



**MULTNOMAH COUNTY**  
**LAND USE AND TRANSPORTATION PROGRAM**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
<http://www.co.multnomah.or.us/landuse>

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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:** T2-06-077

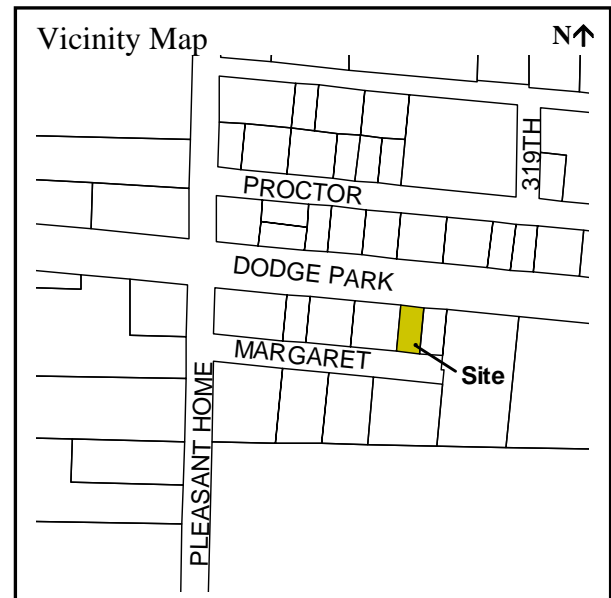
**Permit:** Verification & Alteration Of  
Nonconforming Use

**Location:** 31840 SE Dodge Park Blvd  
TL 4900, Sec 20, T1S, R4E, W.M.  
Tax Account #R67780-0480

**Applicant:** John Kuechler

**Owner:** John Kuechler

**Base Zone:** Multiple Use Agriculture – 20  
(MUA-20)



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**Summary:** Applicant is requesting the following approvals:

1. Verification that the existing single family dwelling is a Nonconforming Structure in relation to the existing setbacks; and
2. Alteration of Nonconforming Use to allow the expansion of the existing front porch within the 30 ft front yard setback.

**Decision:** Approved with conditions.

Unless appealed, this decision is effective Friday, October 20, 2006, at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Friday, October 6, 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 Lisa Estrin, Staff Planner at 503-988-3043 x22597.

**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, October 20, 2006 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC):

*Nonconforming Uses:* MCC 36.7200 Nonconforming Uses, MCC 36.7210 Alteration, Expansion or Replacement of Nonconforming Uses, MCC36.7215 Verification of Nonconforming Use Status; and

*Administration and Procedures:* Chapter 37, including MCC 37.0550 Initiation of Action, MCC 37.0560 Code Compliance, MCC 37.0530(B) Case Procedures.

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 (2) 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.**

**Note: The Planning Director's policy is for the case planner to provide zoning approval of the final Plan on an appointment basis. Please contact Lisa Estrin at 503.988.3043 x22597 to set a time for zoning approval. At the time of land use sign-off of the building permit, a \$53.00 fee will be collected.**

<b>Notice to Mortgagee, Lien Holder, Vendor, or Seller:</b>
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ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.
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## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. The applicants statements are identified below as ‘**Applicant:**’. Staff comments and analysis are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### ***Property Description:***

**Applicant:** Presently the covered 20 inch high deck extends to about half of the front of the home. We would like to continue the covered deck across the remaining uncovered half of the house. The added deck and covered portion will not encroach towards the property line any more than does the present covered deck that needs to be rebuilt due to its age and condition.

1. The house we purchased was built in 1942. It is a small 900 sq. ft. home that has a covered deck that crosses half of the front of the house. From the neighbors we have talked with (see attached letter), it has been like this for more than 30 years. Other homes in the area that are of this age have similar covered decks or porches that are set-back from the property line as close or closer than ours.
2. The covered deck will add no additional noise, vibration, dust, glare, smoke or smells to the neighborhood.
3. The added deck will not add to or change the number of people visiting our home.
4. It is not being built for storage purposed, loading purposes, loading purposes, or for vehicle parking.
5. The continuing of the covered deck will improve the visual appeal of the home by giving the home a more uniform more finished look. The present deck is sparse and looks unfinished. The new deck will have a cedar lattice that will dress up the front of the home.
6. The deck is not being added for commerce, but for family pleasure. It will provide the kids with a fun, safe place to play that is covered and out of the elements.
7. There will be no impact on existing flora.
8. The covered roof will actually help with water by adding a continuous gutter across the front of the house. There will be no impact on the quality of the watershed.
9. We want to fix up a charming but run down little home. This change will add to the value of the property and to that of the neighborhood, by cleaning up and preserving a great old home. It will have no negative impacts to the neighborhood, to the traffic flow, or to the environment.
10. According to the neighbors, the covered deck that we presently have has been part of the home for more than 30 years. The neighbor in the house behind us on Margaret Street said that she has been there for almost 50 years and that the house has never been abandoned, let alone been vacant for the space of two years.

