

**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.

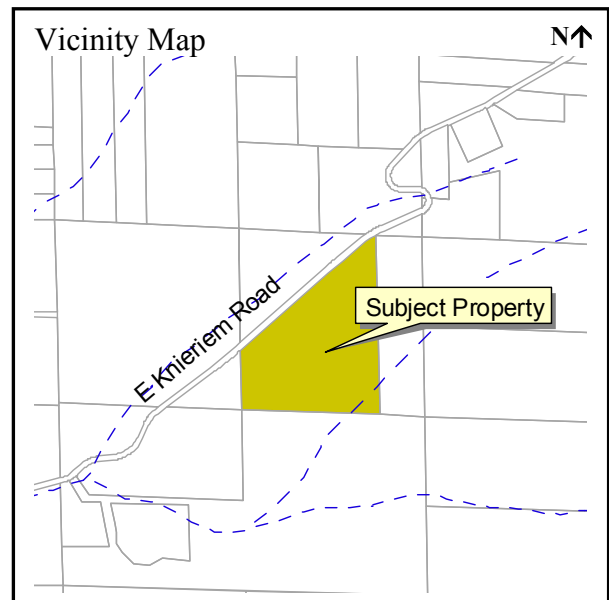
Case File: T2-05-033

Permit: Planning Directors Determination

Location: 39062 E Knieriem Road
TL 300, Sec 36, T1N, R4E, W.M.
Tax Account #R94436-0080

Applicant: William Maxson
11915 SE Madison
Portland, OR 97216

Owner: Charles Maxson
1731 Diomedes Street
Anchorage, Alaska 99504



Summary: Construct a detached 40x30 two-car garage with a shop and recreational room on the upper level.

Decision: Approved With Conditions.

Unless appealed, this decision is effective Wednesday, June 15th, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, June 1, 2005

Instrument Number for Recording Purposes: #

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 until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, June 15th at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 35.0005(L)(13); 35.2220 Allowed Uses; 35.2260 Dimensional Requirements; 35.2275 Lot of Record; 35.2305 Development Standards for Dwellings and Structures; 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. 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 owner of the property shall maintain the following primary and secondary fire safety zones for the 40 x 30 two-car garage and shop:**

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 roof shall be constructed of fire retardant materials [MCC 35.2305(B)(3)].
3. The chimney shall have a spark arrester [MCC 35.2305(B)(4)].

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. Four (4) 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 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 construct a 40 x 30 detached two-car garage roughly 30-feet from the existing dwelling. The garage will contain a shop and a recreational room for the family on the second floor that will contain a billiards table and a restroom. The structure will be accessory to the existing dwelling and provide an area to park their vehicles, have a work space for home improvement projects and have a personal recreational room.

2. **Site Characteristics**

Staff: The property is located on Knieriem Road just south of the boundary for the Columbia River Gorge National Scenic Area in a heavily forested area. The topography on the site slopes down from the north, levels out near the proposed garage/shop site before rising to a crest just beyond the home site. The proposed site of the structure is cleared and has direct access to an existing driveway. A significant amount of the property, including the area surrounding the home and proposed garage site, is cleared, but not in farm use.

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 May 17, 2005. No comments were received.

Procedures met.

4. **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 Charles Maxson as the owner of the subject lot (Exhibit A). Charles Maxson provided and signed a letter authorizing William Maxson to act on his behalf for a land use application (Exhibit B) and thus authorized action on the property.

Criterion met.

5. **Garages, Shops and Entertainment Rooms are Allowed Uses**

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.

* * *

(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

Staff: The applicant is requesting to construct a two story building that would have a two car-garage, some shop space and on the second floor, an entertainment room for billiards, movies, games, etc. Garages and shops are commonly found throughout the rural area as accessory uses to a dwelling. A review of a 2002 air photo of the property and surrounding area shows that the majority of adjacent properties contain accessory buildings such as garages and shops.

A recreational room located on the second floor of the proposed structure would also be considered an accessory use to the dwelling. Entertainment rooms, billiards, etc for personal use at a recreational level are all activities and uses associated with a dwelling.

Criterion met.

