

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: T2-05-034

Permit: Property Line Adjustment & Alteration

of Nonconforming Use

Tract 1: 8046 SE Pleasant Home Road.

Tax Lot 900, Section 20DD, Township 1S, Range 4E, W.M. Tax Account #R994200940

Tract 2: 31817 SE Bluff Rd

Tax Lot 700 & 901, Section 20DD, Township 1S, Range 4E, W.M. R994200730 & R994202090

Applicant: Jean Ice

ERA Freeman & Associates

Tract 1 Manning & Betty Blake
Owner: 31817 SE Bluff Rd

Gresham, OR 97080

Vicinity Map

Tract 1

Tract 2

Tract 2 Lillian Myers C/O Roy Myers

Owner: 8046 SE Pleasant Home Road

Gresham, OR 97080

Summary: Property Line Adjustment to relocate a common boundary line between the dwellings

located at 8046 SE Pleasant Home and 31817 SE Bluff Road. Alteration to

Nonconforming Use to allow the relocation of the property line at a location that does not comply with current code regulations in recognition of the nonconforming status to

the existing rear setback for 8046 SE Pleasant Home Road.

Decision: Approved with Conditions

Unless appealed, this decision is effective Wednesday August 24, 2005, at 4:30 PM.

By:
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, August 10, 2005

<u>Opportunity to Review the Record:</u> 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 (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 Wednesday, August 24, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 37.0530(B) Type II Decisions, MCC 37.0550 Initiation of Action, 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, MCC 36.7210 Alteration, Expansion or Replacement of Nonconforming Uses & MCC 36.7215 Verification of Nonconforming Use Status.

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". 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.

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria are in **bold** font. Staff comments and analysis are identified as **Staff:** and follow Applicant comments identified as **Applicant:** to the applicable criteria. Staff comments include a conclusionary statement in *italic*.

Project Description

Staff: The applicant is proposing to adjust a common property line between 8046 SE Pleasant Home Road (hereafter Tract 1) and 31817 SE Bluff Road (hereafter Tract 2) by moving the east property line of Tract 1 ten ft to the east and 20 ft to the north as shown on the applicant's site plan included as Exhibit A.13. Tract 1 will gain approximately 0.049 acres (2167.4 sq. ft) of land to the east while losing 0.026 acres (1160 sq. ft) on its southern boundary for a total gain of 0.023 acres (1001.88 sq. ft). After completion of the property line adjustment, Tract 1 will be approximately 0.34 acres in size. Tract 2 will be reduced from approximately from 4.30 acres to 4.28 acres in size.

Site Characteristics

Staff: The local area near Pleasant Home Road and Bluff Road is made up of a significant number of smaller parcels with a few larger parcels to the northwest of the subject properties. This is an area of Multiple Use Agriculture – 20 zoning with an overlay of Significant Environmental Concern for water resources (SEC-wr) nearby with some buffer area across both properties. Most properties have single-family dwellings on them and form a fairly dense rural area. Both parcels are flat and contain single family homes. The property line adjustment will give a larger setback to the existing dwelling on Tract 1.

1.00 Administration and Procedures

1.01 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 June 10, 2005. 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: Multnomah County Assessment and Taxation records show Manning & Betty Blake own Tax Lots 700 & 901, 1S4E20DD (Tract 2) and Lillian Myers owns Tax Lot 900, 1S4E20DD (Tract 1) (Exhibit B.2, B.3 & B.4). Roger Myers has signed for Lillian Myers and has submitted in a General Power of Attorney to document his ability to sign for her (Exhibit A.3). All owners have signed the Statement of Property Owner Consent (Exhibit A.2). The property owners have authorized Jean Ice to be the applicant for the property line adjustment (Exhibit A.1). *This criterion has been met*.

- 2.00 Multiple Use Agriculture 20
- 2.01 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.