There are two purposes for extending the covered deck. The home is small, 900 sq. ft., with one main living area and two small bedrooms with no air-conditioning. Extending the covered deck will provide a cool area to sit outside in the warm summer evenings. It also provides a visual connection with the neighbors that enhance the neighborhood’s sense of community and is one aspect of crime prevention by environmental design. The final reason for wanting to extend the deck is to tie the front of the home into one cohesive element that is more pleasing to the eye and which looks more like the old elegant homes of the past.

**Staff:** The subject property is occupied by a single family dwelling constructed in 1942. The dwelling

is 963 sq. ft. in size and has a 420 sq. ft deck in the rear yard. In addition, the property contains a small shed and a playhouse. The property is located within the Multiple Use Agriculture – 20 (MUA-20) zoning district. This property is located in an old subdivision and has a mix of lot sizes and new and old dwellings.

## 1.00 ***Administration and Procedures***

### 1.01 **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 6, 2006 and was deemed complete as of August 4, 2006. An “Opportunity to Comment” notice was mailed on August 9, 2006 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. No written comments were received.

### 1.02 **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:** The proposed project is located on Tax Lot 4900, Section 20AD, Township: 1 South, Range: 4 East. Assessment & Taxation records show that the land is owned by John & Kim Kuechler and both have signed the General Application Form. John Kuechler has been designated the applicant in this case (Exhibit A.1). *This criterion has been met.*

### 1.03 **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:** There are no known violations on the subject site.

2.00 ***Verification of a Nonconforming Use***

2.01 **MCC 36.7215 Verification of Nonconforming Use Status.**

**(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:** MCC 33.0005(N)(2) defines a *Nonconforming Use* as “*A legally established use, structure or physical improvement in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the use regulations of the zoning district in which it is located.*” The County began regulating land uses in all areas of unincorporated Multnomah County in 1953 with an interim zoning ordinance. Permanent zoning was applied to the southwestern region of the County in July 1958. The existing dwelling was constructed in 1942 prior to the adoption of zoning. In 1958, the area was zoned R-7. The R-7 zoning district had the following yard requirements:

Minimum Yard Dimensions - Feet			
Front	Side	Street Side	Rear
20*	5	10	25

\*unless a previous building line less than this has been established, in which case the minimum front yard for interior lots shall be the average of the setbacks of the main structures on abutting lots on either side if both lots are occupied; if one lot is occupied and the other vacant, the setback shall be the setback of the occupied lot, plus one half the remaining distance to the required twenty (20) foot setback. If neither of the abutting side lots or tracts are occupied by a structure, the setback shall be twenty (20) feet.

The single family dwelling was established in 1942 with an 11 ft. 4 in. front yard setback to the front covered porch and a two (2) ft. side setback from the dwelling to the west property line (Exhibit A.7). On October 6, 1977, the County rezoned the subject property to Multiple Use Agriculture – 20 (MUA-20). The yard requirements in the MUA-20 district are as follows:

Minimum Yard Dimensions - Feet			
Front	Side	Street Side	Rear
30	10	30	30

With the zone change to MUA-20, the nonconforming scope of the single family dwelling front and western side setback was increased due to the larger required front yard dimension of 30 ft and 10 ft respectfully. Based on the evidence in the record, the single family dwelling with attached covered front porch is a lawfully established use that is nonconforming to present day Yard Requirements as listed above.

The single family structure, itself, is the nonconforming use on the site. County air photos from 1977, 1985, 1998, 2004 and 2005 (Exhibits B.3 – B.5, B.7 & B.8) show that the building has continued to exist in its nonconforming state since 1945. *These criteria have been satisfied.*

- 2.02      **(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 36.7215 (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 single family dwelling with attached 5 ft – 8 inch wide covered porch has existed in its current configuration since 1942 (Exhibit A.2). The scope of the nonconforming setbacks to the front and side property line increased on October 6, 1977 with the zone change of the area to MUA-20 zoning. The scope of the nonconforming setback increased at that time due to the MUA-20 zone having larger required yards than the R-7 zoning district. The nature and extent of the nonconforming dwelling is established by its square footage and its position to the property lines. No additional activity levels or scope are required to be determined for a residential use. *This criterion has been satisfied.*

- 2.03      **(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 structures became nonconforming to the County's Yard Dimensions in 1958 and the scope of its nonconforming setback was increased on October 6, 1977. Since the house was constructed prior to zoning and building codes, and since the nonconforming yard was also established prior to regulations, the nonconforming situation was lawfully established.

