Criteria for Approval: Category 3 Tentative Plan, MCC 33.7860 Contents of Category 3 Tentative Plan, MCC 33.7885 Application of General Standards and Requirements; and

Chapter 37, specifically MCC 37.0530(B) Type II Process, MCC 37.0550 Initiation of Application, 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. A request for permit extension may be required to be granted 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 phasing of this application shall occur in the following order to ensure compliance with the findings described below:
 - a. The first step taken shall be the recordation of the final plat consolidating the 4 lots into a single parcel.
 - b. Any and all building permits shall be obtained to convert the commercial building over to a single family dwelling.
 - c. Prior to issuance of the building permit for the accessory structure, the building permits (mechanical, electrical, etc) shall be finalled for the dwelling conversion.
 - d. Building permits shall be obtained and finalled for the accessory structure. **[MCC 37.0560 Code Compliance and Applications]**
2. A partition plat shall be prepared that complies with ORS Chapter 92 as amended. Notwithstanding optional provisions in ORS Chapter 92, all parcels created shall be surveyed, monumented and platted, regardless of parcel area. **[MCC 33.8015(B)]**
3. Before the partition plat is submitted to the Multnomah County Surveyor's Office, two (2) blue line copies of the plat are to be filed with the Planning Director. The Planning Director will determine whether the plat complies with this decision and the conditions of approval contained herein. At such time as the plat complies with this decision, a letter of zoning compliance will be provided to the Multnomah County Surveyor. **[MCC 38.8015(A)]**
4. In addition to the information required to be shown on the tentative plan, the following is required to be shown on the partition plat:
 - (A) Corners of adjoining subdivisions or partitions.
 - (B) The location, width and centerline of streets and easements abutting the boundaries of the land division.
 - (C) Normal flood plain or high water line for any creek or other minor body of water or natural drainageway and the 100-year flood line of any major water body.
 - (D) The ownership of each private street shall be shown.
 - (E) Other certifications required by law. **[MCC 38.8020(E)]**
5. The stormwater generated by the impervious surface of the existing building to be used as a single family dwelling, driveway pavement and accessory structure shall be directed to the drywell or a soakage trench. The size and design shall be determined by a licensed engineer who shall stamp the plans. **[MCC 33.7960 Surface Drainage]**
6. All utility wires serving site, including but not limited to electric power, communication, street lighting and cable television wires, shall be placed underground. **[MCC 33.7965 Electrical and Other Wires]**
7. Prior to the issuance of the building permit to convert the existing building to a single family dwelling, the property owner or his representative shall modify one of the existing kitchens to either a wet bar, utility/hobby room with no cooking facilities or another non-related use such as a bedroom. Plans shall be submitted to the Land Use Planning section showing the proposed modifications changing the kitchen to another use. In addition, the property owner shall record of a covenant against the property indicating that the use of the existing building is a single family dwelling or remove the kitchen completely including all plumbing and 220 electrical. **[MCC 33.3320(C) Allowed Uses]**

Note: Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permits signed off. Please contact Lisa Estrin at 503.988.3043 to obtain an appointment for sign-off review.

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 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: The applicant is proposing to convert an existing commercial building to a single family dwelling and construct a 45 ft long by 25 ft wide two story accessory structure. The new accessory structure will have 1 ft eaves. On the first floor will be a garage for the parking of residential vehicles and the second story is for storage. The applicant has requested a minor variance for a 24% reduction in the rear yard setback in order to construct the new building. In addition, the property owner will be converting an existing commercial building to a single family dwelling. The subject property is zoned Rural Center and is adjacent to St. Helens Highway.

The second portion of this application is for a 1 parcel partition to combine a portion of lot 2, lot 3, 4 and a portion of lot 5 into a single parcel. This lot consolidation will remove the property lines which run through the existing building and the proposed garage.

1.00 ***Administration and Procedures***

1.01 **Type II Case PROCEDURES**

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 February 11, 2005 and was deemed complete as of June 23, 2005. An “Opportunity to Comment” notice was mailed on July 6, 2005 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 500, Section 20BB, Township: 2 North, Range: 1 West. Assessment & Taxation records show that the land is owned by Greenwall LLC. The property owner has granted approval for Patrick Eudaly to make application for the necessary permits to establish a single family dwelling and accessory structure on the property (Exhibit A.1). *This criterion has been met.*

1.03 **MCC 37.0560 Code Compliance And Applications.**

Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, 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) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or
- (2) It is necessary to protect public safety; or
- (3) It is for work related to and within a valid easement over, on or under an affected property.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: The existing building on the site is currently being used as a single family dwelling. The last lawful use of this building was for a commercial establishment. The applicant has applied to change the use to a single family dwelling. By obtaining this permit, and necessary building permits, the unlawful use of the building as a single family dwelling will be corrected.