- 2.02 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

Staff: The proposed Property Line Adjustment begins with two tracts and ends with two tracts as seen on the submitted site plan (Exhibit A.13). No new parcel is created. *This criterion has been met.*

- 2.03 (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.

Staff: Tract 1 is currently 0.31 acres in size and will be enlarged to 0.34 acres. Tract 2 is currently 4.30 acres in size and will be reduced to 4.28 acres. *This criterion has been met.*

- 2.04 MCC 36.2870 Lot of Record.
 - (A) In addition to the Lot of Record definition standards in MCC 36.0005, 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 zone 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, MUA-20 zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;
- (6) May 16, 2002, Lot of Record section amended, Ord. 982.
- (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 36.2885, 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 36.2860, 36.2875, and 36.4300 through 36.4360, 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 36.0005 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.

Staff:

<u>Tract 1</u> – The applicant has provided deed records for the property at 8046 SE Pleasant Home Road which shows the creation of the 58' wide by 236.74 ft long. This property was created by a deed on November 11, 1944 recorded in Book 880, Page 420 (Exhibit B.5). The County did not adopt zoning regulations in this area until 1958. No partitioning regulations were in effect in 1944. Tract 1 is a *Lot of Record*.

<u>Tract 2</u> – This property at 31817 SE Bluff Road was created in its lawful 4.30 acre configuration in 1953 (Exhibit B.6). As stated above, this was prior to zoning on the property. Tract 2 is a *Lot of Record*.

2.05 MCC 36.7970 Property Line Adjustment (Lot Line Adjustment)

(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.

Staff: Both properties are zoned Multiple Use Agriculture – 20 (MUA-20) which has a minimum lot size of 20 acres to create a new parcel or lot. Tract 1 is currently 0.31 acres in size and will be enlarged to 0.34 acres. Tract 2 is currently 4.30 acres in size and will be reduced to 4.28 acres. *This criterion has been met*.

- 2.07 (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

Staff: Tract 1 consists of 1 lawfully created parcel as discussed above under the Lot of Record finding of MCC 36.2870. Tract 2 is a 4.30 acre parcel which also was lawfully created as found above. The property line adjustment will begin with 2 lawful parcels and end with 2 lawful parcels (Exhibit A.13). *This criterion has been met*.

2.08 (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

Staff: Lillian Myers owns Tract 1. Roger Myers has Power of Attorney to sign for Ms. Myers (Exhibit A.3). Mr. Myers has consented in writing to the application (Exhibit A.1 & A.2). Manning & Betty Blake own Tract 2. Both have consented in writing to this application (Exhibit A.1 & A.2). *This criterion has been met*.

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

MCC 36.2855 Dimensional Standards and Development Requirements.

(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: Tract 1 contains an existing single family dwelling and garage constructed in 1945. Both structures were constructed over the rear property line of the parcel. Multnomah County did not regulate the placement of structures until 1958 in this area. The two structures are nonconforming to present day Yard requirements. The proposed property line adjustment will decrease the nonconformity of the structure by moving the existing property line 10 ft to the east. This will give the single family dwelling an approximate 8 ft rear yard setback and the garage an approximate 5 ft rear yard. An Alteration to a Nonconforming Use has been reviewed and approved for Tract 1. This allows for the new nonconforming setbacks on Tract 1. The property line adjustment will reduce the nonconformity of the structures, which are "grandfathered" with this encroachment situation.

Tract 2 contains two dwellings (1940 & 1954 respectfully), a greenhouse and shop. The 2 houses and the greenhouse are a minimum of 75 ft from the front property line, a minimum of

35 ft to the southwest side property line, a minimum of 100 ft from the east side property line and a minimum of 370 ft to the rear property line (Exhibit A.12). These measurements will not be affected by the property line adjustment due to the shape of the parcel. The shop is 10 ft from the southwest and south side property lines, 140 ft to the east side property line, over 200 ft from the front property line, over 300 ft to the rear property line and over 200 ft to the west property line near Pleasant Home Road. *This criterion has been met*.

