



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

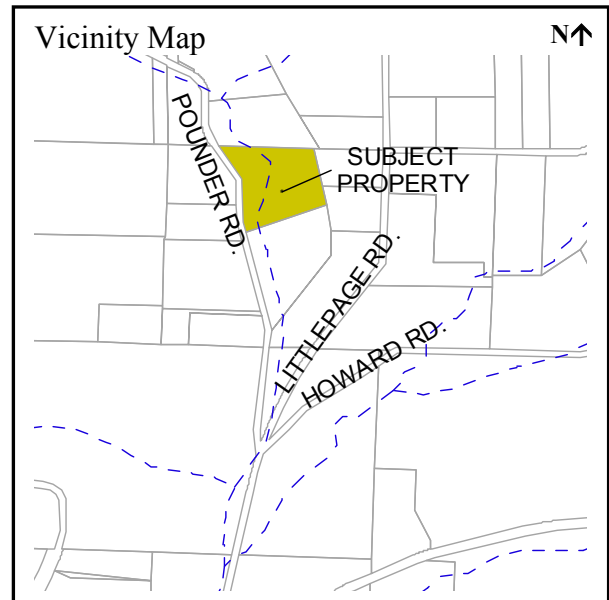
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-05-076

Permit: Administrative Decision by the Planning Director to determine compliance with Policy 21 of the East of Sandy River Rural Area Plan regarding an addition to an existing single family residence

Location: 600 SE Pounder Rd.
T1S, R4E, Sec 02BA, TL 500, W.M.
Tax Account #R99402-0580

Applicant/ Gary & Debby Simone
Owners: PO Box 347
Corbett, OR 97019



Summary: Authorization of an addition to the existing lawfully established, currently habitable single family dwelling within 150 feet of a stream designated as a Goal 5 Resource and protected by Policy 21 of the East of Sandy River Plan. Property is zoned EFU.

Decision: Approved with Conditions.

Unless appealed, this decision is effective Wednesday, September 28, 2005, at 4:30 PM.

Issued by:

By: _____
Tammy Boren-King, AICP, Planner

For: Karen Schilling - Planning Director

Date: Wednesday, September 14, 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, September 14, 2005, at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37 Administration and Procedures; MCC 35.0005- Definitions; MCC 35.2600-35.2690 Exclusive Farm Use Zone; East of Sandy River Plan Policy 21

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>.

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 four 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 must be granted before the expiration 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. All ground disturbing activities within 150 feet of the centerline of Pounder Creek shall be limited to the period between May 1 and October 1. (East of Sandy River Rural Area Plan Policy 21)

2. Prior to authorization of a building permit, the owners must apply for and obtain approval of a Grading and Erosion Control permit. (MCC 29.336)

Once this decision is final and a Grading and Erosion Control permit has been issued, application for building permits may be made. When ready to have building permits signed off, the applicant shall call the Staff Planner, Tammy Boren-King, at (503) 988-3043, to schedule an appointment for review and approval of the conditions and to sign the building permit plans. **Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Four (4) site plans including erosion control information and three (3) sets of building plans are needed for building permits signed off.** Please note that the \$75.00 Erosion Control Inspection Fee is due at the time of zoning authorization of the building permit.

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:

Applicant: The Multnomah County EFU zoning code (MCC 35.2620(L)) allows for the “Alteration, restoration or replacement of a lawfully established habitable dwelling.” We are submitting a General Application Form to construct a two-level residential addition (alteration) with an approximately 600 square foot footprint to the east of the existing dwelling on EFU property at 600 SE Pounder Road, Corbett. The residential addition connects to the dwelling by enclosing a portion of the carport foundation below and the existing deck above.

This residential project is an “addition” of a 600 square-foot footprint to the east side of the existing house. The addition is approximately 24.5 feet x 24.5 feet and consists of two floors. The second floor will be designed to accommodate the larger portion of our library, which contains over 5,000 volumes. The first floor will house the remainder of our collection including books, periodicals, filing cabinets containing ephemera, and computer stations. The first floor addition will also contain a significant amount of household storage.

The residential addition will be connected to the existing house on the first floor by utilizing the existing carport foundation and concrete slab. The first floor connector provides a mudroom and stairs to the second floor. On the second floor, the addition is connected to the existing second floor bedroom closet via the existing deck. The second floor connector provides a master bathroom, larger closets, and stairs down to the first floor, using a cantilever feature to the north side.

As indicated on the Preliminary Drawings (Exhibit 7A) and Site Plan (Exhibit 2A), less than 200 square feet of the residential addition footprint falls within the 150-foot setback from Pounder Creek specified in the East of Sand River Rural Area Plan Policy 21. The remainder of the residential addition project is outside this 150-foot setback. At this point, the only anticipated ground disturbance will be for the excavation of the 600 square-foot footprint for the addition and a small area for the first floor connector.