2.00 ***Rural Center Criteria***

2.01 **MCC 33.3320 Allowed Uses**

(C) Residential use consisting of a single family dwelling constructed on a Lot of Record;

Staff: The current recognized use of the building constructed in the year 1934 is a retail storefront with an office or apartment located on the second floor. Tax records show the basement of the building as unfinished. The last known use of the building was for a mannequin shop. The current property owner would like to utilize the building for a single family dwelling. The applicant has submitted a floor plan which shows the proposed layout of the dwelling. On the first floor is the living room, a bedroom, bathroom and utility kitchen. On the second floor are two bedrooms, a bathroom, a living room, 2 plant rooms, a kitchen and dining room. A single family dwelling is typically allowed to have one kitchen. A wet bar with no cooking facilities or a utility/hobby room with a sink in it is allowable under the code. A condition of approval has been included with this decision which requires the owner to modify one of the kitchens to either a wet bar or utility/hobby room with no cooking facilities, and the recordation of a covenant indicating that the use of the building is a single family dwelling. *As conditioned, this criterion has been met.*

2.02 **(F) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district;**

Staff: In addition to converting the existing building to a single family dwelling, the applicant requested approval to construct a 25 ft wide by 45 ft long two story accessory structure (2,250 sq. ft). The building will have 1 ft eaves. The first floor will be used as a garage for the storage of personal vehicles for the dwelling and the second floor will be for storage. The proposed single family dwelling is approximately 3,520 sq ft in size with a 1,680 sq ft unfinished basement. The proposed accessory structure will be smaller than the proposed single family

dwelling and therefore qualifies as an accessory use. *This criterion has been met.*

2.03 MCC 33.3355 Dimensional Requirements

(A) Except as provided in MCC 33.3360, 33.3370, 33.3375 and 33.4300 through 33.4360, the minimum lot size for new parcels or lots shall be one acre for those RC zoned lands inside the boundary of an “acknowledged unincorporated community”. For RC zoned properties outside an “acknowledged unincorporated community” the minimum lot size is two acres except for those properties within one mile of the Urban Growth Boundary and then the minimum lot size shall be as currently required in the Oregon Administrative Rules Chapter 660, Division 004 (20 acre minimum as of October 4, 2000).

(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: The subject properties qualify as Lots of Record pursuant to the findings in 2.05 below. The proposed lot consolidation will combine 4 existing lots into a single 0.22 acre parcel. This consolidation into a single parcel will result in one Lot of Record instead of the existing four, and the single parcel is therefore not a new but a reconfiguration. As stated above, a Lot of Record pursuant to MCC 33.3370 is exempt from the 2 acre minimum lot size. *This criterion has been met.*

2.04 (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: As shown on Exhibit A.15, the existing building has 2.5 ft between the structure and the front property line adjacent to St. Helens Highway, 4.0 ft to the northwestern side property line, 7 ft to the northern side property line, 72 ft to the southeastern side property line and 33 ft to the rear property line.

The proposed accessory structure has 30 ft to the front property line, 18.3 ft to the southeastern side property line, approximately 50 ft to the northwestern side property line and 23 ft to the rear property line. The applicant has applied for a minor variance for the rear yard requirement of 30 ft. The subject application has demonstrated compliance with the minor variance criteria listed under MCC 33.7600 as described below. The proposed height on the accessory structure is 23 ft-2.25 in. to the top of the gable. The front lot line is 117.31 ft. *These criteria have been met.*

2.05 MCC 33.3370 Lot of Record

(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR and R zones applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**

- (4) October 6, 1977, RC zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change to RC for some properties, Ord. 395;
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004 applied a minimum 2 acre lot size to RC zoned areas outside “acknowledged unincorporated communities” except where properties are within one mile of the Urban Growth Boundary the minimum is 20 acres;
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 33.3385, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 33.3360, 33.3375, and 33.4300 through 33.4360, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be a lot of record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**
- (3) An area of land created by court decree.**

MCC 33.0005 Definitions.

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

(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:....

