

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

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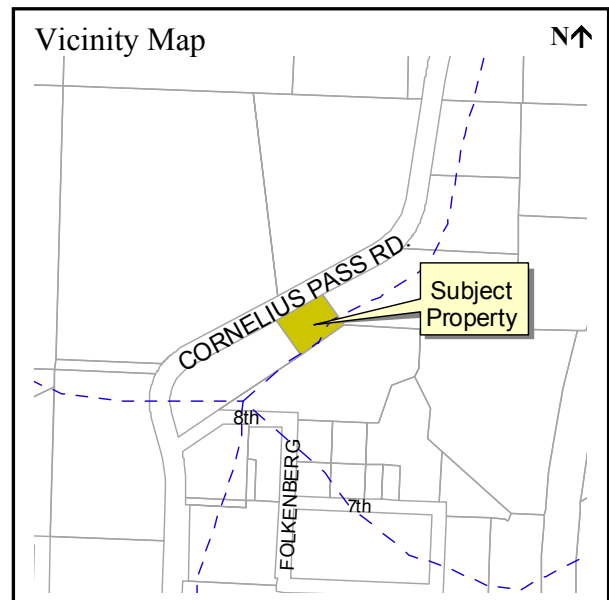
[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

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## NOTICE OF DECISION

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

**Case File:** T2-05-080**Permit:** Alteration of a Non-Conforming Use**Location:** 15230 NW Cornelius Pass Road  
Tax Lot 700, Section 30BB,  
Township 2N, Range 1W, W.M.**Applicant/  
Owner:** Kathleen Schreiter  
15230 NW Cornelius Pass Road  
Portland, Oregon

**Summary:** Proposal to build a 6' by 30' porch addition onto an existing dwelling that does not meet the minimum rear yard requirement. The property is in the Rural Residential Zone District in a area with overlay zones for Significant Environmental Concern for Habitat and Streams.

**Decision:** Approved

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

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Issued by:

By: \_\_\_\_\_  
George A. Plummer, 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 George A. Plummer, Staff Planner at 503-988-3043.

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

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, September 28, 2005 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): Chapter 37, MCC 33.4100 et al: Rural Residential (RR), and MCC 33.4500 et al: Significant Environmental Concern.

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](http://www.co.multnomah.or.us/dbcs/LUT/land_use).

### **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. A request for permit extension may be required to be granted prior to the expiration date of the permit.**

**Note:** Once this decision is final, application for building permits may be made with the City of Portland, Building Bureau. When ready for building permit signed off, the applicant shall call the Staff Planner, George Plummer, at (503) 988-3043, for an appointment for zoning review plan check and to sign the building permit form. Please note, Multnomah County must review and sign off the building permit form and plans before the applicant submits building plans to the City of Portland. Six (6) sets the plans and site plan of the building area are needed for building permits signed off.

#### **Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **FINDINGS AND CONCLUSIONS**

This decision is based on the findings and conclusions in the following section.

**Staff Report Formatting Note:** To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. At the end of the report, Exhibits are described. The applicant's submittals are included and made part of this decision under the category Exhibit 1...

### **1.2. SITE AND VICINITY CHARACTERISTICS**

**Staff:** The subject property is a 0.42 acre parcel located within the Rural Residential Zone District in the West Hills Rural Plan Area. The property is also entirely within the Significant Environmental Concern for Habitat and Stream Overlay District (Exhibit 2.2 and 2.3). The property is accessed from Cornelius Pass Road a little less than a quarter mile south of its junction with Sheltered Nook Road. The property is on the southeast side of the Road. The dwelling is located near the rear of the property. The surrounding area is a pocket of Rural Residential zoned properties of which some have been developed but several are undeveloped.

### **2. DESCRIPTION OF THE PROPOSAL:**

**Applicant:** *To add a 6' x 30' one story addition to the front of my house, approx. 180 sq. ft.*

**Staff:** The applicant is requesting an Alteration to a Non-Conforming Use Permit to build an addition onto an existing dwelling that does not meet the minimum rear yard requirement. The addition will be on the front of the dwelling and will not further reduce the rear yard (Exhibits 1.1 and 1.3).

The dwelling is located near the rear of the property. While a Land Use and Transportation Program 2002 aerial photo shows the property line as going through the dwelling (Exhibit 2.4), the applicant indicates that the dwelling is entirely on her property. The property lines on the aerial photo occasionally have an incorrect location. We are unable to determine for certain whether dwelling is entirely on the property, this issue will be addressed in later findings in Section 6.1.1. of this decision.

The proposed addition of 180 square feet is below the threshold of 400 square for which a Significant Environmental Concern for Habitat and Stream Permit is required. MCC 33.4515 (H) allows without a permit uses legally existing on November 17, 1994 and any alteration and expansion of such a use in the SEC-h and SEC-s overlays if the addition is less than 400 square feet of ground coverage.

