



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: T2-06-082

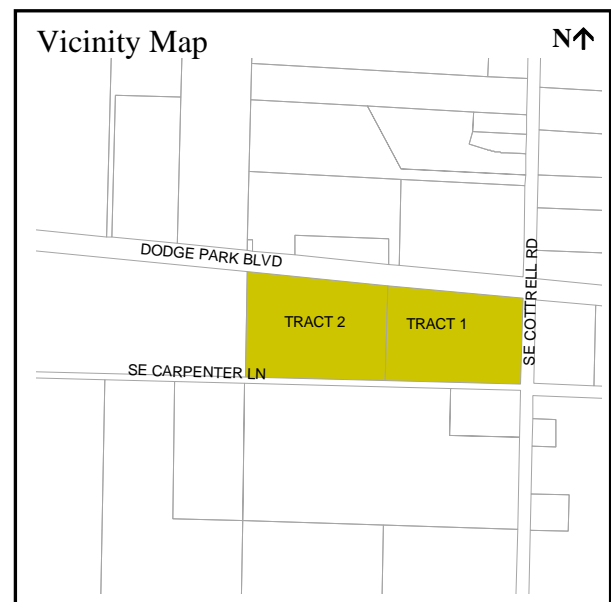
Permit: Property Line Adjustment /
Temporary Health Hardship

Location: 7625 SE Cottrell Rd
(Tract 1) Tax Lot 100, Section 22CB,
Township 1S, Range 4E, W.M.

(Tract 2) 34305 SE Carpenter Ln
Tax Lot 200, Section 22CB,
Township 1S, Range 4E, W.M.

Applicant: Scott and Karil Mallory

Owner: Scott and Karil Mallory



Summary: Property Line Adjustment to relocate a common boundary line between 7625 SE Cottrell Road (Tract 1) and 34305 SE Carpenter Lane (Tract 2) immediately adjacent to the west. Tract 1 would increase in size from the existing 6.19 acres to 11.69 acres. Tract 2 would decrease in size from 7.10 acres to 1.6 acres. A Temporary Health Hardship Permit has also been requested.

Decision: Approved, with conditions.

Unless appealed, this decision is effective March 8, 2007, at 4:30 PM.

Issued by:

By: _____
Kenneth Born, AICP, Planner

For: Karen Schilling- Planning Director

Date: February 22, 2007

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 Kenneth Born, AICP, Staff Planner at 503-988-3043 ext. 29397.

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 March 8, 2007 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): § 36.2855 - Dimensional Standards and Development Requirements; § 36.2860 - Lots of Exception and Property Line Adjustments; § 36.7970 - Property Line Adjustment (Lot Line Adjustment); § 36.0515 - Temporary Health Hardship Permit

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. **Prior to issuance of land use sign off for the building permit to site the replacement dwelling, a penal bond in the amount of \$1,000 is to be submitted to the Land Use Planning Section.**

2. The health hardship dwelling shall be removed from the property within six months after the health hardship ceases to exist. Failure to remove the health hardship dwelling within this time period may cause the forfeiture of the penal bond to the County.
3. The health hardship dwelling shall be for Monnie June Mallory and Henry C. Mallory. Upon their permanent departure from the property, the six month removal period shall commence.
4. The health hardship dwelling shall be connected to the same public facilities (e.g., sewer, water or power mains, curb cuts, etc.) as the permanent dwelling.
5. The Health Hardship Dwelling permit may be renewed if the Health Hardship situation continues. Every two years from the date this decision becomes final (March 8, 2007), the applicant shall apply for a renewal of the Health Hardship permit. This renewal shall include:
 - A recent (within 6 months prior to the two year deadline) physician's statement verifying that the Health Hardship situation still exists (MCC 36.0515(A)(6));
 - A letter from the care provider describing the continuing assistance being given. (MCC 36.0515(A)(6)); and
 - A recent (within 6 months prior to the two year deadline) authorization from the Sanitarian for continued use of the septic system (Policy 37)
6. The property owner, or representatives thereof, shall complete the adjustment pursuant to the attached "Applicant's Instructions for Finishing a Property Line Adjustment," and "Surveyor's Instructions for Finishing a Property Line Adjustment". This will entail survey and monumentation of the new lot line by a registered surveyor as required by MCC 36.7970.
7. Prior to recording the deeds, the property owner, or representative thereof, shall submit copies of the final survey, and legal descriptions to Multnomah County Planning for verification that the adjusted properties conform to the approved Tentative Plan Map. If the submitted documents conform with the approved Tentative Plan Map (Exhibit A.3) and zoning requirements staff will sign the survey and deeds. Multnomah County Planning must review and sign the survey before you submit your deed(s), surveys, and legal descriptions to County Records Management office at Assessment and Taxation and County Surveying for recording [MCC 36.7970].
8. For each of the two properties, a new deed shall be filed with County Records describing the property boundaries with a metes-and-bounds description. When the process is complete the portion of property that is transferred shall be merged into Tract 1 through the deed description describing the entire property. No additional lot or parcel shall be created. [MCC 36.2860].

