



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

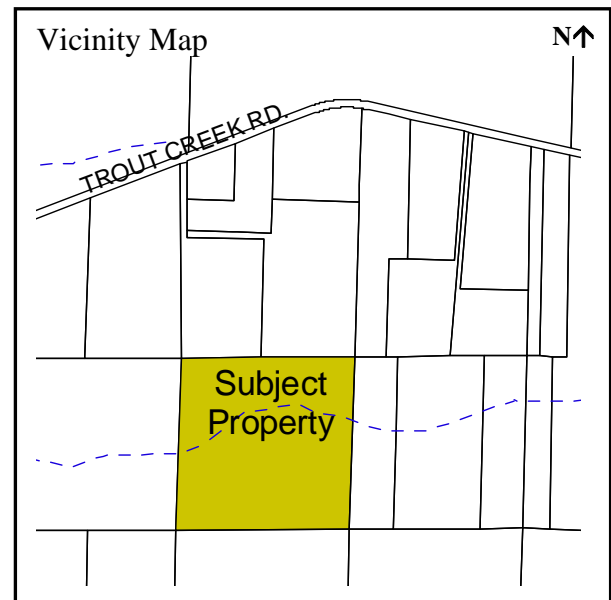
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-08-014

Permit: Administrative Decision by Planning Director

Location: 41200 SE Trout Creek Road
Tax Lot 300, Section 18D,
Township 1 South, Range 5 East, W.M.
R995180040

Applicant/Owner: John Vaughn
41200 Trout Creek Road
Corbett, OR 97019



Summary: Request to build 3,600 square foot (50' by 72') accessory building for storage of forest equipment, personal items and a moving business tractor/trailer as well as personal use metal shop and wood shop in the Commercial Forest Use – 4 (CFU-4) Zone District.

Decision: **Denied**

Unless appealed, this decision is effective June 12, 2008, at 4:30 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Thursday, May 29, 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 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 George A. Plummer, Staff Planner at 503-988-3043, ext. 29152.

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 12, 2008 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37: Administration and Procedures and MCC 35.2200 et. seq: Commercial Forest Use CFU-4

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.

FINDINGS AND CONCLUSIONS

This decision is based on the findings and conclusions in the following sections.

Staff Report Formatting Note: To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. At the end of the report, Exhibits are described.

1. DESCRIPTION OF THE PROPOSAL

Applicant: *I own and operate a full-size tractor-trailer, moving the contents of customers homes coast to coast On average, I am away from the property from May through October or November, then I'm home November through April or May.*

My wife and I manage 40 forested acres and cultivate the trees through selective cutting, removal of deciduous trees and invasive species, and planting of native evergreens.

The acreage upon which I live is at the end of a private driveway, far away from the road and all of my neighbors. No one drives by my house -they only come to it as a destination.

I would like to build a barn (i.e. accessory building) on my property, so that when I am at home I can store my property (i.e. tractor-trailer) inside my barn, as well as having room for a metal shop, wood shop, , parking for a boat, and vehicles and tractors for maintaining 39 acres of forest.

There are concerns regarding the size of my accessory building because it will be a total of 3,600 square feet, which is more than the allowed 2,500 square feet

My commercial business is not operated out of this property. I leave, conduct business, and return. I have the right to protect my personal property from the elements.

I have a need to store my equipment inside of a barn and to be able to build it according the appropriate size. If it is built, no one in the vicinity will object or complain or receive harm from it, since it is not visible, would not block views, nor would impact any neighbor.

I plan to replace my existing older house with a new house after I build the barn. The house will have a daylight basement, main floor and an upstairs with bedrooms. The size of the barn will be in proper proportion to the barn

Staff: The applicant has requested an approval to build a 3,600 square foot (50' by 72') accessory building for storage of forest equipment, personal items and a moving business tractor/trailer as well as a personal use metal shop and wood shop in the Commercial Forest Use – 4 (CFU-4) Zone District (Exhibits 1.3 and 1.4). This application request did not include replacement of the dwelling.

