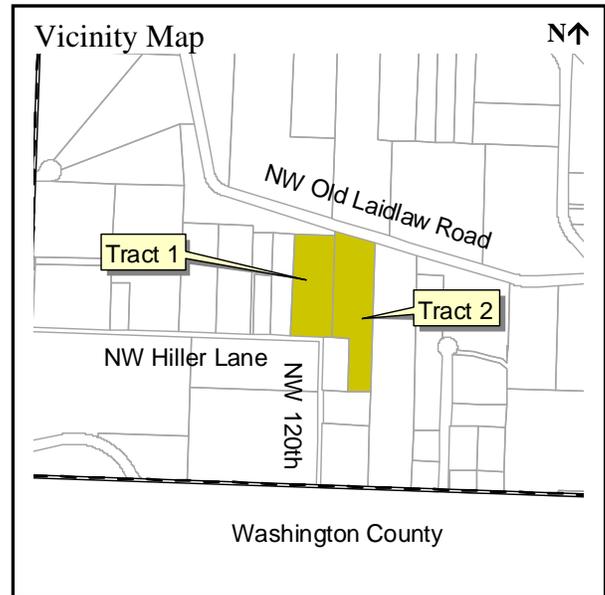




NOTICE OF DECISION

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

Case File: T2-07-032
Permit: Property Line Adjustment
Location: **Tract 1:**
12001 NW Hiller Lane
Tax Lot 3500 of Lot 12, Bonny Slope,
Sec 22, T1N, R1W, W.M.
Tax Account #R09060-1060
Tract 2
Tax Lot 1900 Lot 11; Bonny Slope
Sec 22, T1N, R1W, W.M.
Tax Account #R0906-0980
Applicant: Brian Nelson
Owner: Brian and Stephanie Nelson
Carl and Andrea Boden



Summary: Increase the size of Tract 1 from 83,361 square feet (1.91 acres) to 84,264 square feet (1.93 acres) and decrease the size of Tract 2 from 114,562 square feet (2.63 acres) to 113,691 square feet (2.61 acres).

Decision: Approved With Conditions

Unless appealed, this decision is effective Tuesday, February 19, 2008, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, February 05, 2008

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, x29270.

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 Tuesday, February 19, 2008 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 37.0560 Code Compliance; 33.0005 Lot of Record; 33.3155 Dimensional Requirements; 33.3160 Property Line Adjustments; 33.3170 Lot of Record; 33.3185 Access.

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. The request for a permit extension must be submitted prior to the expiration of the approval period.**

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 X. This will include the survey and monumentation of the new lot line by a registered surveyor.**

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: Increase the size of Tract 1 from 83,361 square feet (1.91 acres) to 84,264 square feet (1.93 acres) and decrease the size of Tract 2 from 114,562 square feet (2.63 acres) to 113,691 square feet (2.61 acres).

2. **Site Characteristics**

Staff: The properties involved are located in the Bonny Slope area of the West Hills Rural Plan Area. The area is also commonly known as Area 93 in reference to Metro's delineation of areas that were brought into the Urban Growth Boundary in 2002. Both properties are zoned Rural Residential with no overlays. The area is characterized by residential development, substandard right-of-way width for roads, and slopes varying from slight to steep.

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 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 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: An Opportunity to Comment notification was mailed on December 5, 2007 to property owners within 750-feet of the property lines. A couple of phone calls and one letter were received regarding the Opportunity to Comment.

The phone calls were directed towards Multnomah County's policies regarding Area 93 and urban conceptual planning. Those policies and plans are still being discussed at an elected official and departmental level and are not codified or being implemented by the current zoning code. Nor do they impact the current application for a Property Line Adjustment. The subject proposal only needs to address the current zoning rules in place. The letter from a neighbor expressed concern

over drainage issues should a dwelling eventually be placed on Tract 2. A dwelling is not a part of this application. However, should one be proposed in the future, the current development requirements would include the stormwater being reviewed by a professional engineer to ensure runoff generated from the development would be handled completely on site for a 10-year/24-hour storm event.

Procedures met.

4. **Code 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: There are no known code compliance issues on the involved properties.

Criterion met.

5. **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 Stephanie and Brian Nelson as owners of Tract 1 and Carl and Andrea Boden as owners of Tract 2 (Exhibit 1). Brian Nelson and Carl Boden have signed the Property Line Adjustment Application Form (Exhibit 2) as the owners of the properties, thus authorizing the processing of the permit.