Staff: The Burlington Tract was divided prior to zoning in 1909. Lots 3 and 4 are in their original configuration except for the front portions that have been sold for road purposes to ODOT for the widening St. Helens Highway. In 1950, a flag shaped piece on the northwesterly lot line of Lot 2 was transferred to and made a part of Lot 1, Block 2, Burlington Tract (Exhibit B.4) through a deed and survey. Lot 5 was split in half in 1923 (Exhibit A.24) and the northwesterly half will be consolidated with this request into a single lot of record after the recordation of the 1 parcel partition.

2.06 MCC 33.3380 Off-Street Parking and Loading

Off-street parking and loading shall be provided as required by MCC 33.4100 through 33.4220. (Two parking spaces for a single family dwelling)

Staff: The applicant is proposing to construct a 4 car garage and in front of the garage is a 30 ft long by 40 ft wide paved area which also is available for parking. *This criterion has been met.*

2.07 MCC 33.3385 Access

Any lot in this district shall abut a street, or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles.

Staff: The subject property abuts St Helens Highway. This Highway is a public street. *This criterion has been met.*

3.00 Variance Criteria

3.01 MCC 33.7600 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).

Staff: The applicant has requested a reduction in the rear yard requirement from 30 to 23 ft in order to construct a detached 25 ft by 45 ft accessory structure on the subject site.

(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.

Staff: The property immediately north of the variance site is occupied by railroad tracks. The encroachment into the rear yard setback will not impact the utilization of this transportation line. Staff can find no impact to the public welfare by the issuance of this variance. *This criterion has been met.*

3.02 (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.

Staff: The minor variance is to allow the establishment of an accessory use to a single family dwelling. The accessory use is an allowed use in the Rural Residential zoning district. The subject property is designated Rural Center within the West Hills Rural Area Plan. The Rural Center district allows for smaller lots and parcels and mixed uses. Staff has not identified any adverse affect that would be created by the issuance of this variance. *This criterion has been met.*

3.03 MCC 33.7605 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.

Staff: The applicant has requested a reduction of the 30 ft rear yard setback to 23 ft. This is a 24% reduction and qualifies as a Minor Variance. The applicant has obtained signatures from the adjoining property owners (Exhibit A.2). *These criteria have been met.*

4.00 ***Land Division Criteria***

4.01 **MCC 33.7775 Category 3 Land Divisions**

A land division proposal under any of the following circumstances is designated a Category 3 Land Division:

- (A) A partition located at the end of a street;**
- (B) A partition abutting a street which has a centerline to property line width less than one-half the width specified for that functional street classification according to the Multnomah County Street Standards Code and Rules;**
- (C) A partition which will result in a flag lot;**
- (D) A partition which will result in one or more parcels with a depth-to-width ratio exceeding 2.5 to 1;**
- (E) A partition which will result in a proposed parcel with an area four or more times the area of the smallest proposed parcel; and**
- (F) A partition of land classified as Significant Environmental Concern (SEC), Exclusive Farm Use (EFU), or Special Plan Area (SPA) under MCC Chapter 33.**
- (G) A partition resulting in the creation of a lot for which an Exception or Variance is required under another part of MCC Chapter 33.**

Staff: The lot consolidation will allow the construction of an accessory use on the subject site. The applicant has applied for a minor variance to the rear yard requirement due to the limited depth of the parcel. The application for a variance designates this 1 parcel partition as a Category 3 land division.

4.02 **MCC 33.7855 Criteria For Approval: Category 3 Tentative Plan**

In granting approval of a Category 3 tentative plan, the Planning Director shall find that the criteria listed in subsections (B), (C) and (H) of MCC 33.7800 are satisfied and that the tentative plan complies with the area and dimensional requirements of the underlying zoning district.

- (B) Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances;**

The adjoining properties to the northwest are owned by Greenwall LLC and have already been divided in 1909 by the Burlington Subdivision. The approval of this lot consolidation into a single parcel will not prevent the development of adjacent lands. *This criterion has been met.*

4.03 **(C) The tentative plan complies with the applicable provisions, including the purposes and intent of this Chapter.**

Staff: Currently the subject property consists of 5 lots or portions of lots. The proposal is to consolidate these lots into a single parcel which is closer in size to the minimum lot size of two acres. This will allow for a better utilization of the subject site for a single family dwelling and

accessory structure. *This criterion has been met.*

- 4.04 **(H) Approval will permit development to be safe from known flooding and flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood waters into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:**

