

**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.

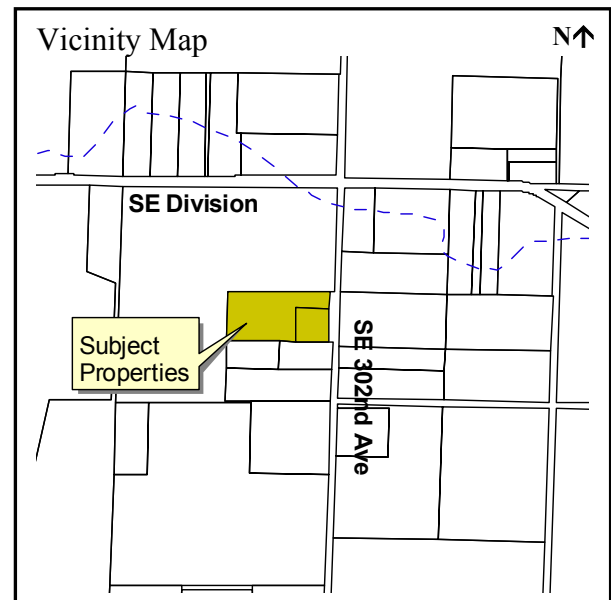
Case File: T2-06-059

Permit: Property Line Adjustment

Location: 3821 SE 302nd Ave
TL 200 & 300, Sec 7, T1S, R4E, W.M.
Tax Account #R2920-0010 & R29220-0200

Applicant: Joseph Willis

Owners: Joseph and Shannon Willis & Kim and Ann Skinner



Summary: The request is a Property Line Adjustment to move a subdivision lot line to where an existing tax lot line is, and in the process correct an unlawful land division.

Decision: Approved with Conditions

Unless appealed, this decision is effective Friday, August 18, 2006, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Friday, August 4, 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 extension 29270.

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 Friday, August 18, 2006 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 36.0005(L)(13) Lot of Record; 36.2855 Dimensional Standards and Development Requirements; 36.2860 Lots of Exception and Property Line Adjustments; 36.2870 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/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 8. 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 36.7970(C).**

2. The owner shall obtain building permits for the interior alterations that occurred in the accessory building previously used as a dwelling. Building plans shall be signed-off prior to the finalization of the property line adjustment [MCC 37.0560].

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 move an existing subdivision lot line to the location of a tax lot line that was moved and created an unlawful land division. Moving the line will erase the subdivision lot line and lawfully create the existing tax lot 300 as one lot.

2. **Site Characteristics**

Staff:

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 June 26, 2006. Those that received notice were given 14-days to provide comment. No written comments were received on the proposal.

Procedures met.

4. **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: Assessment and Taxation show Joseph and Shannon Willis as the owners of Tax Lot 200 (Exhibit 1) and Kim and Ann Skinner as owners of Tax Lot 300 (Exhibit 2). Joe Willis and Kim Skinner signed the General Application Form (Exhibit 3) and the Statement of Property Owner Consent (Exhibit 4) to authorize the processing of the permit.

Criterion met.

5. **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.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: Tax lot 200 had an unresolved code compliance issue for an unlawful land division and a second dwelling located in an outbuilding. The applicant brought in photographs of the interior of the structure that contained the second dwelling that showed the cooking facilities had been removed and the electrical capped. Additionally, a covenant has been recorded that indicates only one dwelling is allowed on the property and the structure can only be used as an accessory structure as was originally approved. A condition of approval will require the owner to obtain building permits for any interior changes that occurred after the original building permit. These actions correct the unlawful second dwelling issue. Completion of the Property Line Adjustment will resolve the unlawful land division issue and bring the property into full compliance.

Criterion met.

6. **Property Line Adjustments Are Allowed Uses in the MUA-20 Zone.**

MCC 36.2825 Review Uses.

Uses listed in this section may be permitted after required review as Type II decisions pursuant to MCC 37.0510 through 37.0800, or as specified for the use.

(D) Property Line Adjustment pursuant to the provisions of MCC 36.2860.

Staff: Property Line Adjustments are allowed in the MUA-20 zone.

Criterion met.

7. **The New Property Line Location Meets the Dimensional Requirements**

MCC 36.2855 Dimensional Standards and Development Requirements.

All development proposed in this district shall comply with the applicable provisions of this section.

A. **(A) Except as provided in MCC 36.2860, 36.2870, 36.2875, and 36.4300 through 36.4360, the minimum lot size shall be 20 acres.**

Staff: No new lot is being created.

B. **(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.**

Staff: No new lot is being created so the calculation of lot size is not required.