- 2.04      **(D) Except for nonconforming uses considered under MCC 36.7210 (B), the Planning Director may impose conditions to any verification of nonconforming use status to**

insure compliance with said verification.

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

**Staff:** No conditions have been included with this verification. This nonconforming application has been processed as a Type II permit as discussed above under section 1.01. *These criteria have been satisfied.*

- 2.05 **(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.**

**(G) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application.**

**Staff:** The evidence (Exhibit B.3, B.4, B.5, B.7 & B.8) in the record address the existence, continuity, nature and extent of the nonconforming structure. *These criteria have been satisfied.*

2.06 **MCC 36.7210 Alteration, Expansion or Replacement of Nonconforming Uses.**

**(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.**

**Staff:** This application is subject to the *no greater adverse impact* standard because it is not required to meet a health safety requirement. Planning staff has determined in the findings below that the proposed expansion of the covered porch will not have a greater impact of the neighborhood. *This criterion has been met.*

- 2.07 **(C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 36.7215, 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.**

**Staff:** The single family dwelling was constructed in 1942 per the A&T property records (Exhibit B.1). The proposed expansion of the attached covered porch across the front of the dwelling will add to the character of the dwelling and create a congregation place during summer days and evenings. This expansion will not affect or alter the use of the single family dwelling. No additional vehicle trips will be generated or additional occupants be added due to the expansion of the covered porch. No adverse impacts have been identified or will be generated to the neighborhood from this expansion. *This criterion has been met.*

- 2.08 **(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 application for an Alteration of a Nonconforming Use has been processed as a Type II permit as described above under section 1.01. *This criterion has been met.*

- 2.09 ***Multiple Use Agriculture – 20 Lot of Record Finding***

**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.**

**(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 36.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**(C) Except as otherwise provided by MCC 36.2860, 36.2875, and 36.4300 through 36.4360, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.**

**(D) The following shall not be deemed to be a lot of record:**

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**
- (3) An area of land created by court decree.**

**MCC 36.0005 Definitions**

**As used in this Chapter, unless the context requires otherwise, the following words and**



their derivations shall have the meanings provided below.

**(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.)**

**Staff:** The subject property was created in the year 1912 with the recordation of the Proctor Subdivision (Exhibit B.6). The County did not implement zoning in the area until 1958. The County did not have any applicable land division laws in 1912. The property remains in its original configuration and is described as Lot 9, Block 2, Proctor Tract. The subject property, Lot 9, Block 2 Proctor Tract is a *Lot of Record*.

### 3.00 **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary to allow the Alteration of a Nonconforming Use in the MUA-20 zoning district.

### 4.00 **Exhibits**

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	7/6/06

A.2	1	Site Plan	7/6/06
A.3	1	Proposed Floor Plan with Covered Porch – Sheet 1	7/6/06
A.4	1	Existing House Floor Plan – Sheet 2	7/6/06
A.5	1	New Elevations – Sheet 3	7/6/06
A.6	1	Existing Elevations – Sheet 4	7/6/06
A.7	1	Survey 47639 Dated 4/9/1984	7/6/06
A.8	1	Narrative Statement	7/6/06
A.9	1	Letter from Neighbor, Brian Peacock	7/6/06
A.10	3	Photos of Existing Covered Porch and Age of House Construction	7/6/06
<b>‘B’</b>		<b>Staff Exhibits</b>	<b>Date of Document</b>
B.1	2	A&T Printout for 1S4E20AD – 04900	7/6/06
B.2	1	Current Zoning Map	7/6/06
B.3	1	1998 Air Photo	9/29/06
B.4	1	2004 Air Photo	9/29/06
B.5	1	2005 Air Photo	9/29/06
B.6	2	Proctor Subdivision Recorded 1912	9/29/06
B.7	1	1977 Air Photo	9/29/06
B.8	1	1985 Air Photo	9/29/06
<b>‘C’</b>		<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	1	Complete Letter – Day 1	8/4/06
C.2	7	Opportunity to Comment	8/9/06
C.3	10	Administrative Decision	10/6/06