- (1) The infiltration of flood waters into the system; and**
- (2) The discharge of matter from the system into flood waters.**

Staff: The subject site is not located within any FEMA dedicated floodplain. No streams traverse or are adjacent to the subject site. The septic system has been permitted been approved by the Sanitarian (Exhibit A.14) to comply with DEQ regulations. *This criterion has been met.*

4.05 **MCC 33.7860 Contents of Category 3 Tentative Plan**

A tentative plan for a Category 3 Land Division shall consist of maps, written information and supplementary material adequate to provide the following:

(A) Type 3 tentative plan map contents. A tentative plan map of a sheet size and scale as specified in MCC 33.7810 shall indicate the following:

- (1) Date, north point and scale of drawing.**
- (2) Description of the proposed land division sufficient to define its location and boundaries.**
- (3) Identification as a tentative plan map.**
- (4) Location, names or purpose and width of all streets, rights-of-way or easements on or abutting the tract.**
- (5) Natural features, water courses or areas covered by water.**
- (6) The location and use of any buildings or structures proposed to remain after division.**
- (7) The proposed parcels, their dimensions and areas.**
- (8) Contiguous property under the same ownership.**

Staff: This information has been provided on Exhibit A.14). *This criterion has been met.*

- 4.06 **(B) Written information; Category 3 tentative plan. Written information shall include:**

- (1) Name, address and telephone number of the record owner(s), owner's representative, designer(s), engineer(s) or surveyor(s), and the date of survey, if any.**
- (2) Proof of record ownership of the tract and the representative's authorization.**
- (3) Legal description of the tract.**
- (4) Present and proposed uses.**
- (5) Description of the water supply, methods of sewage disposal and storm water disposal, and the availability of other utilities.**
- (6) Statements of the manner in which the criteria for approval listed in MCC 33.7855 are satisfied.**
- (7) Statement of the improvements to be made or installed and the time scheduled**

therefore.

(C) Supplementary material; Category 3 tentative plan. The Planning Director may require such additional information, listed in sections MCC 33.7805 through 33.7825, as the Director deems necessary to assist in the review and assessment of the land division proposal according to the provisions of this Chapter.

Staff: This information has been provided in Exhibits A.1, A.5, A.7 & A.17. *These criteria have been met.*

4.07 MCC 33.7885 Application of General Standards and Requirements

Every land division proposal shall comply with the applicable provisions of MCC 33.7890 through 33.7965.

Staff: This application has complied with the applicable provisions contained in MCC 33.7890 through 33.7965. See additional findings listed below. *This criterion has been met.*

4.08 MCC 33.7890 Land Suitability

A land division shall not be approved on land found by the approval authority to be both unsuitable and incapable of being made suitable for the intended uses because of any of the following characteristics:

- (A) Slopes exceeding 20%;**
- (B) Severe soil erosion potential;**
- (C) Within the 100-year flood plain;**
- (D) A high seasonal water table within 0– 24 inches of the surface for three or more weeks of the year;**
- (E) A fragipan or other impervious layer less than 30 inches from the surface; or**
- (F) Subject to slumping, earth slides or movement.**

Staff: The subject site is relatively flat with slopes not exceeding 20%. The soil on the site is Burlington fine sandy loam (6B, 0 - 8% slopes). The Soil Survey for Multnomah County indicates that the soil is well draining, has slight soil erosion potential and does not mention a high water table or fragipan in relation to this soil type. The site is not located within an area map as slope hazard by the County. *These criteria have been met.*

4.09 MCC 33.7895 Lots and Parcels

The design of lots and parcels shall comply with the following:

- (A) The size, shape, width, orientation and access shall be appropriate:**
 - (1) To the types of development and uses contemplated;**
 - (2) To the nature of existing or potential development on adjacent tracts;**
 - (3) For the maximum preservation of existing slopes, vegetation and natural drainage;**
 - (4) To the need for privacy through such means as transition from public to semi-public to private use areas and the separation of conflicting areas by suitable distances, barriers or screens; and**
 - (5) To the climactic conditions including solar orientation and winter wind and rain.**

Staff: The shape of the lot consolidation is basically rectangular with a small jog on the northwest corner of the parcel (Exhibit A.14). The site will be used for a single family dwelling with an accessory structure. The shape of the parcel is limited to the underlying lotting pattern. *This criterion has been met.*

- 4.10 **(B) The side lot lines shall be perpendicular to the front lot line or radial to the curve of a street, to the extent practicable.**