C. **(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.

Staff: The new property line will be moved east towards the dwelling on Tax Lot 300. The closest new side yard will be 13.3-feet as seen on the submitted site plan (Exhibit 5) and 90-feet to the rear property line. The new property line will also be over 80-feet from the dwelling on Tax Lot 200. As proposed, structures will meet the dimensional standards.

Criterion met.

8. **The Property Line Adjustment Approval Criteria are Met**

A. **MCC 36.2860 Lots of Exception and Property Line Adjustments**

(B) Property Line Adjustment

Pursuant to the applicable provisions in the Multnomah County Land Division Ordinance, the approval authority may grant a property line adjustment between two contiguous Lots of Record upon finding that the approval criteria in (1) and (2) are met. The intent of the criteria is to ensure that the property line adjustment will not increase the potential number of lots or parcels in any subsequent land division proposal over that which could occur on the entirety of the combined lot areas before the adjustment.

(1) No additional lot or parcel is created; and

(2) One of the following situations occurs:

(a) The lot or parcel proposed to be reduced in area is larger than 20 acres prior to the adjustment and remains 20 acres or larger in area after the adjustment, or

(b) The lot or parcel proposed to be enlarged in area is less than 40 acres in area prior to the adjustment and remains less than 40 acres in area after the adjustment.

Staff: No additional lot is created by moving the subdivision lot to the proposed location. Prior to the adjustment there are two legal subdivision lots and after the adjustment there will be two legal Lots of Record.

Both properties are below the minimum lot size and remain below the minimum lot size. Therefore, the lot being enlarged in area is less than 40-acres before and after the adjustment.

Criteria met.

B. **MCC 36.7970 Property Line Adjustment (Lot Line Adjustment)**

A property line adjustment is the relocation of a common property line between two abutting properties.

(A) The Planning Director may approve a property line adjustment between two properties, in the Rural Area, where an additional lot or parcel is not created and where the existing lot or parcel reduced in size by the adjustment is not reduced below the minimum lot size established by the applicable zoning designation.

(B) The Planning Director may approve a property line adjustment between two properties in the Rural Area where an additional lot or parcel is not created but where one or both of the adjusted properties are below the minimum lot size established by the applicable zoning district designation. Such an adjustment shall comply with any applicable zoning district standards for a Property Line Adjustment or Lot Line Adjustment.

(C) Property line adjustments approved under subsections (A) and (B) above shall meet the following additional standards:

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

(2) 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

(3) The adjusted properties shall meet all dimensional requirements in the underlying zoning district designation except for lot area.

(4) The right-of-way width between the front line of each adjusted property and the centerline of any adjacent County road shall comply with the applicable provisions of the Street Standards Code and Rules as determined by the County Engineer.

Staff: No additional lot is being created as a result of the Property Line Adjustment. Both properties are below the MUA-20's minimum lot size of 20-acres. Both owners have agreed to the adjustment as evidenced by the submittal of the Owner Consent Form (Exhibit 4). The adjusted properties meet the dimensional requirements of MCC 36.2855. The right-of-way adjacent to the properties meets the minimum requirement of the Street Standards Code of 50-feet.

Criteria met.

9. The Involved Properties Will be Lots of Record After the Adjustment.

MCC 36.2870 Lot of Record.

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, SR zone applied;

(2) July 10, 1958, F-2 zone applied;

(3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

(4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;

(5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;

(6) May 16, 2002, Lot of Record section amended, Ord. 982.

MCC 36.0005(L)(13 – Lot of Record

(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.)

Staff: Both properties involved were originally created under a county approved subdivision called Fort Sherman in 1969 and recorded on February 19, 1969 (exhibit 6). Therefore, both original subdivision lots met the land division and zoning rules in place at the time.

Between the time the lots were created and the present, a portion of Lot 2 was sold to the owner of Lot 1. This moved the property line of Lot 2 to the north and west line of the current Tax Lot 300 (exhibit 7). Because the original subdivision lot line was not vacated, this partitioned Lot 2 and created a new property that did not meet the zoning or land division rules in place at that time.

This property line adjustment properly vacates the subdivision line between Lot 1 and Lot 2 and places the new property line at the current location of Tax Lot 300 – in effect removing the unlawfully created lot from the previous action and legalizing the current property line of Tax Lot 300.

After the adjustment, both properties will be lawfully created under the zoning and land division rules the application was made under and will therefore be Lots of Record.

Criteria 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 Form For Tax Lot 200
2. Multnomah County Assessment and Taxation Form For Tax Lot 300
3. General Application Form
4. Property Owner Consent Form
5. Applicant's Site Plan
6. Original Fort Sherman Subdivision Plat
7. Current Tax Lot Map Of Properties
8. Applicant's Instructions for Finishing a Property Line Adjustment and Surveyor's Instructions for Finishing a Property Line Adjustment