



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/landuse>

NOTICE OF DECISION

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

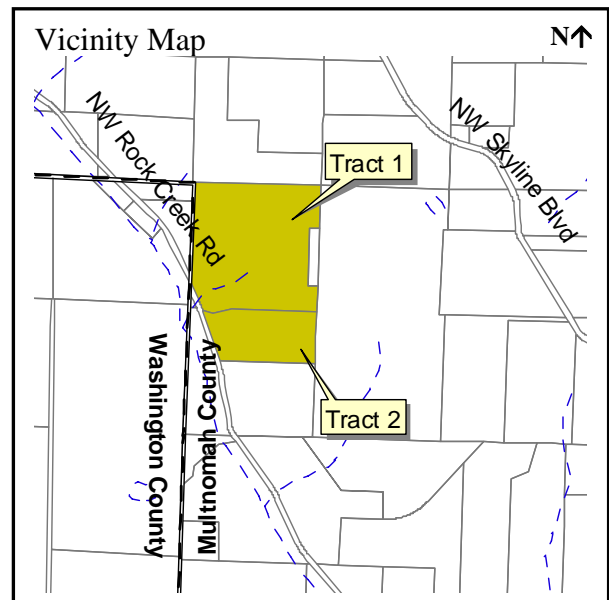
Case File: T2-05-063

Permit: Property Line Adjustment

Location: 13006 & 12831 NW Rock Creek Road
TL 1200 & 1300, Sec 36, T2N, R2W,
W.M.
Tax Account #R97236-0220 & R97236-0140

Applicant: David and Tina Joslin

Owner: David and Tina Joslin & Charles Brown



Summary: A Property Line Adjustment between 13006 NW Rock Creek Road and 12831 NW Rock Creek Road to resolve an improper lot line adjustment and to bring the properties into compliance with the CFU zoning code.

Decision: Approved with Conditions.

Unless appealed, this decision is effective Tuesday, January 2, 2007, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, December 19, 2006

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 Tuesday, January 2, 2007, at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 37.0560 Code Compliance; 33.2260 Dimensional Requirements; 33.2270 Lot Line Adjustment; 33.2275 Lot of Record; 33.7970 Property Line Adjustment.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse>.

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. **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 or 37.0700, as applicable. 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 property owner, or representatives thereof, shall complete the adjustment per the attached "Applicant's Instructions for Finishing a Property Line Adjustment," and "Surveyor's Instructions for Finishing a Property Line Adjustment" included as Exhibit 6. 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 33.7970(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 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 seeking to adjust the property line between Tract 1 and Tract 2 to bring an agricultural building on Tract 1 into compliance with the zoning district setback requirements.

2. **Site Characteristics**

Staff: The properties are located in the West Hills of Multnomah County off of Rock Creek Road near the Washington County boundary and are zoned Commercial Forest Use-2. The area consists of larger lots ranging from 10-acres to 75-acres that are heavily forested. The entire area contains the Significant Environmental Concern overlay for Wildlife Habitat and many portions of the general area contain steep and rolling slopes. The subject properties have portions that have recently been harvested of lumber with the areas immediately adjacent to the dwellings being completely cleared.

3. **Public Comment**

MCC 37.0530 Summary Of Decision Making Processes.

(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 the Land Use Board of Appeals (LUBA) within 21 days of when the signed Hearings Officer decision is mailed pursuant to 37.0660(D).

Staff: Public notice was mailed out on April 26, 2006. Those that received notice were given 14-days to provide comment. No written comments were received on the proposal.

Procedures met.

4. **Initiation of Action**

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: Assessment and Taxation records show David and Tina Joslin as owning Tract 1 (Exhibit 1) and Charles Brown as the owner of Tract 2 (Exhibit 2). Both property owners signed the General Application Form (Exhibit 3) and the Statement of Property Owner Consent (Exhibit 4) to authorize the processing of the permit.

The application was submitted on June 22, 2005. The application was deemed complete, noticed to property owners as stated above. Subsequently the owner requested to have the 150-day clock tolled indefinitely. A new Commercial Forest Use-2 zoning code was adopted by the County and became effective on August 26, 2006. In a fax received on November 26, 2006, the applicant requested to withdraw the application and resubmit under the new code provisions. This decision incorporates the newly adopted CFU-2 code.

Criterion met.

4. **Full Compliance**

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.

Staff: Tract 2 (Property known as 12831 NW Rock Creek Road - #R972360140) currently is not a Lot of Record. The property was involved with PLA 3-99 that was recorded without Land Use Planning sign-off and thus the property line was moved improperly. This adjustment will correct the problem by properly moving the property line and bringing Tract 2 into compliance.

Tract 1 (property known as 13006 NW Rock Creek Road - #R972360220) contains multiple compliance issues, including not being a Lot of Record. A Voluntary Compliance Agreement (VCA) has been signed by the County and the Joslin's (Property owners) in zoning violation file

ZV 01-002 to correct the violations and bring the property into full compliance. This property line adjustment is one of the agreed upon sequence of steps in that VCA (Exhibit 7).

Criterion met.

5. **Property Line Adjustments Are Allowed in the Commercial Forest Use-2 Zoning District**

MCC 33.2215 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 33.2220 through 33.2240 when found to comply with MCC 33.2245 through 33.2310.

* * *

MCC 33.2225 Review Uses

(H) Lot Line Adjustment pursuant to all applicable approval criteria, including but not limited to the provisions of MCC 33.2270.