2. SITE AND VICINITY CHARACTERISTICS

Applicant: *This site is 1480 feet from Trout Creek road, and is bordered by 40 undeveloped forested acres to the west. My nearest neighbor is 675 feet from the north property line. South of me my neighbor's house is not visible. On the east the neighbor is 1300 feet away. From my building site I cannot see any neighbors' buildings, even in the late winter after the leaves have fallen off of all the deciduous trees.*

The site and elevation of this barn: Elevation: The elevation of the location of this site is 50 feet below the highest point to the south on the 40 acres, and 25 feet below the hill to the north.

The site location is 600 feet from Trout Creek and is the only flat spot on this acreage. The site is as close to Trout Creek Road as possible. This site is the most beneficial location for forest management because it is established and no trees will have to be removed in the construction area. This site is within 100 feet of my house.

Staff: The subject property is a 40 acre parcel located in the East of the Sandy River Rural Plan Area within the Commercial Forest Use – 4 (CFU-4) Zone District (Exhibit 2.2). The property has a Hillside Development (HD) Overlay District and a Policy 21 Stream Overlay District, however proposed development is entirely outside these overlay areas (Exhibits 1.2 and 2.3). The subject property has a mobile home dwelling that was placed through Building Permit MMH 93-194 with County Planning Zoning Review and Land Division Review on September 11, 1992 (Exhibit 1.5). The proposed development area has a relatively shallow slope. The property is accessed from Trout Creek Road via easements across other properties.

The subject property is surrounded by properties in the CFU-4 District with forest use as the predominate land use in the area. Parcels to the north and east are developed with residential uses and properties to the west and south are not developed (Exhibit 2.4). There are several nearby parcels that are similar in size to the subject property however to the north and east, properties developed with a residence tend to be smaller in size.

3. OWNERSHIP

MCC 37.0550: 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.

Staff: County Assessment records show the property owner as John M. Vaughn (Exhibit 2.1). Mr. Vaughn signed the applicant form providing the necessary authorization to process the application (Exhibit 1.1).

4. TYPE II CASE PROCEDURES

- 4.1. MCC 37.0530 (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: The Type II (Administrative Decision by the Planning Director) process was applied to this case. An opportunity to comment was mailed to property owners within 750-feet of the property lines on April 17, 2008. A letter of comment was received from Rebecca Bruns, 41960 Trout Creek Road (Exhibit 3.1). In her letter Ms. Bruns stated that she had, "...no objection to the permit as long as it meets The East of the Sandy River Rural Area Plan and the codes (MCC 35.0000)." She continued with a series of questions and concerns she listed which addressed the proposed use of the building for commercial tractor-trailer storage. We address proposed use of the building for commercial tractor-trailer storage in findings in Section 5 of this decision.

This decision review will include findings detailing how the proposed development meets or does not meet the Code requirements which enact the County Comprehensive Plan and East of the Sandy River Rural Area Plan policies.

5. COMMERCIAL FOREST USE – 4 ZONE DISTRICT

5.1. ALLOWED USES

MCC 35.2220 (T) Accessory Structures:

- (1) Other structures or uses listed below when customarily accessory or incidental to any use permitted or approved in this district.**
 - (a) Garages or carports;**
 - (b) Pump houses;**
 - (c) Garden sheds;**
 - (d) Workshops;**
 - (e) Storage sheds;**
 - (f) Greenhouses;**
 - (g) Woodsheds;**
 - (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;**
 - (i) Swimming pools, pool houses, hot tubs, saunas, and changing rooms;**
 - (j) Sport courts;**
 - (k) Gazebos, pergolas, and detached decks;**
 - (l) Fences, gates, or gate support structures; and**
 - (m) Similar structures.**
- (2) If the accessory structure is a building, then to be an "allowed use" the foot print of the building in combination with the foot-print of all other accessory buildings on the property shall not exceed 2500 square feet.**
- (3) If the accessory structure has a bathroom or kitchen facilities, then prior to issuance of the building permit the property owner shall record a deed restriction with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling.**
- (4) Buildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions.**