Staff: Staff concurs with the applicant’s description of the project. This decision will determine if the property is a lot of record pursuant to MCC 35.0005(L)(13) and MCC 35.2675, if the dwelling is lawfully established and is a habitable dwelling pursuant to MCC 35.2620(L), MCC 35.0005(L)(3), and MCC 35.0005(H)(1), and if the proposal is in compliance with the stream protection measures in Policy 21 of the East of Sandy River plan.

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 and Taxation information lists Gary and Debby Simone as the current owners (Exhibit 5S). A copy of the deed that transferred ownership to Gary and Debby Simone in 1999 is included as Exhibit 3A. Both Gary and Debby Simone have signed the application form, initiating the application process (Exhibit 1A).

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 July 19, 2005 and was complete when submitted. An “Opportunity to Comment” notice was mailed on August 3, 2005 to all property owners within 750 feet of the subject properties in compliance with MCC 37.0530. Copies of both the “Opportunity to Comment” and the mailing list are in the file. No written comments were received.

Procedures met.

4. CODE COMPLIANCE AND APPLICATIONS

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: Staff performed a site visit on September 8, 2005 and did not observe any violations of the zoning code. The property is in full compliance

Criteria met.

5. THE PROPERTY IS A LOT OF RECORD PURSUANT TO MCC 35.0005(L)(13) AND MCC 35.2675.

Applicant: According to MCC 35000S(L)(13), "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."

"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".

As evidence that our parcel satisfied all applicable zoning laws we submit information generated by Planning Staff. In Staff Report T3-02- 007, Page 9, Don D. Kienholz documented that our property (Lot#S8) met the F-2 zoning district requirements for lawful lot creation by complying with a minimum lot size of 2 acres, by having 50 feet of road frontage and adequate access. This lot has not changed shape since 1977.

"Satisfied all applicable land division laws shall mean the parcel or lot was created: (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".

As evidence that our parcel satisfied all applicable land division laws, we submit the following information: The subject parcel was created by a warranty deed (attached Book of Records, Book 1049, Page 562) dated and signed by the parties to the transaction (Windust and Bunnell), that was recorded with the Section of the public office responsible for public records prior to October 19, 1978.... The attached deed is signed on July 1, 1975 and recorded July 3, 1975.

Validation of Present Ownership

Present ownership of this property is validated by the attached Warranty Deed between the two parties to the transaction (Post and Simone) dated August 24, 1999, and recorded on September 30, 1999, Multnomah County.

EFU Lot of Record provisions of MCC 35.2675 aggregate contiguous parcels under the same ownership on February 20, 1990. According to the Pre-filing Meeting Notes (PF-05-110), "staff reviewed assessment information available from this time period and it does not appear that the subject property was under the same ownership as any adjacent properties on February 20, 1990 ".

We have spoken with the original owner (Bunnell)and confirmed these staff findings, i. e., the owners of the parcel on February 20, 1990 did not own the parcel to the south (Lot #S6), east (#52)or north. The western boundary is Pounder Road.

Staff: Staff is not relying on the decision rendered in Cast T3-02-007 to determine lot of record status for the subject parcel. The criteria of MCC 35.0005(L)(13) require a property to have been created in accordance with all zoning and land division laws in place at the time it was created. These criteria also require any subsequent reconfigurations to have been done in accordance with all zoning and land division laws in place at the time of reconfiguration. The applicant has provided a copy of a deed recorded in Book 1049 on page 562 on July 3, 1975 (Exhibit 4A) which describes the property in its

current configuration. The property was zoned F2 on July 3, 1975 as shown on the historic zoning map included as Exhibit 6S. On this date, the F2 zone has minimal requirements for the creation of new lots. For an F2-zoned lot to be created lawfully, it had to comply with a 2-acre minimum lots size, have 50 feet of road frontage, and have adequate access. The subject property is 5-acres in size, has well over 50 feet of road frontage, and has direct access to a public road. The applicants have submitted a copy of the current deed for the property (Exhibit 3A) which has the same legal description as the 1975 deed which created the property. The property was lawfully established and has not been reconfigured since the 1975 deed. The subject property meets the definition of Lot of Record established in MCC 35.0005(L)(13).

In addition to the requirements that a lot of record be lawfully established, the EFU zone district contains aggregation standards for properties under 19 acres in size (MCC 35.2675). Pursuant to MCC 35.2675(A)(1), a parcel may be a Lot of Record if it, “was not contiguous to any other parcel or lot under the same ownership on February 20, 1990.” Staff does not have access to data regarding the ownership of properties on February 20, 1990. Staff does have access to Assessment and Taxation records which list ownership as of 10-15-1989 and 5-20-1990. From this data, it is feasible to infer the ownership on 2-20-1990. The chart below shows the ownership on these two dates, which is assumed to be representative of ownership on February 20, 1990. The referenced map of the surrounding properties is included as Exhibit 1S.

