



MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/dscd/landuse>

NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

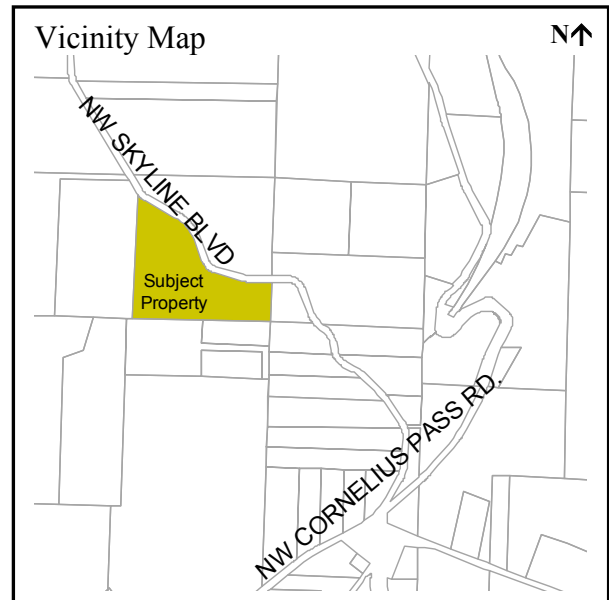
Case File: T2-05-056

Permit: Director's Determination

Location: 12735 NW Skyline Blvd.
Tax Lot 500, Section 36,
Township 2N, Range 2W, W.M.

Applicant: John Nguyen
PO Box 1714
Hillsboro, OR 97123

Owners: John Nguyen, Nancy Nguyen &
Viet Nguyen
PO Box 1714
Hillsboro, OR 97123



Summary: The Planning Director has determined that the subject property is a "Lot of Record" and that the house is a lawfully established, currently habitable dwelling.

Decision: Approved

Unless appealed, this decision is effective Wednesday, July 27, at 4:30 PM.

Issued by:

By: _____
Tammy Boren-King AICP, Planner

For: Karen Schilling - Planning Director

Date: Wednesday, July 13, 2005

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Tammy Boren-King, Staff Planner at 503-988-3043.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, July 27, 2005, at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37 Administration and Procedures; 33.0005(H)(1)- Definition Habitable Dwelling, 33.0005(L)(3)- Definition Lawfully Established Dwelling, 33.0005(L)(13)- Definition Lot of Record, 33.2675- EFU Lot of Record

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/dscd/landuse>.

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

Formatting Note: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. Applicant comments are identified as **Applicant:** and follow. Staff comments and analysis are identified as **Staff:** and follow. Staff comments include a conclusionary statement in *italic*.

1. PROPOSAL DESCRIPTION AND BACKGROUND:

Staff: The applicant has requested a determination from the Planning Director to establish whether or not the subject property is a Lot of Record and whether or not the existing house is a lawfully established, currently habitable dwelling under the provisions of the Multnomah County zoning code.

No construction or physical changes to the property are proposed in this application.

2. PROOF OF OWNERSHIP

MCC 37.0550: 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.

Staff: Assessment records show that John F. Nguyen, Viet Anh Nguyen, and Nancy Nhung Nguyen are the owners of the property (Exhibit B). John D. Nguyen has signed the application form initiating the application. (Exhibit A)

Criterion met

3. 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 June 2, 2005 and was deemed complete as of June 16, 2005. An "Opportunity to Comment" notice was mailed on June 22, 2005 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. The comment period was open for fourteen days. No written comments were received. A copy of the Opportunity to Comment letter and the mailing list are in the file.

Procedures met.

4. CODE COMPLIANCE AND APPLICATIONS

MCC 37.0560: The County shall not approve any application for a permit or other approval, including building permit applications, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County. A permit or other approval, including building permit

applications, may be authorized if it results in the parcel coming into full compliance with all applicable provisions of the Multnomah County Code.

Staff: Staff performed a site visit on June 28, 2005 and did not observe any violations of the code on site. No complaints have been received regarding the subject property and there is no indication that there is any compliance issue for this property.

The 2002 aerial photo included as Exhibit O shows property contains three buildings of which only two remained on the property as of staff's site visit on 6-28-05. The first building is a house which Assessment and Taxation records show was built in 1924. (Exhibit B) The applicant's photos included as Exhibit D and staff's photos included as Exhibit C verify that the house is an older home consistent with a 1924 construction date. The second building shown on the aerial photo is a 3,500 square foot farm building which has since been destroyed. Page 3 of the Staff Photos included as Exhibit C show the remains of the demolished building. The third building showing in the 2002 aerial photo is a 400 square foot detached garage which is still on the property. This is in-tact structure shown on Page 3 of the Staff Photos. This building appears to be original to the house.