Staff: The side lot lines are basically perpendicular to St Helens Highway and the front lot line (Exhibit A.14). *This criterion has been met.*

- 4.11 **(C) Double frontage or reverse frontage lots or parcels shall be provided only when essential for separation of land uses from arterials or to overcome specific disadvantages of topography or orientation.**

Staff: The subject parcel is not a double frontage or reverse frontage parcel. *This criterion has been met.*

- 4.12 **(D) A land division may include creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the applicable zoning district, subject to the following:**

(1) When a flag lot does not adjoin another flag lot, as shown in MCC 33.7895 Figure 1, the pole portion of the flag lot shall be at least 16 feet wide.

(2) Where two flag lots are placed back to back as shown in MCC 33.7895 Figure 2, the pole portion of each flag lot shall be at least 12 feet wide.

(E) Within a land division, flag lots shall not be stacked one behind the other as shown in MCC 33.7895 Figure 3. Instead, a private accessway shall be used as shown in MCC 33.7895 Figure 4.

Staff: The proposed parcel is not flag lot shaped (Exhibit A.14). *This criterion is not applicable.*

- 4.13 **33.7905 Street Layout**

(A) Except as otherwise provided in subsections (B) and (C) of this section, the arrangement of streets in a land division shall be designed:

Staff: No new streets are proposed. St. Helens Highway fronts the parcel. *This criterion has been met.*

- 4.14 **MCC 33.7930 Sidewalks, Pedestrian Paths and Bikeways**

(E) The width, design and configuration of sidewalks and pedestrian paths and bikeways shall comply with applicable ordinance standards, as follows:

(1) In a public right-of-way — in accordance with the Street Standards Code and Rules; and

Staff: ODOT has not indicated a need for sidewalks along the highway. *This criterion is not applicable at this time.*

- 4.15 **MCC 33.7935 Easements**

Easements shall be provided and designed according to the following:

(A) Easements for utilities and storm or sanitary sewers may be required where appropriate to serve abutting lots or parcels. Such easements shall be not less than 10 feet in width, centered on side or rear property lines or five feet in width along front

property lines.

(B) Where a tract is traversed by a water course such as a drainage way, channel or stream, a storm water easement or drainage right-of-way adequate to conform substantially with the lines of the water course shall be provided. In a drainage district or water control district, such easement or right-of-way shall be approved by the district board, in accordance with ORS 92.110. If not within such District, approval shall be by the County Engineer.

(C) Easements for pedestrian paths and bikeways shall be not less than 10 feet in width.

Staff: No easements are needed. *This criterion is not applicable.*

4.16 MCC 33.7950 Water System

The provision of domestic water to every lot or parcel in a land division shall comply with the requirements of subsections (4) (a), (b), or (c) of ORS 92.090 and MCC 33.7985 of this Chapter.

MCC 33.7985 Water System

Water mains, service and fire hydrants shall meet the requirements of the Water District and shall be located as follows:

(A) In a public street — in accordance with the Street Standards Code and Rules; and

(B) In a private street — as approved by the approval authority.

Staff: The subject site is served by Burlington Water District (Exhibit A.10). They indicate that a 8" water line is available to the site. The water line is located on the west side of Hwy 30 (St Helens Highway). *This criterion has been met.*

4.17 MCC 33.7955 Sewage Disposal

The provision for the disposal of sewage from every lot or parcel in a land division shall comply with the requirements of subsection (5) (c) of ORS 92.090 and MCC 33.7990 of this Chapter.

MCC 33.7990 Sewage Disposal

(A) A sewage disposal system approved by the State Department of Environmental Quality, shall be provided. All lots or parcels in a proposed land division which will utilize private subsurface sewage disposal system shall apply for and obtain approval of a Land Feasibility Study confirming the ability to utilize the system prior to tentative plan approval. In such cases, the approval authority may require that a sanitary sewer line, with branches to the right-of-way line for connection to a future sewer system, be constructed and sealed.

Staff: The site contains a septic system. The Sanitarian Mike Ebeling has indicated that the existing system is suitable to serve the existing building (Exhibit A.14). *This criterion has been met.*

4.18 MCC 33.7960 Surface Drainage

Surface drainage and storm sewer systems shall be provided as required by section MCC 33.7995. The County Engineer may require on-site water disposal or retention facilities adequate to insure that surface runoff volume after development is no greater than that

before development.