Number on Map	R Number	Ownership 10-15-1989	Ownership on 10-12-1990
1	Subject Lot 994020580	Gretchen Bunnell	Same as 1989
2	994020500	Cynthia Jensen	Same as 1989
3	994020520	Victor & Patricia Meyers	Same as 1989
4	994020560	Jonnie & Judy Jansen	Anders & Bonnie Horberg
5	994020700	Mary Phillips & Margaret Blair	Same as 1989
6	994020710	Jannet & Dennis Pitts	Same as 1989
7	944350910	Howard & Eileen Swanson	Same as 1989
8	944350370	Roy & Shirley Poffenberger	Same as 1989

The subject property was not held in common ownership with any of the surrounding parcels. The property is a Lot of Record pursuant to MCC 36.2675(A) and MCC 36.0005(L)(13).

Criteria met.

6. THE SUBJECT DWELLING IS LAWFULLY ESTABLISHED AND HABITABLE PURSUANT TO MCC 35.2620(L), MCC 35.0005(L)(3), and MCC 35.0005(H)(1).

§ 35.2620 ALLOWED USES (EFU ZONE)

6.1 (L) Alteration, restoration or replacement of a lawfully established *habitable dwelling*.

Staff: The subject property is zoned EFU, which allows for the alteration of a lawfully established, habitable dwelling. In order for the subject request to be approved, the applicants must document that their dwelling is lawfully established as defined in MCC 35.0005(L)(3) and habitable as defined in MCC 35.0005(H)(1).

6.2 § 35.0005 **Definitions**

(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.

Applicant: As evidence that our dwelling was established in accordance with the laws in effect at the time it was placed on the lot, we submit the following:

1. A copy of the Residential Building Permit (#751458) issued on August 26, 1975, secured from the City of Portland Bureau of Development Services' microfilm archives. (Exhibit 5A)
2. A copy of the Land Use Permit (#751461) issued on August 26, 1975 for the construction of our barn, which pictorially locates the barn, house and septic system on our property. The permit for the barn construction makes reference to the Residential Building Permit. (Exhibit 5A)

Staff: The applicant has submitted sufficient evidence in the form of permit records to establish that the house was lawfully established. See Exhibit 5A. Staff also submits Exhibit 2S, which is the record of inspections showing that the work covered by permit 751458 was inspected as required by the building code.

The subject dwelling is lawfully established. Criterion met.

6.3 (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.**

Applicant: As evidence that our existing home is currently "habitable" we submit the following:

1. Intact exterior walls and roof structure: Photographs #1, 2, 3, 4, 5, and 6.
2. Indoor Plumbing consisting of a kitchen sink, toilet and bathing facilities: Photographs #7, 8 and 9. Attached is a copy of the Multnomah County, Environmental Services Division, Report of Plumbing Inspection #25953 with final inspection on 1-29-76 on plumbing and sanitary waste disposal system.
3. Interior Wiring for Interior lights: Photographs #10 and 11.
4. A Heating System (heat pump and air handler): Photographs 12 and 13.

Staff: The applicant's photos are included as Exhibit 6A. Staff performed a site visit on 9-8-05 and verified that the photos submitted are photos of the house on the subject parcel. These photos are adequate evidence to document that the house is currently habitable.

The subject dwelling has the features required to qualify as a habitable dwelling. Criteria met.

7. THE PROPOSAL MEETS THE APPLICABLE DIMENSIONAL STANDARDS OF THE EFU ZONING DISTRICT.

§ 35.2660 DIMENSIONAL 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.

Applicant: The location of the proposed residential addition will more than meet the stipulated setbacks of 30 feet Front, 10 feet Side, 30 feet Street Side, and 30 feet Rear. The residential addition will be setback approximately: 322 feet from the front property line; 112 feet from the east property line; 150 feet from the north side property line; and 195 feet from the south property line, as indicated on the enclosed Site Plan.

The alteration will consist of a standard two-floor residential addition to complement the existing dwelling. The maximum structure height limit of 35 feet will not be exceeded. The Front lot Line Length is approximately 569 feet, which more than meets the required minimum Front Lot line Length of 50 feet. Reference enclosed Site Plan.

Staff: The applicant's proposal exceeds the required yard dimensions as shown on the applicant's site plan which is included as Exhibit 2A. The applicant has indicated that the structure will be within the height limit. Staff will verify the height of the structure on the final building plans prior to authorizing the issuance of a building permit.

Criteria met.