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.

1.0 Project Description

Staff: The applicant is proposing to adjust a common property line between one lot located at 7625 SE Cottrell Road (hereafter Tract 1) and the lot immediately adjacent to the west at 34205 SE Carpenter Lane (hereafter Tract 2). This would be achieved by moving the westerly property line of Tract 2 approximately 514 feet to the east along the shared boundary. Tract 1 will gain an estimated 5.5 acres of land, while Tract 2 will lose an estimated 5.5 acres. After completion of the property line adjustment, Tract 1 would be approximately 11.69 acres in size. Tract 2 will have decreased from 7.10 acres to 1.60 acres in size.

The applicant is also requesting to use the existing 1,782 square foot manufactured home located at 34205 SE Carpenter Lane as a health hardship dwelling for both parents of the property owner, Scott Mallory. While currently sited on Tract 2, the dwelling would be located on Tract 1 subsequent to the property line adjustment. As such, Tract 2 would be vacant after the property line adjustment was finalized.

2.0 Site Description

Staff: The subject properties are located in the West of Sandy Rural Plan Area just south of the intersection between SE Dodge Park Blvd. and SE Cottrell Rd. Both lots are zoned Multiple Use Agriculture-20 (MUA-20), and with the exception of the two home sites, are currently devoted to agricultural uses. A 784 square foot manufactured home and 1248 square foot carport is located on Tract 1, along with two farm buildings, 946 and 1,664 square feet in size, respectively. A 1,782 square foot manufactured home and 240 square foot shed is located on Tract 2. The topography of both properties is generally flat (Exhibit B.4).

3.0 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 Director's 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 January 25, 2007. No comments were received.

4.0 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 Scott Mallory owns both Tax Lot 100 (Tract 1) & Tax Lot 200 (Tract 2). The property owner is authorized to be the applicant for the property line adjustment. *This criterion has been met.*

5. Both Properties Involved Are Lots Of Record

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.

Staff:

Tract 1 – The subject tract appears in its current configuration on the 1962 zoning maps. These maps are the oldest Multnomah County zoning maps and have been deemed to show the zoning in place when land use regulations were first enacted. The current size of the property also exceeds the minimum lot size pursuant to the zoning designation shown to encumber the property on the 1962 maps (Suburban Residential (S-R)). This evidence is sufficient to show that one lot of record encompassing the entire 7.10 acres exists. Tract 1 is a *Lot of Record*.

Tract 2 – The applicant has provided deed records for the property at 34305 SE Carpenter Lane which demonstrate the creation of the subject tract. This property was created in its current configuration by a deed on June 2, 1977 recorded in Book 1182, Page 1866 (Exhibit A.5). It was subject to regulations pursuant to the SR zoning district and the time it was created. A 40,000 square foot minimum for new parcels was in effect. The parcel satisfied all applicable zoning laws at the time of its creation because it met the minimum parcel size, and partition requirements were not in place until October of 1978. Tract 2 is a *Lot of Record*.

6.1 Property Line Adjustments Are Allowed In The Multiple Use Agricultural Zoning District as a Review Use

§ 36.2825 Review Uses

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

Staff: MCC 36.2860 allows for a property line adjustment in the Multiple Use Agriculture-20 (MUA-20) zone. The applicant has demonstrated compliance with the applicable code criteria. *This criterion has been met.*

6.2 § 36.2860 Lots of Exception and Property Line Adjustments.
(B) Property Line Adjustment

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

Applicant: *We propose to make property #1 11.69 acres and property #2 1.6 acres, thus not creating a new lot of parcel.*

Staff: The proposed Property Line Adjustment begins with two tracts and ends with two tracts as seen on the submitted site plan (Exhibit A.3). A new parcel is not created. *This criterion has been met.*

6.3 (2) One of the following situations occurs:

(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.