2.10 (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.

Staff: SE Pleasant Home Road consists of a 60 ft right-of-way. In the West of Sandy River Rural Area Plan, Pleasant Home Road is designated a *Local* Road. Bluff Road consists of a 60 ft right of way and is designated as a Rural Arterial. Multnomah County's Transportation Planner Alison Winters has indicated that no additional right of way is needed for Pleasant Home or Bluff Road at this time. *This criterion has been met*.

- 3.00 Nonconforming Use
- 3.01 MCC 33.7210 Alteration, Expansion or Replacement of Nonconforming Uses
 - (C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 33.7215, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider all of the criteria listed below. Adverse impacts to one of the criterion may, but shall not automatically, constitute greater adverse impact on the neighborhood.
 - (1) The character and history of the use and of development in the surrounding area;

Staff: The existing nonconforming condition is that the existing dwelling and garage on Tract 1 encroaches over the rear property line onto Tract 2. The proposed property line adjustment will move the rear property line so that the buildings do not encroach onto Tract 2. The change will not create a greater adverse impact on the neighborhood as the issue is between Tract 1 & 2 only and will in fact reduce the adverse impact to these properties. The single family dwelling and garage were constructed in 1945 (Exhibit B.7) The proposed property line adjustment will move the rear property line to the east 10 ft. The character and history of the use will not be changed by this alteration to the nonconforming setback. No impacts have been identified to Tract 2 as all buildings on that tract meet the setbacks even after the alteration. The modified property line will improve conditions on both Tract 1 and 2 by removing an encroachment condition. *This criterion has been met*.

3.02 (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;

Staff: Tract 1 and Tract 2 will have the same improvements on each as before the property line adjustment. No increases in noise, vibration, dust, odor, fumes, glare or smoke will occur with the adjustment of the rear property line. *This criterion has been met*.

3.03 (3) The comparative numbers and kinds of vehicular trips to the site;

Staff: The number of trips associated with the single family dwelling on Tract 1 will not increase as no improvements are proposed to the square footage of the dwelling. *This*

criterion has been met.

3.04 (4) The comparative amount and nature of outside storage, loading and parking;

Staff: No physical improvements are proposed. The adjustment of the rear property line will allow the correction of the encroachment of structures onto Tract 2. No new parking, loading or outside storage are proposed. *This criterion has been met*.

3.05 (5) The comparative visual appearance;

Staff: The property of Tract 1 and Tract 2 will have the same visual appearance as before the property line adjustment. Tract 1 currently has a fence at the proposed property line. No new structures are proposed as part of this application. The adjusted property line will not create any new physical appearances. *This criterion has been met*.

3.06 (6) The comparative hours of operation;

Staff: Single family dwellings operate 24/7 and do not have hours of operation. *This criterion is not applicable.*

3.07 (7) The comparative effect on existing flora;

Staff: No physical modifications to the existing flora are proposed. The adjusted rear property line will legalize the rear yard currently utilized on Tract 1. *This criterion has been met.*

3.08 (8) The comparative effect on water drainage or quality; and

Staff: The adjustment of the rear property line will not effect the existing drainage situation or water quality. No physical improvements are proposed at this time. *This criterion has been met.*

3.09 (9) Other factors which impact the character or needs of the neighborhood.

Staff: No other factors have been identified that may impact the character or needs of the neighborhood. *This criterion is not applicable at this time*.

3.10 (D) Any decision on alteration, expansion or replacement of a nonconforming use shall be processed as a Type II permit as described in MCC Chapter 37.

Staff: This application has been processed as a Type II per mit. *This criterion has been met.*

3.11 MCC 33.7215 Verification of Nonconforming Use Status

- (A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:
 - (1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and

Staff: The existing house and garage on Tract 1 were constructed in 1945 (Exhibit B.7). The County did not apply zoning to the West of Sandy River area until 1955. The two buildings were lawfully established in their respective locations prior to zoning on the subject site. They became nonconforming in 1955 when the County adopted setbacks and have remained so since that date.