6. **The Proposed Structure Meets the Dimensional Requirements of the CFU-4 Zone**

MCC 35.2260 Dimensional Requirements

A. **(A) Except as provided in MCC 35.2265, 35.2270, 35.2275, and 35.2280, the minimum lot size for new parcels or lots shall be 80 acres.**

Staff: No new lot is being created.

Criterion met.

- B. **(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.**

Staff: No new lot is being created as part of this application; therefore lot size is not a factor.

Criterion met.

- C. **(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 proposed structure is over 300 feet to any property line as shown on the submitted site plan (Exhibit C). The structure is also two stories tall and under 35-feet in height.

Criterion met.

7. **The Property Is a Lot of Record**

MCC 35.005(L)(13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that

was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or

4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

MCC 35.2075 Lot of Record

(A) In addition to the *Lot of Record* definition standards in MCC 35.0005, 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.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record.

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established *habitable dwelling*, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the *same ownership* on February 20, 1990.

(b) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot Size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the *same ownership* on February 20, 1990.

Staff: The property was found to be a legal Lot of Record in PRE 12-92, a Planning Directors Decision for a forest resource management plan and an associated single-family dwelling.

Criterion met.

8. **The Proposed Structure 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);

Applicant: The proposed garage will not have any impact on any forested areas it will be located on a cleared lawn area.

Staff: The garage will be located roughly 25-feet from the existing dwelling. The area surrounding the home is cleared and forms a swath of cleared land roughly 160-feet wide and roughly 1200-feet long. The garage/shop will be located in this cleared residential area and not take and forest land out of potential production. As stated earlier, the structure is proposed to be more than 300-feet from any of the property lines.

Criterion met.

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

Applicant: There will be no forested area used for the garage site.

Staff: Locating the proposed structure roughly 25-feet from the dwelling will keep it in an established residential area buffered by potential forest and farm operations by the large 160x1200 foot cleared area. Staff does not anticipate any conflict with forest or farm operations due to its location.

Criterion met.

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

Applicant: No forest land used for the proposed site.

Staff: Staff concurs. The proposed site is already cleared of all trees and is in residential use. No clearing will occur for access either.

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**

Applicant: We have an easement across the neighbors land, driveway is over 500-feet and been in existence for over 30 years.

Staff: No new accessway is part of the application. The current accessway is over 500-feet in length but was previously permitted with the original dwelling.

Criterion met.

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

- a. **(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;**

Applicant: City water will be at the site and accessible by fire truck.

Staff: No stream or other perennial water source appears on the site as seen on the County's GIS system. Tom Layton of Multnomah County Rural Fire District #14 has indicated that access and flow are adequate for the property (Exhibit D).

Criterion met.

- b. **(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.

Applicant: A watered lawn will be all around the proposed garage for a distance of 60-feet, for the next 100 feet the area will be brush free. Less than 10% slope. There is a firebreak at least 60-feet in all directions of the

proposed garage...between 60-150 feet the area has been brushed out and lower limbs of a few trees have been trimmed.

Staff: The primary and secondary fire safety zone creation and maintenance shall be a condition of approval. The building site has a roughly 5% slope based on GIS topographical information, so the primary fire safety zone does not need to be extended.

Criterion met with condition of approval.

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

Staff: The slope is roughly 5% as measured on the County's GIS topographical information.

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: No dwelling is proposed in this application.

Criterion met.

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

Staff: A fire retardant roof will be required as a condition of approval.

Criterion met.

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

Staff: A spark arrester shall be required as a condition of approval.

Criterion met.

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

Staff: The property is served by the Corbett Water District (Exhibit E).

Criterion met.

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 existing driveway on the site, serving one dwelling, has been reviewed by the local fire protection district and determined to meet the fire access requirements (Exhibit D), which are the basis for these standards. The driveway was previously approved by the County with the original dwelling.

Criteria met.

Conclusion

Staff: Based on the findings and other information provided above, this application for a Planning Directors' Determination satisfies, with appropriate conditions, the applicable Multnomah County Zoning Code requirements.

Exhibits

- A. Multnomah County Assessment and Taxation form showing ownership
- B. Letter granting authorization to act to William Maxson
- C. Site Plan
- D. Fire District Access Review Form
- E. Water District Review Form