Applicant: *I would like to build a barn (i.e. accessory building) on my property, so that when I am at home I can store my property (i.e. tractor-trailer) inside my barn, as well as having room for a metal shop, wood shop, parking for a boat, and vehicles and tractors for maintaining 39 acres of forest.*

I own and operate a full-size tractor-trailer, moving the contents of customers homes coast to coast. On average, I am away from the property from May through October or November, then I'm home November through April or May.

My commercial business is not operated out of this property. I leave, conduct business, and return. I have the right to protect my personal property from the elements.

The goal of this new guideline is not to control the size of barns, but to avoid small lot areas to become dominated by commercial activities. This guideline needs to take into consideration the size of the acreage or its location. In my case the 40 acres --as well as my occupation--necessitate a barn of this size, and the location of the barn ensures that it will not disturb any neighbors on their neighboring acreage or be unattractive to those driving by on the nearest road. In fact, it will even improve the appearance of the property, because my equipment and vehicles will be stored away out of sight instead of scattered around the property.

There are concerns regarding the size of my accessory building because it will be a total of 3,600 square feet, which is more than the allowed 2,500 square feet

Staff: The applicant proposes to use the proposed barn for a metal shop, wood shop, parking for a boat, and vehicles and tractors for maintaining the 39 acres of forestland all which are uses listed as accessory uses that are customarily accessory or incidental to the permitted use the dwelling. However the applicant also proposes to use the proposed building to store a commercial coast to coast moving business tractor-trailer rig. The storage of commercial business property is a commercial use of the building. Storage of commercial business property use is not a use that is listed as an accessory use. A building used to store commercial business equipment is not a use that is customarily accessory or incidental to the permitted use on the property, the dwelling. A building used to store commercial business equipment is a primary use which is not allowed in the CFU-4 Zone District.

Additionally the proposed building with a 3,600 square foot footprint does not meet MCC 35.2220 (T)(2). This code section does not allow a building in combination with the foot-print of all other accessory buildings on the property that exceeds 2,500 square feet as an use allowed outright. A building this large must be reviewed under the CFU-4 Review Uses and must meet the criteria of MCC 35.2225(M).

If the portion of the building that is proposed for parking the commercial vehicle were eliminated from the building, it would be a total of 2,232 square feet meeting the 2,500 square feet cumulative footprint standard (if there are no other accessory structures) and could be approved as an allowed use. The applicant has not proposed this sized structure at this time.

5.2. REVIEW USES

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

MCC 35.2225 (M) Structures or uses customarily accessory or incidental to any use permitted or approved in this district, which do not meet the “accessory structures” standard in MCC 35.2220 Allowed Uses.

Applicant: *I would like to build a barn (i.e. accessory building) on my property, so that when I am at home I can store my property (i.e. tractor-trailer) inside my barn, as well as having room for a metal shop, wood shop, , parking for a boat, and vehicles and tractors for maintaining 39 acres of forest.*

The goal of this new guideline is not to control the size of barns, but to avoid small lot areas to become dominated by commercial activities. This guideline needs to take into consideration the size of the acreage or its location. In my case the 40 acres --as well as my occupation—necessitate a barn of this size, and the location of the barn ensures that it will not disturb any neighbors on their neighboring acreage or be unattractive to those driving by on the nearest road. In fact, it will even improve the appearance of the property, because my equipment and vehicles will be stored away out of sight instead of scattered around the property.