8. THE PROPOSAL IS IN COMPLAINT WITH POLICY 21 OF THE EAST OF SANDY RIVER RURAL AREA PLAN.

POLICY 21

Protect significant streams in the East of Sandy River Rural Area by prohibiting new residential development within 150 feet of a stream centerline and limiting new roads, stream crossings, additions to existing structures, and other grading activities within this 150 foot area. Additions to existing dwellings of up to 400 square feet shall be exempt from the

setback requirements. All related ground disturbing activities within the 150 foot stream setback shall be confined to the period between May 1 and October 1 in any year.

STRATEGY: Multnomah County shall implement this policy with amendments to the Multnomah County Zoning Code Significant Environmental Concern Zoning Overlay District and applying the district to areas within 150 feet of the centerline of each significant stream.

21a. Require any stream crossing to utilize a bridge or arched culvert which does not disturb the bed or banks of the stream and are of the minimum width necessary to allow passage of peak winter flows.

STRATEGY: Multnomah County shall implement this policy through application of the Multnomah County Zoning Code Significant Environmental Concern Zoning Overlay District, which includes a requirement for stream crossings to consist of a bridge or arched culvert.

Applicant: The East of the Sandy River Plan Policy 21 (July 1997) "protects significant streams in the East of the Sandy River Rural Area by prohibiting new residential development within 150 feet of a stream centerline and . . . limiting . . . additions to existing structures... within this 150 foot area. Additions to existing dwellings of up to 400 square feet shall be exempt from the setback requirements. All related ground disturbing activities within the 150 stream setback shall be confined to the period between May 1 and October 1 in any year."

Please reference the attached Multnomah County Land Use Planning Division aerial photo PF-05-110 and scaled Site Plan for confirmation of the 150 foot set-back from Pounder Creek. The portion of our residential addition that will be within 150 feet from the centerline of Pounder Creek will be less than 400 square feet. This is indicated on the enclosed scaled Site Plan (Exhibit 2A) and Preliminary Drawings (Exhibit 7A). Therefore, we conclude that our residential addition project is exempt from review under Policy 21,

The existing house is presently located up slope from the stream. The proposed addition will be further upslope going east away from the stream. The impact of ground disturbing activities on the Creek will be minimized by the presence of the house between the stream and the new construction. In accordance with Policy 21, our ground disturbing activities are planned for between May 1 and October 1, 2006.

Staff: Pounder Creek flows through the applicant's property and is designated as significant stream, which is protected by Policy 21 of the East of Sandy River plan. Policy 21 extends a 150 foot buffer area around streams that are designated as significant. Some streams in the East of Sandy River area were extended further protection through the application of the Significant Environmental Concern for Streams (SEC-s) overlay zone, which has a 200 foot buffer zone. As can be seen on Exhibit 3S, the mapping difference between Policy 21 protected streams and SEC-s protected streams is the width of the buffer. The subject site contains a significant stream and is subject to the requirements of Policy 21, but not to the requirements of the SEC-s overlay.

The applicant's lawfully established dwelling is currently within 150 feet of the centerline of Pounder Creek as shown on the site plan included as Exhibit 2A. The proposed addition is on eastern side of the dwelling, away from Pounder Creek. A portion of the footprint of the proposed addition will be within

the 150 foot protected zone. Staff has calculated the area of the addition that will be within the 150 foot buffer as approximately 181 square feet as can be seen on Exhibit 4S.

The proposal is in compliance with the Policy 21 requirement to limit additions to 400 square feet or less within the protected area 150 feet from the centerline of the stream.

As a condition of approval, the applicant will be required to limit ground disturbing activities to the period between May and October.

Since grading activities will occur within 200 feet of a water body (Pounder Creek), the applicant must obtain a Grading and Erosion Control permit prior to issuance of a building permit for the subject addition (MCC. 29.333).

Policy met with conditions.

Conclusion

The applicant has carried the burden of proof to document that the house is lawfully established and habitable and that the proposed addition meets the requirements of Policy 21 of the East of Sandy River Plan Area. The request is approved with conditions.

EXHIBITS

Applicant's Exhibits

- 1A Signed Application Form
- 2A Site Plan
- 3A Current Deed
- 4A 1975 Deed of Creation
- 5A 1975 Building permits for house and accessory building
- 6A Photos of Existing House
- 7A Preliminary Drawings for proposed addition

Staff's Exhibits

- 1S Map of surrounding lots for aggregation purposes
- 2S Inspection record for 1975 building permit (Permit number 751458)
- 3S Map of protected streams showing Policy 21 and SEC-s designations
- 4S Estimate of area of addition within 150 feet of Pounder Creek
- 5S Assessment and Taxation Information for subject property
- 6S Historic zoning map showing zoning in effect in 1975