Assessment and Taxation information shows the house on the subject parcel was built in 1924. (Exhibit B). Multnomah County first adopted interim zoning on May 26, 1953 and first adopted a building code on February 4, 1954. The house pre-dates zoning, land division, and building code requirements.

The property is in full compliance.

5. THE PROPERTY IS A LOT OF RECORD PURSUANT TO MCC 33.0005(L)(13) AND 33.2675

MCC 33.0005- Definitions

(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

5.1 Staff: MCC 33.0005(L)(13) requires a property to have been created in accordance with all zoning and land division laws in place at the time it was created. The subject property was originally a 47.58 acre piece of property split by Skyline Blvd. as shown on the County's earliest zoning map included as Exhibit E. This property was reconfigured on 12-21-1979 through a deed recorded in Book 1407 Page 2410, a copy of which is included as Exhibit F. This reconfiguration transferred the westerly 10 acres to Tax Lot 3, resulting in a 37.58 acre property split by Skyline Blvd. In 1979, the property was split zoned MUA-20 south of Skyline Blvd and MUF-20 north of Skyline Blvd. as shown on the 1977 zoning map included as Exhibit H. Both of these zones had a twenty-acre minimum lot size. The subject lot was well in excess of twenty acres after the adjustment. Neither the MUF-20 nor the MUA-20 zones in place at the time had property line adjustment criteria. Copies of the MUF-20 and MUA-20 zones in effect as of 10-6-1977 are included in the file. Staff can find no property line adjustment criteria in the code that would have required a land use approval of the property line adjustment in 1979. The property line adjustment met the zoning and land division requirements in place at the time it was executed.

The reconfigured property was divided by a deed recorded in Book 1526 Pages 2241 through 2253 on May 28, 1981. Due to the length of this deed, only the pages with the legal description and the date of recording are included as Exhibit G. A copy of the entire deed is in the file. This deed separated the portion of the property north of Skyline Blvd. from the subject property, which is south of Skyline Blvd.

The zoning in effect on May 27, 1981 is shown on the map included as Exhibit I. The northerly portion was zoned MUF-19 and the southerly portion was zoned EFU as of August 14, 1980. A copy of the Lot of Record provisions in the MUF-19 zone in effect on May 27, 1981 is included as Exhibit J. MCC 3.144.2(c) states, "*Separate Lots of Record shall be deemed created when a County-maintained road or zoning district boundary intersects a parcel of land.*" NW Skyline Blvd. is a county-maintained road. The subject property was a separate lot of record from the portion of the property north of the road pursuant to this code provision.

The owner recorded the deed included as Exhibit G to sell the Lot-of-Record south of the road, creating the two separate properties. This action divided the parent lot into two lots. Multnomah County first implemented a land division code that included partitioning requirements on 10-19-1978. A copy of the applicable portions of the partitioning requirements is included as Exhibit K. Dividing an area of land into two or three parcels within one calendar year was a partition pursuant to the definition of partition in place at the time in MCC 1.145 included in Exhibit K. The subject division was a "Minor Partition" under the definition in MCC 1.138 in place at the time since no road was created. Minor partitions were either a Type III land division pursuant to MCC 1.223 or an Exempt minor partition pursuant to MCC 1.224 (Exhibit K). The subject partition was not any of the types of partitions listed in MCC 1.223 and was therefore exempt pursuant to MCC 1.224. No land use approval was required to execute the partition that created the subject parcel.

The subject parcel was created in accordance with all zoning and land division laws in effect at the time it was created. The subject parcel has not been reconfigured since it was created. The subject parcel is a Lot of Record pursuant to MCC 3.0005(L)(13).

§ 33.2675 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

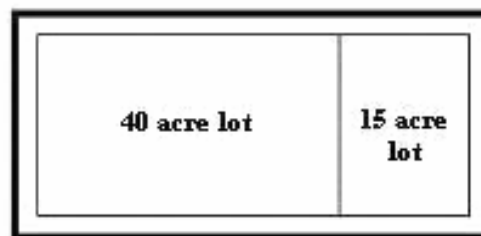
(a) Which were held under the *same ownership* on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

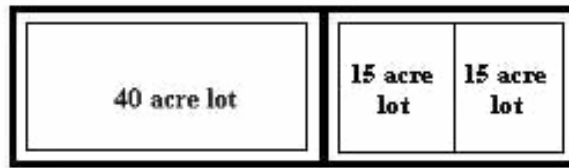
1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with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

2. An exception to the 19 acre minimum lot size requirement shall occur 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.