Criterion met.

6. **Property Line Adjustments Are Allowed As A Review Use**

MCC 33.3125 Review Uses

(F) Property Line Adjustment pursuant to the provisions of MCC 33.3160

Staff: Property Line Adjustments are allowed under the code.

Criterion met.

7. **Rural Residential Dimensional Requirements**

MCC 33.3155 Dimensional Requirements

A. **(A) Except as provided in MCC 33.3160, 33.3170, 33.3175 and 33.4300 through 33.4360, the minimum lot size for new parcels or lots shall be five acres. For properties within one mile of the Urban Growth Boundary, the minimum lot size shall be as currently required in the Oregon Administrative Rules Chapter 660, Division 004 (20 acre minimum as of October 4, 2000).**

Staff: No new lots are being created as a result of this application.

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 lots are being created; therefore lot size is not a factor in the decision.

Criterion met.

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: As seen on the submitted preliminary plan (Exhibit 3), the existing structures meet the required setbacks to the proposed property line.

Criteria met.

D. **(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

Staff: No new structures are a part of the application that would require an increase in the yard requirement.

Criterion met.

8. **Property Line Adjustment Approval Criteria**

A. **MCC 33.3160 Lots of Exception and Property Line Adjustments**

(B) Property Line Adjustment

Pursuant to the applicable provisions in MCC 33.7790, 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. **(1) The following dimensional and access requirements are met:**

(a) The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements;

(b) If the properties abut a street, the required access requirements of MCC 33.3185 are met after the relocation of the common property line; and

Staff: The new property line is 10-feet to the garage on Tract 1. This new property line is a side lot line and therefore the required setback is 10-feet, which is met. Both parcels will abut NW120th Ave with the adjustment. Therefore, the access requirement of having road frontage (MCC 33.3185) is met.

Criteria met.

2. **(2) At least one of the following situations occurs:**

(a) The lot or parcel proposed to be reduced in area is larger than 5 acres prior to the adjustment and remains 5 acres or larger in area after the adjustment, or

(b) The lot or parcel proposed to be enlarged in area is less than 10 acres in area prior to the adjustment and remains less than 10 acres in area after the adjustment.

Staff: Tract 1 is being enlarged and begins less than 10-acres in size and after the adjustment remains less than 10-acres in size. Tract 2 is being reduced in size and begins less than 5-acres in size and after the adjustment remains less than 5-acres. Both (a) and (b) above are met.

Criteria met.

B. **MCC 33.7790 Property Line Adjustment**

A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:

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

Staff: Two parcels exist prior to the adjustment and two would exist after the adjustment.

Criterion met.

2. **(B) 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**

Staff: The Property Line Adjustment application form (Exhibit 4) has the signatures of both property owners.

Criterion met.

3. **(C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district; and**

Staff: The adjustment meets the Rural Residential approval criteria as shown in Finding #8(A).

Criterion met.

9. **Both Properties Are Lots of Record**

MCC 33.3170 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 33.0005, 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, RR zone applied, Ord. 148 & 149;**
- (5) **October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;**

(6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;

(7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

MCC 33.0005

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 33.7785. 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 Re-cording 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.)**

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**

2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

Staff: Tract 1 was originally platted in 1926 as part of Lot 12 of the Bonny Slope subdivision. The plat was approved by the County and therefore met all land division rules in place at the time. In August of 1950, Lot 12 was divided into two, including the subject property. In 1950, there were no zoning requirements and no requirements for minor partitions. Therefore, Tract 1 met all land division and zoning laws in place at the time of its creation. Since its creation, portions of the property were dedicated for road purposes which does not impact its Lot of Record status.

Tract 2 was originally part of Lot 11 of the 1926 Bonny Slope Subdivision. It was subsequently part of the County approved case LE 3-99 (Property Line Adjustment). At that time the property met all land division and zoning requirements. It has not changed its configuration since that approval and therefore is still a Lot of Record.

Both involved parcels are Lots of Record.

Criteria met.

Conclusion

Considering the findings and other information provided herein, this application for a property line adjustment, as conditioned, satisfies applicable Multnomah County Zoning Ordinance requirements.

Exhibits

1. Multnomah County Assessment And Taxation Information Sheet For Tract 1
2. Multnomah County Assessment And Taxation Information Sheet For Tract 2
3. Preliminary Site Plan
4. Property Line Adjustment Application Form With Owner’s Signatures
5. Instructions On How To Finish A Property Line Adjustment