

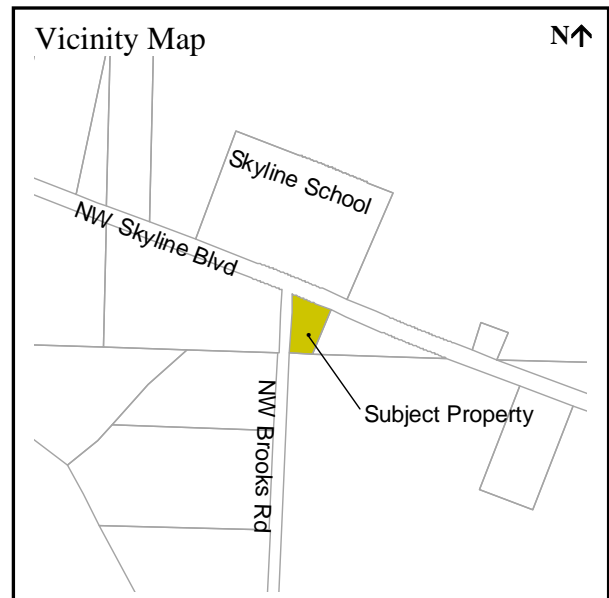


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

Case File: T2-10-010
Permit: Administrative Decision by the Planning Director
Location: 11539 NW Skyline Blvd
TL 800, Sec 31D, T2N, R1W, W.M.
Tax Account #R971310220
Applicant: Bruce Vincent
Owner: Cindy Banks
Base Zone: Exclusive Farm Use (EFU)
Overlays: Significant Environmental Concern – Wildlife Habitat (SEC-h); Slope Hazard



Summary: Determine the residential use located within the church building was lawfully established and is a habitable dwelling eligible for alteration, restoration or replacement under the Exclusive Farm Use Zone code. The applicant is also seeking a Lot of Record determination.

Decision: Approved With Conditions

Unless appealed, this decision is effective Friday, July 9, 2010, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Friday, June 25, 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 Don Kienholz, Staff Planner at 503-988-3043, ext. 29270.

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 Friday, July 9, 2010 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 33.0005 Habitable Dwelling and Lot of Record; 33.2620(L) Allowed Uses; 33.2675 Lot of Record.

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.

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 any alteration, modification, expansion or replacement of the dwelling, the owner shall apply for, and receive approval from the Sanitarian for a new septic tank and drainfield [Comprehensive Plan Policy 37].

Note: Once this decision is final and the condition of approval is met, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, Don Kienholz, at (503) 988-3043 ext. 29270, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 may be required.

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*.

1.00 Project Description:

Staff: The applicant is seeking recognition by Land Use Planning that the current structure on site, a church, has a lawfully established apartment within the church building. Because the property is zoned Exclusive Farm Use (EFU), dwellings are not outright allowed uses and can only be altered or replaced on EFU zoned property if a lawfully established habitable dwelling already exists on site; or if the property meets the “income test” as required under state statute. In seeking recognition by the Planning Director that a residence exists within the church, the applicant would then be granted certain rights associated with an established dwelling in the EFU zone.

Additionally, the applicant is seeking acknowledgement that the property the church is located on is a lawfully established Lot of Record.

2.00 Lawful Establishment of a Dwelling

Staff: State law and County code require that an existing dwelling in the EFU zone must meet a two tier test in order to be recognized as an allowed use. Under MCC 33.2620(L), a dwelling must first be lawfully established; secondly, it must be habitable.

A. Lawfully Established as defined under MCC 33.0005 says:

Lawfully established dwelling – A dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include zoning, land division and building code requirements. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a dwelling unit were obtained and all qualifying permitted work completed.

Staff: Multnomah County Assessment and Taxation shows the church building being established in 1931 (Exhibit 1). Deed documents submitted by the applicant – Book 156, Pages 592 and 593 (Exhibit 2) – detail the conveyance of the subject property from a coalition of individuals to the Brooks Hill Free Methodist Church in 1931. These documents alone provide reasonable proof that the structure was established as a church in at least 1931.

