



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.

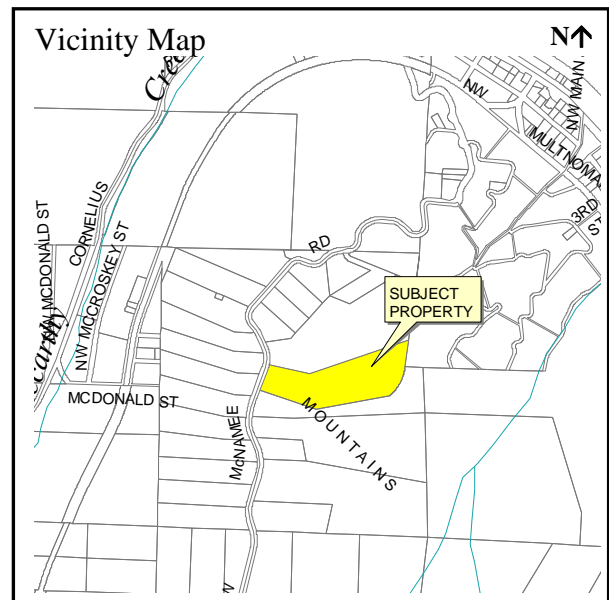
Case File: T2-07-047

Permit: Zoning Code Interpretation

Location: 16032 NW McNamee Rd
Tax Lot 900, Section 19D,
Township 2N, Range 1W, W.M.
Tax Account #R97119-0330

Applicant: Mark Johnson

Owners: Mark and Susan Johnson



Summary: Request for an interpretation of the zoning code as to whether a Farm Help Dwelling is allowed in the Commercial Forest Use-2 Zoning District.

Decision: Staff finds a Farm Help Dwelling is not listed as an Allowed, Review or Conditional Use in the Commercial Forest Use-2 zoning district and therefore is not allowed.

Unless appealed, this decision is effective June 19th, 2007 at 4:30 PM.

Issued by:

By: _____
Adam Barber, Senior Planner

For: Karen Schilling- Planning Director

Date: June 5th, 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 Directors 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 Adam Barber, Staff Planner at 503-988-3043 x 22599.

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 June 19th, 2007 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): **33.2200 – 33.2310**, Commercial Forest Use-2 Zoning Regulations; **Chapter 37**, Administration and 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>

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.

DECISION OF THE PLANNING DIRECTOR

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria are in bold font. Staff comments and analysis are identified as **Staff:** and follow Applicant comments identified as *Applicant:* to the applicable criteria.

1.0 SUMMARY OF REQUEST

Staff: The applicant has requested an interpretation of the zoning code as to whether a farm help dwelling is an allowed (i.e. permitted use) in the Commercial Forest Use-2 zoning district. The Planning Director has the authority to decide all questions of interpretation or applicability to specific properties of any provision of the comprehensive framework plan, rural area plan, or other land use code (**Multnomah County Code, MCC 37.0740(A)**). An application for an interpretation shall be processed as a Type II application (**MCC 37.0740(B)**). Although the applicant would ultimately like to establish a farm help dwelling on the subject property, this particular request is more hypothetical in nature with no specific development plan proposed at this time. The applicant has requested this hypothetical determination as a necessary step of the Ballot Measure 37 process (Oregon Revised Statutes Chapter 197).

On April 12th, 2007 the Board of Multnomah County Commissioners found Mark and Susan Johnson had a valid Measure 37 claim to establish a farm help dwelling and as a result removed the challenged current land use regulations (Board Order 07-060 – Exhibit A5). It was then discovered that the applicant had not yet submitted a Measure 37 claim to the State's Department of Land Conservation and Development (DLCD) which is a necessary step. Measure 37 contained a two year window for streamlined claim submittal to the state meaning if an owner had not submitted a claim to the state by December 6th of 2006, they would first need to receive a denial from the local government for the proposed use before submitting the claim. This scenario describes both the applicant's situation and the purpose of this particular Planning Director determination. In summary, the applicant is seeking a formal land use determination from Multnomah County that a Farm Help Dwelling is not a permitted use in the CFU-2 zone so that he can submit a Measure 37 claim to the State of Oregon.