Staff: Property Line Adjustments are allowed uses.

Criterion met.

6. **The Forest Practices Setbacks and Fire Safety Zones of the CFU-2 District Are Met**

MCC 33.2256 Forest Practices Setbacks and Fire Safety Zones

| Use | Forest Practice Setbacks | | | Fire Safety Zones |
|-------------------------------------------------------------------|-------------------------------------------------------------------|---------------------------------------------------------------|---------------------------|-----------------------------------------------------------------------------------------------------------|
| Description of use and location | Nonconforming Setbacks | Front Property Line Adjacent to County Maintained Road (feet) | All Other Setbacks (feet) | Fire Safety Zone Requirements (FSZ) |
| Property Line Adjustment; Lot of Exception; Land Divisions. | May maintain current nonconforming setback to existing structures | 30 | 30 | On tracts with required Primary & Secondary FSZ as part of a land use decision, both shall be maintained. |

Staff: The dwelling on Tract 2 is 160-feet from the new property line and meets all setback requirements as shown on the site plan.

Tract 1's new south property line, as shown on the tentative plan map, has been adjusted in order to place the existing driveway and garage entirely within the boundaries of the correct property. The proposed property line is 30-feet from the existing agricultural building on Tract 1 (the nearest building) and roughly 80-feet from the attached garage of the existing dwelling, thus

meeting the listed forest practice setbacks of 30-feet.

Because no new buildings are being proposed, Fire Safety Zone Requirements do not apply.

Criterion met.

7. **The Proposal Meets The Lot Line Adjustment Criteria**

A. **MCC 33.2270 Lot Line Adjustment**

(A) Pursuant to the applicable provisions in MCC 33.7790, an adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:

1. **(1) The permitted number of dwellings will not thereby be increased above that otherwise allowed in this district;**

Staff: Both lots currently have dwellings therefore neither one could qualify for a new dwelling.

Criterion met.

2. **(2) The resulting lot configuration is at least as appropriate for the continuation of the existing commercial forest practices in the area as the lot configuration prior to adjustment;**

Staff: The resulting lot configuration will meet the forest practices setbacks for both tracts, which makes the proposed lot line at least as appropriate for forest practices.

Criterion met.

3. **(3) The new lot line is in compliance with the dimensional requirements of MCC 33.2256; and**

Staff: The new line is in compliance under Finding #6.

Criterion met.

4. **(4) Neither of the properties is developed with a dwelling approved under the provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use; and**

Staff: Neither existing dwelling was established as a Health Hardship Dwelling nor used for farm or forest help.

Criterion met.

5. **(5) If the properties abut a street, the required access requirements of MCC 33.2273 are met after the relocation of the common property line.**

MCC 33.2273 ACCESS:

All lots and parcels in this district shall abut a street, or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles, except as provided for Lots of Record at MCC 33.2275(C).

Staff: Both lots involved abut NW Rock Creek Road and have direct access.

Criterion met.

B. MCC 33.7790 Property Line Adjustment (Lot Line Adjustment)

A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:

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

Staff: No new lots are created by this adjustment.

Criterion met.

(B) 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: Both property owners have signed the Statement of Property Owner Consent form (Exhibit 4).

Criterion met.

(C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district

Staff: The properties meet the approval criteria of the CFU-2 Zoning District as found in Finding #6 and #7.

Criterion met.

(D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director

Staff: The application contained the appropriate forms and followed the proper procedure.

Criterion met

8. The Lot of Record Requirements Are Met

A. **MCC 33.0005(13)**

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

(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.

Staff: In 1999, both lots were involved in a Property Line Adjustment that put them into their current configuration. However, the land use decision expired before the applicant submitted the final descriptions and plot plan to the County to be finalized. Legal descriptions were recorded and moved the line anyway. Therefore, moving the lot line did not meet the zoning or land division laws and was improperly done.

Tract 2 had been in the same configuration since before 1962 up until that improper property line adjustment. This Property Line Adjustment, known as T2-05-063, will lawfully place Tract 2 from its last known legal configuration into the proposed configuration lawfully by meeting the zoning and land division rules currently in place and make it a Lot of Record.

Tract 1 was in the same configuration since 1962 until 1990 when a 1.36-acre tract was improperly sold off. This Property Line Adjustment will not restore the property to its legal configuration but is step 1 in the sequencing of permits to get it legal as allowed under MCC 37.0560. The second step is to adjust and correct the 1.36-acre tract that was sold off in 1990 through either a buy back or another Property Line Adjustment. As part

of the VCA, a Grading and Erosion Control Permit is also in process to correct grading activities done without a permit. Therefore, this criterion is met.

Criterion met.

B. MCC 33.2275 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,**

Staff: Tract 1 was not in common ownership with any other lot On February 20, 1990 according to Multnomah County Assessment and Taxation Records. Tract 2 was not in common ownership with any other lot on February 20, 1990 according to Multnomah County Assessment and Taxation Records.

Criterion met.

Conclusion:

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

Exhibits:

1. Multnomah County Assessment and Taxation Information Sheet For Tax Lot 1200
2. Multnomah County Assessment and Taxation Information Sheet For Tax Lot 1300
3. General Application Form
4. Statement of Property Owner Consent Form
5. Plot Plan Of Proposed Adjustment
6. Applicant's Instructions for Finishing a Property Line Adjustment," and "Surveyor's Instructions for Finishing a Property Line Adjustment
7. Copy of the Voluntary Compliance Agreement