3.12 (2) Has not been abandoned or interrupted for a continuous two year period.

Staff: There is no evidence in the record that the dwelling has been abandoned or that the use

was interrupted for a continuous two year period. Tax records indicate that the property is occupied by a 720 sq ft single family dwelling and detached 400 sq. ft garage. *This criterion has been met.*

3.13 (B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:

(1) Description of the use;

Staff: The property is occupied by a single family dwelling and detached garage. No additions to the structure have been added since the buildings construction in 1945. The garage is an accessory use to the single family dwelling and no business operations have occupied the structure or the site.

3.14 (2) The types and quantities of goods or services provided and activities conducted;

Staff: The subject property is occupied by a single family dwelling and detached garage and no goods or services are provided from the site.

3.15 (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

Staff: The property has been and will continue to be used as the primary dwelling for the property owner. No change in the scope of use has been documented.

3.16 (4) The number, location and size of physical improvements associated with the use;

Staff: The subject property has a 720 sq. ft single family dwelling with a detached 400 sq. ft garage. (Exhibit B.7 & A.13).

3.17 (5) The amount of land devoted to the use; and

Staff: The Assessment and Taxation Department indicates that the entire 0.32 acre is devoted to the single family dwelling use (Exhibit B.2).

3.18 (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.

Staff: Staff has not determined any other nature or extent of the single family and accessory uses to review.

4.00 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 and an Alteration to the Nonconforming Rear Yard setback may be allowed.

5.00 Exhibits

'A' Applicant

'B' Staff

'C' Administration and Procedure

'A'	# of Pages	Description of Exhibit	Date Received
A.1	1	General Application Form	4/6/05
A.2	2	Statement of Property Owner's Consent	4/6/05 & 6/7/05
A.3	2	General Power of Attorney	6/7/05
A.4	1	Property Profile for 8046 SE Pleasant Home Road	6/7/05
A.5	1	Warranty Deed for 8046 SE Pleasant Home Road (Book 1253 Page 1334)	6/7/05
A.6	1	Warranty Deed for 10 ft by 216.74 Strip of Land (Book 857 Page 1186)	6/7/05
A.7	1	Re-Recorded Warranty Deed for 10 ft by 216.74 Strip of Land (Re-Recorded 6/18/2004)	6/7/05
A.8	1	Exhibit A Legal Description – Order No. 14y0007575m	6/7/05
A.9	2	Property Profiles for 31817 SE Bluff Road	6/7/05
A.10	2	Special Warranty Deed for 20 ft by 52 ft Piece of Land (Recorded 7/7/2004)	6/7/05
A.11	2	Re-Recorded Special Warranty Deed for 20 ft by 52 ft Strip of Land (Re-Recorded 7/7/2004)	6/7/05
A.12	1	Tentative Plan Map	4/6/05
A.13	1	Revised Tentative Plan Map	6/7/05
'B'	#	Staff Exhibits	Date
B.1	1	Survey 57631	4/26/2001
B.2	2	A&T Property Record for 1S4E20DD – 00900 (8046 SE Pleasant Home Road)	4/20/05
B.3	2	A&T Property Record for 1S4E20DD – 00901	4/20/05
B.4	2	A&T Property Record for 1S4E20DD – 00700	4/20/05
B.5	1	A&T Parcel Record for 1S4E20DD – 00900	7/28/05
B.6	1	A&T Parcel Record for 1S4E20DD – 00700	7/28/05
B.7	1	A&T Appraiser Card	8/8/05
'C'	# Administration & Procedures		Date
C.1	3	Incomplete Letter	4/21/05
C.2	1	Complete Letter (Day 1 – 6/7/05)	6/9/05
C.3	3	14 Day Opportunity to Comment	6/10/05
C.4		Administrative Decision (Issued on Day 65)	8/10/05