

**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/dbcs/LUT/land_use

NOTICE OF DECISION

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

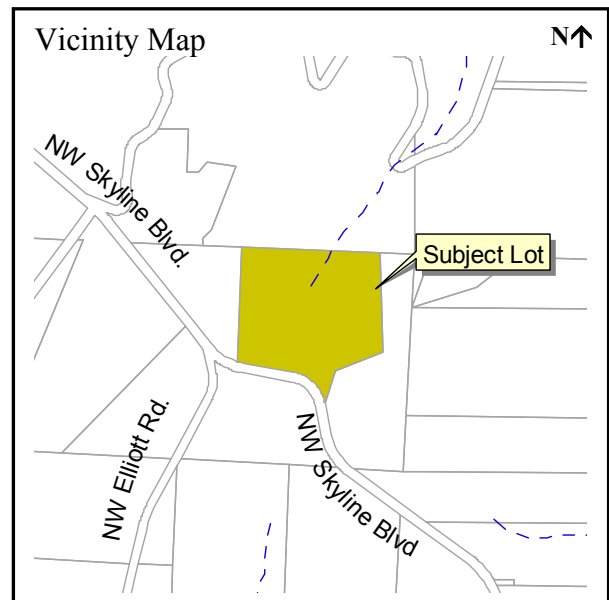
Case File: T2-05-092

Permit: Modification Of Conditions Of Approval
On A Pervious Administrative Decision
And A Time Extension

Location: 17226 NW Skyline Blvd.
TL 200, Sec 23, T2N, R2W, W.M.
Tax Account #R97223-0530

Applicant: Carisa Bohus

Owner: Gary McRobert



Summary: Modification to a Condition of Approval requiring the original Notice of Decision for Case #T2-03-025 to be recorded within 30 days of being final, the removal a Condition of Approval prohibiting a distillery on the property, and a time extension of 24-months.

Decision: Approved with Conditions

Unless appealed, this decision is effective Monday, December 5, 2005, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Monday, November 21, 2005

Instrument Number for Recording Purposes: # 96011336

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 Monday, December 5, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 37.0660(E) - Conditions Of Approval And Notice Of Decision; MCC 37.0670 - Recording Of Decision; MCC 37.0690 - Expiration And Extension Of A Type II Or Type III Decision in EFU and CFU Zones;

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. This permit is for a modification of a previous permit (T2-03-025) and does not alter findings in that permit not covered in this decision. The findings that are modified are specifically identified herein and addressed with new findings. Those conditions of approval not altered by the modifications are still applicable.
3. **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.**

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. Condition #1 of T2-03-025 shall be modified as follows: The Notice of Decision (of case #T2-03-025 which is Pages 1 through 4, the site plan and the Required Screening Exhibit J) shall be recorded in the County deed records and shall run with the land. Proof of recording shall be made prior to zoning approval of building permits for the accessory structure approved in T2-03-025.**
- 2. The Notice of Decision (Pages 1 through 3) for this land use decision, T2-05-092, shall be recorded in the County Deed Records and shall run with the land. Proof of recording shall be made prior to zoning approval of the accessory structure approved in T2-03-025.**
- 3. Condition #10 of case #T2-03-025 is removed and no longer a Condition of Approval.**
- 4. The owner shall enter into a Voluntary Compliance Agreement with Multnomah County requiring the owner to demonstrate that building permits from the City of Portland have been applied for. The agreement shall also require the owner demonstrate that a final occupancy has been acquired from the City. If the Voluntary Compliance Agreement is not signed and completed by December 5, 2007, permits T2-03-025 and T2-05-092 shall be void and the structure shall be removed from the property.**

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.
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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 requesting modifications to Conditions #1 and #10 of the previous case #T2-03-025 and an extension of the approval timeline. Condition #1 required the Notice of Decision to be recorded within 30 days and Condition #10 prohibited a distillery on the property.

2. **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 October 14, 2005. No comments were received regarding the proposed modifications.

Procedures met.

3. **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 Gary McRobert as the owner of the subject lot (Exhibit 1). Mr. McRobert signed the General Application Form as owner and Carisa Bohus has signed the General Application Form as the Applicant (Exhibit 2) and thus has been authorized to take action on the property.

4. **Modification Of Conditions of Approval Authorized**

MCC 37.0660 Conditions Of Approval And Notice Of Decision

(E) Modification of Conditions. Any request to modify a condition of permit approval shall be processed in the same manner, and shall be subject to the same standards, as was the original application provided the standards and criteria used to approve the decision are consistent with the current code. However, the decision maker may at its sole discretion, consider a modification request and limit its review of the approval criteria to those issues or aspects of the application that are proposed to be changed from what was originally approved.

Staff: The Planning Director is authorized to make a modification of Conditions of Approval under MCC 37.0660 and limit the scope of review to only those findings which affect that condition. In this application, the Planning Director has authorized Conditions #1 and #10 of T2-03-025 to be reviewed on a limited basis for potential modification.

Criteria met.

