

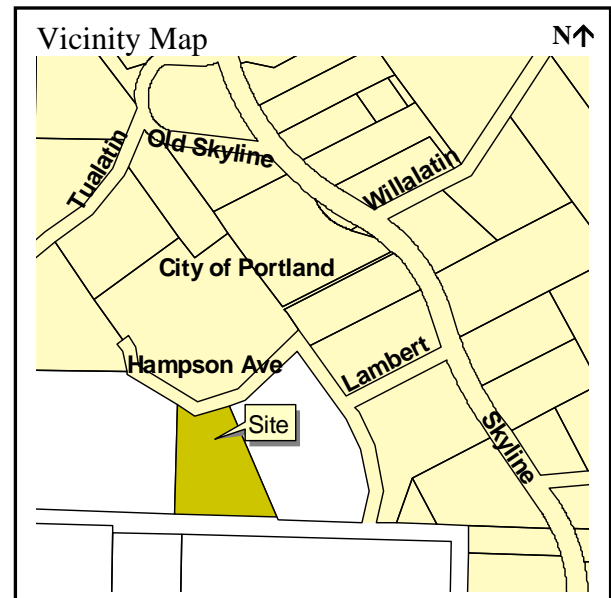


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

Case File: T2-09-071
Permit: Time Extension
Location: No site address (vacant)
Township 1 North, Range 1 West, W.M.
Section 10C, Tax Lot 6100
Tax Account # R846000430
Applicants: Bernard & Amy Nnoli
Owner: Benell & Ilene Tindell
Base Zone: Rural Residential
Overlays: Significant Environmental Concern for
Wildlife Habitat, and Hillside
Development Overlays



Summary: The request is for a Time Extension for Case T2-06-111, Significant Environmental Concern, Hillside Development & Adjustment Permit, an approval with conditions to construct a dwelling on the subject property.

Decision: Approved a six month Time Extension, which expires six months after the original expiration date for Case T2-06-111, with the new expiration date as June 19, 2010.

Unless appealed, this decision is effective March 10, 2010

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, February 24, 2010

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 March 10, 2010 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 37.0700 Expiration And Extension Of Type II Or Type III Decisions In Exception Areas

Copies of the referenced Multnomah County Code (MCC) 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 time extension expires six months after the original expiration date for Case T2-09-111 on June 19, 2010 if building permits have not been issued. 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.**

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 of Fact

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

1. TIME EXTENSION OF TYPE II DECISION IN EXCEPTION AREA

MCC 37.0700(C) The Planning Director may extend any approved decision for a period of six months up to an aggregate period of one year; provided, however, that there has been substantial implementation of the permit and the request is submitted prior to the expiration of the approval period. Any request for an extension shall be reviewed and decided upon by the Planning Director as a Type II decision.

MCC 37.0700(D) Substantial implementation of a permit shall require at a minimum, for each six month extension, demonstrable evidence in a written application showing:

- (1) The permit holder has applied for all necessary additional approvals or permits required as a condition of the land use or limited land use permit;**
- (2) Further commencement of the development authorized by the permit could not practicably have occurred for reasons beyond the reasonable control of the permit holder;**
- (3) The request for an extension is not sought for purposes of avoiding any responsibility imposed by this code or the permit or any condition thereunder; and**
- (4) There have been no changes in circumstances or the law likely to necessitate significant modifications to the approval.**

Staff: The applicants submitted an application on December 16, 2009 (Exhibit A.1) requesting a Time Extension for Case T2-06-111. The application was submitted three days prior to the December 19, 2010 expiration date for Case T2-06-111 (Exhibit B.3). With the application the applicants submitted a narrative (Exhibit A.2) addressing the code requirements for a Time Extension and a receipt from the City of Portland dated 11/25/2009 (Exhibit A.3). The receipt shows payment for submitting an application to the City Bureau of Development Services for land use review and several other reviews, which the applicants state, is for developing the access (developing the Hampson Avenue right-of-way which is in the City of Portland’s jurisdiction and abuts the property). Additionally the applicants’ engineer Dan Symons, PE. Symons Engineering Consultants, Inc, has submitted a set of engineered drawings for developing the Hampson Avenue right-of-way for the dwelling access which he stated were submitted to the City of Portland (Exhibit A.4).

We have received two letters of comments which include an email from Steven Miller and Leslie Hildula (Exhibit C.1) and a fax from Hilary Mackenzie (Exhibit C.2). Both of these letters are in opposition of granting the Time Extension and include reasons for that opposition. However, if the applicants demonstrate that the criteria for a Time Extension have been met then the County must grant the extension.

Under MCC 37.0700(D) substantial implementation of a permit is required at a minimum for an extension. The engineered plans submitted and included as Exhibit A4 demonstrate the applicants have made a substantial investment in preparing plans for the application to the City of Portland required to develop the access. Condition of Approval, Number 2 of Case T2-06-111 requires the

applicants to, “apply for and obtain approval of an administrative decision by the City of Portland to utilize the Hampson Avenue right of way for access...” The applicants have made an application to the City of Portland as demonstrated by the submitted receipt from the City of Portland dated November 25, 2009 (Exhibit A.3). This application to the City also demonstrates substantial implementation and is a necessary step in the process required prior to issuance of the zoning review for a building permit. No other permits can be issued unless a permit is granted by the City of Portland to improve the Hampson Avenue right of way for access thus they need to sequence the permits.

The applicants state that the delay has been “due to the state of the economy” and the need to obtain that access approval from the City of Portland. Further commencement of the development authorized by Case T2-06-111 can not occurred until the City of Portland reviews and approves the request to develop Hampson Ave. for access which at this point is beyond the applicants’ control. Additionally the applicants have stated that the state of the economy has also impacted the timing of implementing the approval. Elements of the economy are beyond the applicants’ control as well.

In addressing the criteria, we know of no reason for the applicants to delay the commencement of the project to avoid any responsibility, thus we believe this Time Extension would not be to avoid any responsibility by the delay.

A Time Extension is allowed when “there have been no changes in circumstances or the law likely to necessitate significant modifications to the approval.” Since the application was submitted, there has been a Significant Environmental Concern for Streams Overlay Zone adopted on February 7, 2010 for the subject property. The applicants will need to obtain an approval for a Significant Environmental Concern for Streams (SEC-s) Permit prior to obtaining a building permit. While it is uncertain to fully predict the outcome of an application for an SEC-s Permit, it is unlikely that permit would necessitate significant modifications to Case T2-06-111. If modifications are necessary then the property owner or applicant will need to apply for a Land Use Review to allow those modifications.

2. Conclusion

Based on the findings and other information provided above, the applicants has carried the burden in demonstrating this Time Extension request meets the code criteria necessary for granting an approval for a six month extension to Case T2-06-111.

3. Exhibits

‘A’ Applicants’ Exhibits

‘B’ Staff Exhibits

‘C’ Comments Received

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application form	12/16/09
A.2	2	Narrative	12/16/09
A.3	1	City of Portland, Bureau of Development Services receipt date 11/25/2009	12/16/09

A.4	16	Email dated February 3, 2010 from Dan Symons titled “Nnoli application backup evidence” with attached engineered plan for the proposed access (Hampson Ave.) development.	2/3/10
‘B’	#	Staff Exhibits	
B.1	2	A&T Property Information	
B.2	1	A&T Tax Map with Property Highlighted	
B.3	14	Case T2-06-111 Hearing Officer Decision	
‘C’	#	Comments Received	Date
C.1	1	Email dated January 19, 2010 from Steven Miller & Leslie Hildula	1/19/10
C.2	2	Fax dated 1/26/10 from Hilary Mackenzie	1/26/10