### **3. 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:** County Assessment records show the property owners as Kathleen Schreiter (Exhibit 2.1). Ms. Schreiter signed the application as the owner (Exhibit 1.1).

#### **4. TYPE II CASE PROCEDURES**

##### **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 Director's decision shall become final at the close of business on the 14<sup>th</sup> 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 August 11, 2005. No comments were received regarding the application.

#### **5. RURAL RESIDENTIAL ZONE DISTRICT**

##### **5.1. Allowed Uses:**

**MCC 33.3120(C) Residential use consisting of a single family dwelling constructed on a Lot of Record.**

**Staff:** The proposal is an addition to an existing dwelling established in 1914 (Exhibit 2.1).

##### **5.2. Dimensional Requirements**

**MCC 33.3155 (C) Minimum Yard Dimensions – Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**Staff:** The proposed development will meet the minimum yard requirements according to the applicant as shown on Exhibit 1.3, however the existing dwelling does not meet the rear yard requirement and the addition may not meet the setback as well. This issue will be addressed under the alteration and expansion of a non-conforming use findings in Section 6.2 of this decision. The proposed development is a single story addition which meets the height maximum requirement.

##### **5.3. Lot of Record**

**MCC 33.0005(L)(13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when**

reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

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

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

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

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

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

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

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

**MCC 33.3170 (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 33.3185, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

**Staff:** The applicant submitted copy of a deed filed with County Records on July 5, 1956 in Book 1793 on Page 79 showing the property existed in 1956 prior to zoning or land division requirements (Exhibit 1.5). Thus the property meets the Lot of Record requirements.

## **6. NON-CONFORMING USE**

### **6.1. Verification of Nonconforming Use Status**

**6.1.1. MCC 33.7215 (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

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

**Staff:** The dwelling was established on the property in 1914 (Exhibit 2.1). The applicant has submitted a copy of a deed filed July 5, 1956 in Book 1793 on Page 79 showing the property existed in 1956 prior to zoning or land division requirements (Exhibit 1.5), thus the property existed in 1956 prior to zoning requirements. The property and the use predated the minimum yard requirements established in 1958 when zoning was adopted. While the dwelling may be over the property line there were no zoning requirements that prevented that when the property was created.

The dwelling has continued to exist as a dwelling to the current day. Standard in MCC 33.7215(A)(2) above is subject to the procedures of MCC 33.7215(F) regarding continuity of use, with a ten year period immediately preceding the application. The applicant has submitted evidence, a letter from Shelley Jones, Customer Relations, Portland General Electric indicating service to the dwelling for the last ten years (Exhibit 1.11). This evidence meets the requirement has not been abandoned or interrupted for a continuous two year period.

**6.1.2. MCC 33.7215 (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;**
- (2) The types and quantities of goods or services provided and activities conducted;**
- (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**
- (4) The number, location and size of physical improvements associated with the use;**
- (5) The amount of land devoted to the use; and**
- (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.**
- (7) A reduction of scope or intensity of any part of the use as determined under MCC 33.7215 (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.**

**Staff:** The use is a dwelling established in 1914 on a property created in 1956. The dwelling does not meet the current minimum rear yard requirement of 30 feet. The County adopted Zoning Code setback requirements in 1958 under the Suburban Residential (SR) Zone District for the property. The SR District required a 25 foot rear yard setback to the main building, the dwelling.

**6.1.3. MCC 33.7215 (C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.**

**Staff:** The dwelling was established on the property in 1914 (Exhibit 2.1). The applicant has submitted a copy of a deed filed July 5, 1956 in Book 1793 on Page 79 showing the property existed in 1956 prior to zoning or land division requirements (Exhibit 1.5), thus the property existed in 1956 prior to zoning requirements. The property and the use predated the minimum yard requirements established in 1958 when zoning was adopted. As confirmed with a site visit on August 19, 2005 and County Tax and Assessment Records, the dwelling has continues to exist as a dwelling (Exhibit 2.1).

\* \* \*

**6.1.4. MCC 33.7215 (E) Any decision on verification of nonconforming use status shall be processed as a Type II permit as described in MCC Chapter 37.**

**Staff:** This case has been processed as a Type II Permit.

- 6.1.5. MCC 33.7215 (F)** An applicant may prove the existence, continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application.

**Staff:** The applicant has provided a letter from Shelley Jones, Customer Relations, Portland General Electric indicating service to the dwelling for the last ten years (Exhibit 1.11). The standard has been met.

**6.2. Alteration, Expansion or Replacement of Nonconforming Uses**

- 6.2.1. MCC 33.7210 (A)** Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements.