Applicant: *The two properties are as follows: Property #1 is 6.19 acres, 7625 SE Cottrell Rd., Gresham Or. Sec. 22 1 S4E, TL 100, R 342538. Property #2 is 7.1 acres, 34305 SE Carpenter Lane, Gresham OR. Sec. 22 1 S 4E, TL 200, R 342537.*

Staff: Tract 1 is currently 6.19 acres in size and will be enlarged to 11.69 acres. Tract 2 is currently 7.10 acres in size and will be reduced to 1.60 acres. *This criterion has been met.*

6.4 § 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.

Staff: Both properties are zoned Multiple Use Agriculture – 20 (MUA-20) which has a minimum lot size of 20 acres to create a new parcel or lot. Tract 1 is currently 6.19 acres in size and will be enlarged to 7.10 acres. Tract 2 is currently 7.10 acres in size and will be reduced to 1.60 acres.

This criterion has been met.

6.5 (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

Applicant: We propose to make property #1 11.69 acres and property #2 1.6 acres, thus not creating a new lot of parcel.

Staff: Tract 1 consists of 1 lawfully created parcel as discussed above under Finding 5. Tract 2 is a parcel which also was lawfully created (See Finding 5). The property line adjustment will begin with 2 lawful parcels and end with 2 lawful parcels (Exhibit A.3). *This criterion has been met.*

6.6 (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

Applicant: Since we own both properties, there is no need for written consent from another property owner for the lot line adjustment.

Staff: Staff concurs. *This criterion has been met.*

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

Staff: The adjusted properties meet all dimensional requirements of the MUA-20 zone as seen on the tentative plan map submitted by the applicant (Exhibit A.3). *This criterion has been met.*

6.8 (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: SE Carpenter Lane and SE Cottrell Road are both classified as a Rural Local road, with 50' right-of-way design standard. The roadway width is currently in compliance with the Street Standards Code and Rules. *This criterion has been met.*

7.1 Temporary Health Hardship Permits are Allowed in the Multiple Use Agricultural Zoning District as a Review Use

§ 36.2825 Review Uses

(A) Temporary uses when approved pursuant to MCC 36.0510 and 36.0515.

Staff: MCC 36.0515 allows the temporary placement of a manufactured dwelling to be utilized as a Health Hardship dwelling. The applicant has demonstrated compliance with the applicable code criteria. *This criterion has been met.*

7.2 § 36.0515 Temporary Health Hardship Permit

(A) The Planning Director may grant a Temporary Health Hardship Permit to allow occupancy of a mobile home on a lot with a single family residence based on the following findings:

(1) The person with the health hardship is either one of the property owners or is a relative of one of the property owners.

(a) If the person with the health hardship is one of the property owners, then the care provider in the other residence is not required to be a relative.

(b) If the person with the health hardship is a relative of one of the property owners, then the care provider must be a relative.

(c) For the purposes of this section, a relative is defined as a grandparent, parent, child, brother or sister, either by blood or legal relationship.

Applicant: It's important to note that the persons with the health hardships, Henry and June Mallory, are my parents.

Applicant: Not only do both of my parents qualify for MHH, but when one dies I want the other to have the security of knowing that they have a place to stay until they pass away. I know that we have to reapply every two years, but I didn't want to start from scratch with the remaining living parent.

Staff: The parents of the current property owner (Henry and June Mallory) will live in the health hardship dwelling. Care will be provided by the property owners (Scott and Karil Mallory). *This criterion has been met.*

7.3 (2) The person with the health hardship is unable to adequately provide daily self-care needs because of a physical and/or medical impairment based upon a statement from a licensed physician describing the nature of the impairment and its resultant limitations. The physician shall indicate that those limitations are severe enough to warrant daily assistance, and that at least one of the residents of the property is capable of providing that assistance.

Staff: Two physician statements have been submitted by the applicant for Henry C. Mallory and Monnie June Mallory (Exhibit A.6 and A.7). *This criterion has been met.*

7.4 (3) There is a demonstrated lack of appropriate alternative accommodations within the area entitled to notice, including, but not limited to, rental housing or space within the existing residence.

Staff: The surrounding area is zoned as Multiple Use Agriculture-20 (MUA-20), and has limited residential opportunities, including rental housing. The existing dwelling is not adequate. *This criterion has been met.*

7.5 (4) The following locational criteria are satisfied:

(a) The proposed siting of the mobile home will satisfy the applicable setback and lot coverage standards of the zoning district without variance.