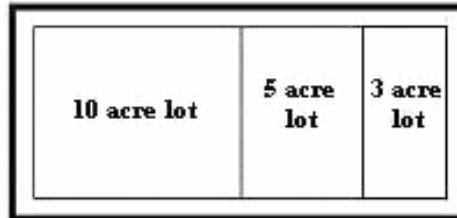
3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:



**Example 1:
One 55 acre Lot of Record**



Example 2:
One 40 acre Lot of Record and
one 30 acre Lot of Record



Example 3:
One 18 acre Lot of Record

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

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

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

(a) 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.

5.2 Staff: MCC 33.2675 establishes lot aggregation standard for Lot of Record purposes in the EFU zone. Lots may be aggregated on the basis of ownership if they are less than 19 acres in size. Pursuant to MCC 33.2660(B), the 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. The subject property was surveyed in 1979 and its size exclusive of the adjacent right-of-way was determined to be 18.289 acres. A copy of this survey is included as Exhibit L. The right-of-way for NW Skyline Blvd. has been mapped as shown on the map included as Exhibit M. The County survey division calculated the amount of right-of-way that would accrue to the subject parcel based on the right-of-way map included as Exhibit M. The calculations are included as Exhibit N. According to these calculations, the lot size is 19.36 acres inclusive of the right-of-way that would accrue to the lot if NW Skyline Blvd. was vacated. Since the subject property is over 19 acres in size it is not subject to aggregation and is an independent Lot of Record pursuant to MCC 33.2675(A)(2).

The subject property is a lot of record.

6. THE DWELLING IS LAWFULLY ESTABLISHED.

MCC 35.0005(L)(3) Lawfully established dwelling – A dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include zoning, land division and building code requirements. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a dwelling unit were obtained and all qualifying permitted work completed.

Staff: Assessment and Taxation information shows the house on the subject parcel was built in 1924. (Exhibit B). Multnomah County first adopted interim zoning on May 26, 1953 and first adopted a building code on February 4, 1954. The house pre-dates zoning, land division, and building code requirements.

The house is lawfully established.

7. THE DWELLING IS CURRENTLY HABITABLE

MCC 35.0005 (H) (1) Habitable dwelling – An existing dwelling that:

- (a) Has intact exterior walls and roof structure;**
- (b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;**
- (c) Has interior wiring for interior lights; and**
- (d) Has a heating system.**

Staff: The applicant has submitted the photos included as Exhibit D as proof that the subject house has the features listed above. These photos contain four pages. Page one demonstrates the house has intact exterior walls and an intact roof structure. Page two demonstrates the house has a kitchen sink and interior wiring for interior lights. Page three demonstrates the house has a toilet and bathing facilities. Page four indicates the house has a heating system. Staff performed a site visit on June 28, 2005 and verified that the house shown in the applicant's photographs is the house in place on the subject property.

The dwelling is currently habitable.

CONCLUSION

Evidence in the record shows the subject parcel is a Lot of Record and that the subject dwelling is Lawfully Established and Habitable.

9. EXHIBITS

Applicant's Exhibits

- A.1 Signed application form.**
- A.2 Applicant's Photos**
- A.3 Deed Recorded in Book 1407, Page 2410 on 12-21-1979**
- A.4 Deed Recorded in Book 1526, Pages 2241 & 2253, Recorded 5-28-1981**

Staff Exhibits

- B.1 Assessment and Taxation information showing current ownership and year the house was built**
- B.2 Staff Photos**
- B.3 County's earliest zoning map (1955-1958)**
- B.4 1977 Zoning Map**
- B.5 1980 Zoning Map**
- B.6 1980 MUF-19 Lot of Record Provisions**
- B.7 1978 Land Division Code excerpts**
- B.8 Survey of property from 1979**
- B.9 Right-of-way Map for NW Skyline Blvd.**
- B.10 Survey Department's Calculations for area of right-of-way that would accrue to subject lot is right-of-way was vacated.**
- B.11 2002 Aerial Photo of Property**