**Applicant:** *To add a 6' x 30' one story addition to the front of my house, approx. 18 sq. ft.*

**Staff:** The applicant proposes an 18 square foot addition to the house (Exhibit 1.1 and 1.4). The addition will be located on the far side of the dwelling from non-conforming rear yard (Exhibit 1.3). Adding 18 square feet to the dwelling will have no impact on the neighborhood. This standard is met.

\* \* \*

- 6.2.2. MCC 33.7210 (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;
- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;
- (3) The comparative numbers and kinds of vehicular trips to the site;
- (4) The comparative amount and nature of outside storage, loading and parking;
- (5) The comparative visual appearance;
- (6) The comparative hours of operation;
- (7) The comparative effect on existing flora;
- (8) The comparative effect on water drainage or quality; and
- (9) Other factors which impact the character or needs of the neighborhood.

**Applicant:** *1. The house is a 1914 house I have lived in for 10 years with minimal development if any in the surrounding area.*

2. *It is so noisy already from the truck traffic that there shouldn't be any noticeable noise. No vibration, dust (except from lumber), odor, no fumes, glare or smoke detectable from construction in the neighborhood.*
3. *One materials delivery, one concrete truck, daily trips from construction companies truck.*
4. *Storage, loading and parking in my driveway. Construction company has trailer for debris that will park in my driveway.*
5. *My house is not easily visible from the road because it is in the middle of two dangerous corners and visual appearance would be consist of framing and general construction.*
6. *One month total, Monday thru Friday approximately 8:30 am - 4:30 pm.*
7. *No effect on flora.*
8. *No effect on the drainage or water quality.*
9. *No other factors to effect the needs of neighborhood.*

**Staff:** The neighborhood has rural residential character with sparse residential development separated by forested areas (Exhibit 2.4). The properties in the surrounding area range from about the size of this property to about four acres. Several of the nearby properties have not been developed. The proposed addition will be used as living space for the residents of the dwelling. The addition to the dwelling will not result in any detectable impacts such as noise, vibration, dust, odor, fumes, glare or smoke. The addition will not increase the number of residents thus will not increase the number of vehicle trips to and from the property. The addition will match the dwelling's existing architecture with a comparative visual appearance. The hours in which the dwelling will be used for residential purposes will not change. The addition will not impact existing flora. The proposed addition is below the 500 square foot minimum for which the county requires an engineer's assessment of stormwater drainage. The minimal size of the proposed addition should result in no measurable impact on drainage or water quality. There are no other factors that would effect the needs of the neighborhood related to the addition. The addition will not increase the impacts of the existing dwelling. The alteration and expansion will not result in a greater adverse impact on the neighborhood.

**6.2.3. MCC 33.7210 (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 case has been processed as a Type II permit.

**7. CONCLUSION**

The applicant has demonstrated the criteria for a verification of Nonconforming Use status

**8. EXHIBITS**

**8.1. Exhibits Submitted by the Applicant:**

- Exhibit 1.1: Application form submitted 7/29/05 (1 page);
- Exhibit 1.2: Applicant's narrative submitted 8/4/05 (1 page);
- Exhibit 1.3: Site Plan submitted 7/29/05 (1 page);
- Exhibit 1.4: Floor plan and elevation drawings of proposed addition and dwelling submitted 7/29/05 (4 pages);
- Exhibit 1.5: Copy of deed for the property filed with County Records on July 5, 1956 in Book 1793 on Page 79 submitted 7/29/05 (3 pages);

- Exhibit 1.6: Copy of deed for the parent property filed with County Records on April 20, 1950 in Book 1398 on Page 554 submitted 7/29/05 (1 page);
- Exhibit 1.7: Plat map showing measurements listed on the deeds submitted 7/29/05 (1 page)
- Exhibit 1.8: Certificate of On-site Sewage Disposal submitted 7/29/05 (6 pages);
- Exhibit 1.9: Fire District Access Review submitted 7/29/05 (3 pages);
- Exhibit 1.10: Fire District Review Fire Flow Requirements submitted 5/27/05 (6 pages).
- Exhibit 1.11: Letter from Shelly Jones, Customer Relations, Portland General Electric (PGE) indicting service to the property for the applicant for the last ten years submitted 7/29/05 (1 Page);
- Exhibit 1.12: 2002 Aerial Photo showing subject property submitted 7/29/05 (1 page);

## **8.2. Exhibits Provided by the County**

- Exhibit 2.1: County Assessment Record for the subject property (1page);
- Exhibit 2.2: Current County Zoning Map with subject property labeled (1 page);
- Exhibit 2.3: Significant Environmental Concern Overlay Zone Map (1 page);
- Exhibit 2.4: Aerial Photo of the vicinity (1 page).