Staff: As found under Finding 8.1, the health hardship dwelling meets the applicable setback. The Multiple Use Agriculture zone does not have a lot coverage standard. *This criterion has been met.*

- 7.6 (b) The mobile home shall be located in a manner which satisfies the locational requirements of a second residence on properties capable of being divided under the existing zoning within those areas designated as urban by the Comprehensive Framework Plan.**

Staff: The property is zoned Multiple Use Agriculture-20 (MUA-20) and may not be divided at this time. *This criterion is not applicable at this time.*

- 7.7 (c) The mobile home will not require any new main connections to public facilities or services (e.g., sewer, water or power mains, curb cuts, etc.) unless sited in the manner allowed in subsection (b) above, in which case those services may be extended to the area on the property which satisfies the locational requirements of a second residence.**

Staff: No new main connections to public facilities or services have been proposed by the applicant. *This criterion has been met.*

- 7.8 (d) The mobile home will not require any attached or detached accessory structures other than wheelchair ramps to accommodate the health care needs of the proposed occupant.**

Staff: The applicant has not proposed to construct accessory structures in conjunction with the health hardship application. *This criterion has been met.*

- 7.9 (5) A penal bond in the amount of \$1,000 is posted to insure removal of the mobile home within six months after the health hardship ceases to exist.**

Applicant: *A penal bond in the amount of \$1,000 prior to approval to insure removal of the mobile home within 6 months after the health hardship ceases to exist.*

Staff: A condition of approval has been included to require a bond prior to issuance of the land use sign-off of the building permit for the replacement dwelling. *As conditioned, this criterion has been met.*

- 7.10 (6) As a condition of approval, every two years from the approval date the applicant shall submit:**

- (a) A recent (within 6 months prior to the two year deadline) physician's statement verifying that the situation described in (2) above still exists; and**
- (b) A letter from the care provider describing the continuing assistance being given.**

Applicant: *We also agree to submit, every two years, a physician's statement verifying that the MHH still exists and the reasons why and a letter describing continuing assistance being given to my parents.*

Staff: A condition of approval has been included requiring renewal of the health hardship permit. *As conditioned, this criterion has been met.*

8.1 § 36.2855 Dimensional Standards and Development 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.

Staff: The adjusted properties meet all dimensional requirements of the MUA-20 zone as seen on the tentative plan map submitted by the applicant (Exhibit A.3). *This criterion has been met.*

9.0 Conclusion

Based on the findings, narrative, and other information provided herein, this application has satisfied the applicable approval criteria required for a property line adjustment and temporary health hardship permit.

10.0 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Comments

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	07/14/06
A.2	3	Application Narrative	01/09/07
A.3	4	Site Plans <ul style="list-style-type: none"> a. Subject parcels in current configuration b. Subject parcels in current configuration w/ dimensions, structures, driveways, septic information c. Subject parcels after property line adjustment d. Subject parcels after property line adjustment with structures, driveways, septic information 	01/05/07
A.4	11	Service Provider Forms <ul style="list-style-type: none"> a. Fire District Review Access b. Fire District Review Fire Flow Requirements c. Certification of Water Service d. Certification of On-Site Sewage Disposal 	01/05/07
A.5	8	Deed Information <ul style="list-style-type: none"> a. Warranty Deed, Book 571 Page 287-288, Recorded 10/10/1940 b. Warranty Deed, Book 519 Page 86-87, Recorded 03/10/1964 c. Real Estate Contract, Book 2220 Page 1856-1858, Recorded 07/19/1999 d. Statutory Special Warranty Deed, Dated 02/05/1999 	07/14/06
A.6	1	Physician's Statement for Monnie June Mallory	01/23/06
A.7	1	Physician's Statement for Henry C. Mallory	02/02/07
'B'		Staff Exhibits	Date
B.1	2	A&T Property Information	N/A
B.2	1	Zoning Map	N/A
B.3	3	Site Visit Photos	02/05/07
B.4	1	Aerial Photograph with 10 foot contour lines	N/A
'C'		Administration & Procedures	Date
C.1	2	Incomplete Letter	08/07/06
C.2	1	Complete Letter – Day 1	01/25/07
C.3	4	Opportunity to Comment	01/25/07

C.4	3	Administrative Decision	02/22/07
'D'		Comments	Date
D.1	1	Multnomah County Transportation Planning	02/07/07