2.0 VICINITY AND PROPERTY DESCRIPTION

Staff: The 11.56 acre subject property is located along NW McNamee Road roughly ¾ mile south (uphill) of the intersection between NW McNamee Road and Highway 30 (Exhibit A1). The property is primarily forested with two defined clearings containing structures visible in an aerial photo taken in August of 2004 (Exhibit A2). According to the County's tax assessment records, the subject property at 16032 NW McNamee Road contains a dwelling constructed in 1986. The subject property is zoned Commercial Forest Use-2 with zoning overlays for Significant Environmental Concern (wildlife habitat and view) protection. The majority of the eastern 3/4 of the property is mapped within a Slope Hazard overlay zone.

The majority of the other properties in the vicinity are also zoned either Commercial Forest Use-2 (CFU-2) or CFU-1 with exception to a strip of residentially zoned lots opposite the subject property on the other side of NW McNamee Road (Exhibit A3). The vicinity is defined as forested properties with single family dwellings located on the smaller forested lots adjacent to NW McNamee. Slopes in the area tend to be steep (between 25% - 40%), sloping away from NW McNamee Road on either side of the road. Property sizes in the area range greatly in acreage with the 11.56 acre subject property falling within the middle of that range.

3.0 **COMMERCIAL FOREST USE-2 ZONING ALLOWANCES**

Staff: Zoning allowances in the Commercial Forest Use-2 zone are listed as Allowed, Review and Conditional Uses (**MCC 33.2220 – 33.2230**). A use must be listed within one of these three categories to be considered a possibility. **Table 1** below lists all dwelling allowances in the Commercial Forest Use-2 zoning district.

ALLOWED USES	MCC REFERENCE
<i>Alteration and maintenance of an existing lawfully established habitable dwelling</i>	33.2220(D)
<i>Caretaker residence for a public park or fish hatchery</i>	33.2220(G)
REVIEW USES	
<i>Expansion, replacement or restoration of an existing lawfully established habitable dwelling</i>	33.2225(A)
<i>Large acreage dwelling</i>	33.2225(B)(1)
<i>Template dwelling</i>	33.2225(B)(2)
<i>Heritage tract dwelling</i>	33.2225(B)(3)
<i>Mobile home in conjunction with a health hardship</i>	33.2225(C)
<i>Mobile home during construction or reconstruction of a residence</i>	33.2225(B)
CONDITIONAL USES	
<i>Private seasonal accommodations for a fee hunting or fishing operation</i>	33.2230(A)(15)

Table 1. List of all dwelling allowances in the CFU-2 zone (MCC 33.2220 – 33.2230).

None of the dwelling allowances in Table 1 are tied to management of an agricultural use. Other zoning districts, such as the Exclusive Farm Use zone, do clearly list a farm help dwelling allowance¹ and therefore Staff finds a farm help dwelling allowance has been purposely omitted from the CFU-2 zoning district and therefore is not allowed.

4.0 **COMMENTS**

Upon receipt of a complete application, notice of the application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750-feet of the subject tract (**MCC 37.0530(B)**). No written comments were submitted.

CONCLUSION

Considering the findings and other information provided herein, Staff finds that the Commercial Forest Use-2 zoning district does not allow establishment of a farm help dwelling.

EXHIBITS

All materials submitted by the applicant, prepared by County staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record of this application. Exhibits referenced herein are enclosed, and a brief description of each is listed below:

¹ MCC 33.2625(C) – A farm help dwelling for a relative on real property used for farm use.

<u>Label</u>	<u>Page(s)</u>	<u>Description</u>
A1	1	Vicinity map prepared by Staff
A2	1	2004 aerial photo prepared by Staff
A3	1	Zoning map presented by Staff
A4	1	Map of property prepared and submitted by the applicant
A5	4	Ballot Measure 37 Board Order 07-060