There are concerns regarding the size of my accessory building because it will be a total of 3,600 square feet, which is more than the allowed 2,500 square feet

The size variation that I am requesting is not significantly more than the average size in this area. Until I am able to build this barn, my equipment will continue to be subjected to the winter rain, ice and other elements that will cause rust and deterioration ... things that will make the equipment on my property become unattractive. No neighbors, or those who pass by, will even know the barn is here, due to its proximity.

The barn will only be for my personal and work use. None of the space therein will be rented or leased and commercial activities will not be conducted out of it No customers or employees will come to the site. The barn's purpose is to store personal property. I am the owner and operator of my tractor-trailer. This will take most of the space in the barn. No one will live in this barn, nor will there be any bedrooms or kitchen.

Trucking is a business but is not operated at this site. The tractor-trailer, however, is my personal property. The neighbors and the community would benefit from it being stored inside. I personally operate it in pursuit of my income. I do all the work myself and have no employees. I will not operate the business from my barn, but rather only store my equipment and maintain an office for tax record storage. I merely need a place to put my property inside while I'm at home on break from work I am presently under contract with Hill Moving Services (Poulsbo, WA) and that is where my business operates, not in Corbett, OR. The business has no relation to the barn. The barn is only for storage of my property when I am not going coast to coast There is no activity in my business relating to the use of my barn.

Staff: The applicant has not presented evidence that the size an accessory building for storage at 3,600 square feet is customary accessory or incidental to any use permitted or approved in this district. Additionally the applicant proposes to use the proposed building to store a commercial, coast to coast, moving business tractor-trailer rig.

Commercial Uses in the Commercial Forest Use Districts are strictly limited by the State of Oregon and by the County. An example of that is, in the CFU-4 District, a building for the

permanent storage of logging equipment would require a conditional use permit (commercial logging equipment). Commercial uses and storage of commercial equipment is not listed as use allowed within the CFU-4 District. It is a common practice in rural areas for property owners to use the vehicle they conduct business in as a commuting vehicle, i.e. pickups or small vans. We consider these types of vehicle dual use vehicles because they are used for commercial use as well as personal use such as running personal errands and commuting. The applicant's moving business tractor-trailer is not a dual use vehicle. It is not the type of vehicle that people use to commute with or to run errands. The coast to coast, moving business tractor-trailer is purely a commercial vehicle which requires that type of licensing and permits.

The storage of commercial business property in a building is a commercial use of the building. Given that logging equipment storage is specifically listed as requiring a conditional use in the CFU-4 District and other types of commercial equipment storage is not listed at all, the proposed use, a building to be used to store a coast to coast, moving business tractor-trailer is not a use that is allowed in the CFU-4 District. A building used to store commercial business equipment is not a use that is customarily accessory or incidental to the permitted use, the dwelling. A building used to store commercial business equipment is a primary use which is not allowed in the CFU-4 Zone District.

6. CONCLUSION

The applicant has not demonstrated that the proposed building qualifies as an accessory building under the criteria for an accessory building under the criteria listed in MCC 35.2220 (T) or MCC 35.2225 (M). For that reason this proposed use request must be denied.

7. EXHIBITS

7.1. Exhibits Submitted by the Applicant:

- Exhibit 1.1: Application form (1 page)
- Exhibit 1.2: Site Plans (2 oversized pages)
- Exhibit 1.3: Narrative (4 pages)
- Exhibit 1.4: Proposed building elevation drawings and floor plans (2 oversized pages)
- Exhibit 1.5: Building permit for the dwelling on the property (1 page)

7.2. Exhibits Provided by the County:

- Exhibit 2.1: County Assessment Record and map for the subject property (3 pages)
- Exhibit 2.2: Current County Zoning Map with subject property labeled (1 page)
- Exhibit 2.3: GIS map showing zoning including Policy 21 stream and HD Overlay Districts (1 page)
- Exhibit 2.4: 2004 aerial photo map showing vicinity

7.3. Exhibits Provided by Others:

- Exhibit 3.1: Letter of comment submitted by Rebecca Bruns