5. **Conditions Can Be Modified**

A. **MCC 37.0670 Recording Of Decision.**

The County may impose as a condition of final approval of a Type II, Type III, or Type IV decision, the requirement that the applicant record with the County the Notice of Decision. The Notice of Decision shall run with the land and shall be placed in the county deed records prior to the issuance of any permits or development activity pursuant to the approval. Proof of recording shall be made prior to the issuance of any permits and filed with the Land Use Planning Division. Recording shall be at the applicant's expense.

Applicant: Modify Condition #1 requiring the Notice of Decision be recorded in a timely manner. The requestor did not understand the condition and did not record the decision in a timely manner. We understand the recording process now and would like to record this modified decision promptly, once decided.

Staff: The applicant is requesting a modification to Condition #1 of case #T2-03-025, which states:

“Within 30 days of this decision becoming final and prior to building permit sign-off, the property owner shall record the Notice of Decision (pages 1-4 of this decision, the site plan and Required Screening Exhibit J) with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and filed with the Land Use Planning Division, and a copy of the recorded document shall be submitted to the Land Use Planning Division. Recording shall be at the applicant's expense. Failure to sign and record the Notice of Decision within the above 30 day time period shall void the decision. [MCC 37.0670]”

The current code does not specify a timeline in which the applicant is required to record the Notice of Decision and therefore there is discretion in when it can be accomplished. The code under which the applicant applied under in 2003 required the decision to be recorded within 30-days of the decision becoming final. The important aspect of the Condition of Approval is ensuring the Notice of Decision is recorded so future land owners know the conditions placed on the property – specifically those regarding the Significant Environmental Concern requirements and retention of vegetation. Because the applicant neglected to record the Notice of Decision within 30-days, the permit would be invalid unless the condition was modified, which is an appropriate request. As such, Staff finds it is appropriate to remove the 30-day requirement of the original condition.

Condition #1 of T2-03-025 is modified by having the 30-day requirement removed.

B. 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.

Applicant: Remove Condition #10 which prohibits the production, distribution and sale of distilled products for commercial purposes on the property located at 17226 NW Skyline Road (#R972230530). We are in the process of modifying the SEC decision, entering into a Voluntary Compliance Agreement, and applying for a Conditional Use Permit in order to start a distillery business. That was the original intent of the building permit process two years ago. We understand the process much better now. This condition needs to be removed for the SEC decision to be consistent with our plans.

Staff: When case #T2-03-025 was being processed, The Oregon Liquor Control Commission contacted Multnomah County Planning regarding an application to obtain a commercial liquor license for the subject property. No application had been filed with Multnomah County and the Planning Department wanted to ensure the forest zone the property was located in was protected against unauthorized businesses and uses. The CFU-2 zone does not list distilleries as allowed uses. Some commercial activity is allowed on a limited basis through a Home Occupation and the applicant would like to try and see they can qualify for a Home Occupation Permit. In order to do that, Condition of Approval #10 must be removed in order to apply and still be in compliance with the original permit. Under these circumstances, the Planning Director believes it to be appropriate to remove the condition since the applicant and owner are fully aware of the limitations on the property and the process which a Home Occupation must go through.

Condition #10 of T2-03-025 is removed from the decision.

6. The Applicant Meets The Requirement for a Time Extension

MCC 37.0690 Expiration And Extension Of A Type II Or Type III Decision in EFU and CFU Zones.

(C) The Planning Director shall grant one extension period of 24 months for approvals of dwellings listed in (B) above if:

- (1) An applicant makes a written request for an extension of the development approval period;**
- (2) The request is submitted to the county prior to the expiration of the approval period;**
- (3) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and**
- (4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.**
- (5) Approval of an extension granted under this section is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.**

Staff: The applicant submitted a request for an extension prior to the original decision expiring, so the request is timely. The Land Use Decision (T2-03-025) was obtained but the applicant Improperly built the structure without building permits. Extending the expiration of the permit will allow the applicant to obtain proper building permits through a Voluntary Compliance Agreement without draining County resources with an SEC application for an the exact same project. If the permit is not extended, the deadline will pass and the applicant will not be able to obtain building permits. The extension was consolidated to the Modification of a Condition of Approval strictly for efficiency in dealing with the applicant's requests and for the ease of notification and mailing. **Finding #6 of this notification is NOT a land use decision as described in ORS 197.015 and CANNOT BE APPEALED.**

The applicant has supplied the necessary information to qualify for a permit extension and is granted a 24-month extension to the original permit.

7. 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: The applicant has constructed the building approved under T2-03-025 without completing the conditions of approval, without obtaining zoning approval from Multnomah County and without building permits from the City of Portland. In order to ensure compliance with Case #T2-03-025 and the building code, the applicant is required to enter into a Voluntary Compliance Agreement with Multnomah County. The agreement allows the County to issue building permits for the structure and be in compliance with the zoning code.

Criteria met with Voluntary Compliance Agreement and Condition of Approval.

Conclusion

Staff: Considering the findings and other information provided herein, this application for Modification of Conditions of Approval, as conditioned, satisfies applicable Multnomah County Zoning Ordinance requirements

The Planning Director also grants a 24-month time extension to the original permit.

Exhibits

1. Multnomah County Assessment and Taxation Information Sheet
2. General Application Form