Further evidence in the form of notarized personal affidavits from several individuals living within the neighborhood detail histories of church attendance and recollections of the existence of the dwelling unit (the church parsonage) located in the building. Of significance is an affidavit from Pastor Robert Hutchinson (Exhibit 3), who chronicled living in the skyline area from 1945 until 1951 and attending the church. Mr. Hutchinson notes the parsonage that was located in the church and when he came back to the area, it served as his home when he was pastor of the church beginning in 1986. Additionally, Pastor Gregg Townsley submitted a notarized affidavit discussing his use of the parsonage while pasturing the Faithspring Community Church from 2003 to 2005 (Exhibit 4).

Documents provided by the Oregon Conference of the Free Methodist Church detail uses the building served to support for the church, including a living quarters for the pastoral family (Exhibits 5 and 6).

Building permit records show that the County recognized the parsonage in the church in 1983 with the installation of a wood stove specifically for the residential space of the building (Exhibit 7). A letter from NW Natural notes that the address has had a residential billing since at least 1995 (Exhibit 8). Billing prior to 1995 could not be verified due to a computer records change that year.

It is clear from the submitted body of evidence that when the church was built and established in the early 1930's, a single family dwelling unit was included as an integral part of the church. Pastors used the parsonage for their family's residence while they served the church and that use continued through the history of the structure. Multnomah County recognized the parsonage through permitting and utility records support the continued use of a residence within the building. Given the evidence in the record, staff finds the single family dwelling unit was lawfully established and has been continuously used since its establishment.

A residential use was lawfully established. Criteria met.

B. Habitable Dwelling – An existing dwelling that:

- (a) Has intact exterior walls and roof structure;**
- (b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;**
- (c) Has interior wiring for interior lights;**
- (d) Has a heating system; and**
- (e) Was lawfully established.**

Staff: Photos provided by the applicant (Exhibit 9) show the structure contains all of the required elements to be a 'habitable dwelling.' Finding 2(A) details the dwelling was lawfully established.

The existing dwelling is a habitable dwelling as defined by Multnomah County Code. As such, the dwelling is eligible for alteration or replacement under MCC 33.2620(L) – including but not limited to expanding the dwelling into the entirety of the structure; and pursuant to being, and remaining, in full compliance as required under MCC 37.0560. Proof of continuing to be a habitable dwelling is required at the time of building permit sign-off for any alteration, modification or expansion as required by Multnomah County Code. Criteria met.

3.00 Lot of Record

A. MCC 33.2075 LOT OF RECORD

(A) In addition to the *Lot of Record* definition standards in MCC 33.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not *contiguous* to any other parcel or lot under the *same ownership* on February 20, 1990, or

(2) A group of *contiguous* parcels or lots:

(a) Which were held under the *same ownership* on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

Staff: The subject parcel was created by deed in 1931. The subject parcel was not contiguous to any other parcel in the same ownership on February 20, 1990. As such, the parcel satisfies the EFU Lot of Record requirements.

Criteria met.

B. 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 Recording 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: The subject property was created by deed in 1931 (Exhibit 2) when the property was sold to the Brooks Hill Free Methodist Church. In 1931, there were no partition requirements for the creation of three or fewer parcels within a calendar year. As such, the property met the land division requirements in place at the time.

Multnomah County first adopted zoning requirements in 1958, long after the creation of the property. As such, the property met the zoning requirements at the time the property was created.

Criteria met. The property is a Lot of Record.

4.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for demonstrating the single family residential use in the church was lawfully established and is currently habitable. Additionally, the applicant has provided the evidence necessary to demonstrate the parcel the residence is located on is a legal Lot of Record. This approval is subject to the conditions of approval established in this report.

5.00 Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-10-010 at the Land Use Planning office.

Exhibit #	Description of Exhibit
1*	Multnomah County Assessment and Taxation Information Sheet
2*	1931 Deed Creating Property
3*	Affidavit of Pastor Robert Hutchinson
4*	Affidavit of Pastor Gregg Townsley
5*	Letter from Sharon J. Porter, Business Manager for the Oregon Conference of the Free Methodist Church.
6*	Letter from Gary Sloan, Superintendent for the Oregon Conference of the Free Methodist Church.
7*	Building Permit for Installation of Wood Stove in the Parsonage
8*	Letter From NW Natural Detailing Residential Use of Electric Meter
9	Photos Showing Dwelling is Habitable