Staff: Water from the new accessory structure will be handled on-site in a new drywell located southeasterly of the new building (Exhibit A.14). Stormwater from the existing building must also be handled on site. A condition of approval has been included requiring that the water generated by the existing building also be directed to the drywell. A stormwater certificate has been submitted for the site (Exhibit A.11). *This criterion has been met.*

4.19 MCC 33.7965 Electrical and Other Wires

Wires serving within a land division, including but not limited to electric power, communication, street lighting and cable television wires, shall be placed underground. The approval authority may modify or waive this requirement in acting on a tentative plan upon a finding that underground installation:

(A) Is impracticable due to topography, soil or subsurface conditions;

(B) Would result in only minor aesthetic advantages, given the existence of above-ground facilities nearby; or

(C) Would be unnecessarily expensive in consideration of the need for low-cost housing proposed on the lots or parcels to be served.

Staff: No waiver of this requirement has been requested by the applicant. A condition of approval has been included requiring the under grounding of all utilities serving the site. *As conditioned, this criterion has been met.*

5.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for a minor variance to reduce the rear yard requirement from 30 to 23 ft for the construction of an accessory structure in the Rural Center zoning district. In addition, the application has met the criteria for a Category 3 Land Division to consolidate 4 lots into 1 parcel. 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	2/11/05
A.2	3	Property Owner Consent of Variance Request Form	2/11/05
A.3	2	Narrative Statement for Lot Consolidation & Variance	2/11/05
A.4	1	Request to Assessment & Taxation to Consolidate Tax Lots	2/11/05
A.5	1	Letter of Authorization from Property Owner for Patrick Eudaly to be Applicant	2/11/05
A.6	1	Plot Plan	2/11/05
A.6.1	1	Plan Showing Location of Buildings in Relation to Existing Lot Lines of Lots 2-5, Block 2, Burlington	2/11/05
A.7	1	Legal Description from Order No. 965542	2/11/05

A.8	6	Fire District Review for Fire Flow Requirements	2/11/05
A.9	4	Fire District Access Review	2/11/05
A.10	1	Certification of Water Service from Burlington Water District	2/11/05
A.11	2	Storm Water Certificate	2/11/05
A.12	1	Ground Level Floor Plan for Garage	2/11/05
A.13	3	Elevations for Garage	2/11/05
A.14	2	Certification of On-Site Sewage Disposal	4/13/05
A.15	1	Revised Site Plan/Tentative Plan Map	4/25/05
A.16	2	Floor Plans	4/25/05
A.17	4	Revised Narrative Statements	6/15/05
A.18	1	Detailed Garage Location Plan	6/15/05
A.19	5	Title Report for Tax Lot 500, Lot 2-5 Block 2 Burlington a. Property Characteristics & Ownership Information (1 page) b. Personal Representative's Deed (3 pages) c. Map with property marked (1 page)	6/15/05
A.20	11	Title Report for Tax Lot 700 Block 1 & 2 Burlington a. Property Characteristics & Ownership Information (1 page) b. Statutory Warranty Deed (4 pages) c. Bargain & Sale Deed (6 pages) (most pages illegible)	6/15/05
A.21	1	Letter Regarding Residential Status at 16950 NW St. Helens Road	6/15/05
A.22	13	Photos of Interior of Building	6/15/05
A.23	4	ODOT Application	6/23/05
A.24	2	Deed Creating the Northwesternly Portion of Lot 5, Burlington	9/9/05
'B'		Staff Exhibits	Date of Document
B.1	2	A&T Property Records	2/11/05
B.2		Record of Survey # 54704 for the Remainder Lots 25 thru 34, Block 1, Lot 1 and Part of Lot 2, Block 2 and Vacated Main Street, Burlington	10/3/1995
B.3	2	Burlington Subdivision	1909
B.4	1	Survey #2601 for Lots 1, 2 & 3, Block 2 Burlington Subdivision	7/1950
B.5	1	A&T Map for 2N1W20BB	4/16/04
B.6	4	A&T Appraisal Card	5/19/05
B.7		A&T Improvement Information	5/18/05
'C'		Administration & Procedures	Date
C.1	3	Incomplete Letter#1	3/11/05

C.2	4	Incomplete Letter #2	5/20/05
C.3	1	180 Day Response Agreement	5/23/05
C.4	1	Complete Letter – Day 1 (June 23, 2005)	7/6/05
C.5	5	Opportunity to Comment	7/6/05