

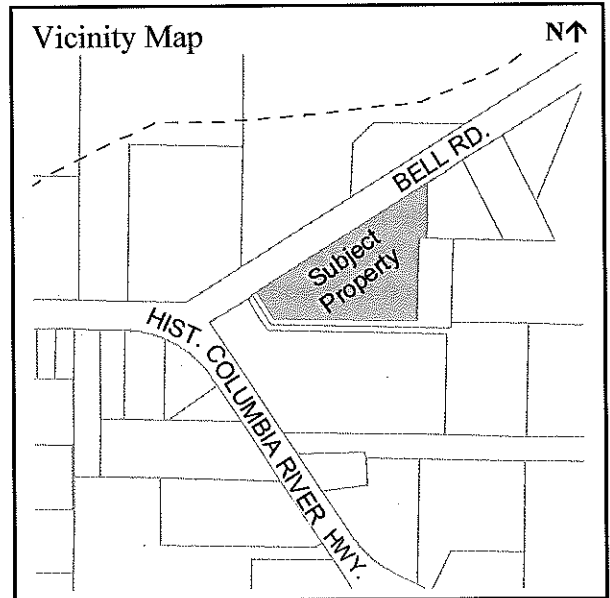


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.multco.us/landuse>

NOTICE OF DECISION

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

Case File: T2-2011-1936
Permit: Non-Conforming Use Verification
Location: 32500, 32510, 32520 E. Bell Rd.
Tax Lot 800, Section 33CC,
Township 1 North, Range 4 East, W.M
Tax Account #R944330200
Applicant: Charles Boman
Owners: Charles D. & Gail Boman
Base Zone: Springdale Rural Center (SRC)
Overlays:



Summary: Request to verify the nonconforming status of three dwellings on the subject property including nonconforming front yard for two of the dwellings.

Decision: Nonconforming Status Confirmed

Unless appealed, this decision is effective February 3, 2012, at 4:00 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: January 20, 2012

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 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 February 3, 2012, at 4:00 PM.**

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 35.3300 et al: Springdale Rural Center District, MCC 35.7200 et. al: Nonconforming Uses and Multnomah County Road Rules 4.000. Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) 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> or <http://web.multco.us/transportation-planning>.

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 pursuant to MCC 37.0690(B) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**
3. Based on the findings and other information provided above, the applicant has carried the burden necessary for the Verification of a Nonconforming Use to establish nonconforming status for the three dwellings and the nonconforming front yard status for Dwelling (#2) and (#3) as shown on Exhibit A.2.

Note: Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, George Plummer, at (503) 988-3043 ext. 29152, 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 Gresham. Three (3) 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. There is no Right-of-Way Access Permit on file for this property, please contact Alan Young at 503-988-3582 about obtaining an access permit.

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. Project Description:

Request to verify the nonconforming status of three dwellings on the subject property including nonconforming front yard for two of the dwellings (Exhibit A.1).

2. Property Description:

The property located along Bell Road is in the East of the Sandy River Plan area and within the Springdale Rural Center Zone District. The property has a gentle slope dropping to the south away from the road.

3. Springdale Rural Center Zone District:

3.1. Allowed Uses

MCC 35.3320(C): Residential use consisting of a single family dwelling constructed on a Lot of Record.

Staff: One single family dwelling is allowed per Lot of Record. There are three dwellings on the subject property. This application is a request for a Verification of a Nonconforming Use (three dwellings on one property) to confirm that the three dwellings meet nonconforming code requirements for property owner to confirm their status. The property owner began a repair project on one of the dwelling without obtaining building permit which was determined to be a code compliance issue (UR-2010-977). A building permit can not be issued without the nonconforming verification that the three dwellings have nonconforming status. This is addressed in the Verification of a Nonconforming Use Status in Section 4 below).

3.2. Dimensional Requirements

MCC 35.3355: Minimum Yard Dimensions

Front Yard: 30 feet

Rear Yard: 30 feet

Side Yard: 10 feet

Staff: Dwelling (#1), as labeled on Exhibit A.2, address 32500 E. Bell Rd., meets all the minimum yard standards. Dwelling (#2), address 32510 E. Bell Rd, meets the rear yard and side yard minimum yard standards, however the dwelling is located very close (less than one foot) to the right-of way line. Dwelling (#3), address 32570 E. Bell Rd, meets the rear yard and side yard minimum yard standards, however the dwelling is located approximately 10 feet from the right-of way line. Dwelling (#2) and (#3) do not meet the minimum front yard standard. This is addressed in the Verification of a Nonconforming Use Status in Section 4 below).

3.3. Lot Of Record

MCC 35.3370(A): In addition to the Lot of Record definition standards in MCC 35.0005, for the purposes of this district the significant dates and ordinances...

MCC 35.0005: Definitions - 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 35.7785. 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.)**

Staff: The subject property was involved in a series of Lot of Exception and Property Line Adjustment cases in 1996 and 1997 (Exhibits B.3 through B.7) until the current property configuration was created. A Lot of record finding was made for the subject property before it was reconfigured in Case LE 5-96 (Exhibit B.7). *The subject property is a Lot of Record.*

4. VERIFICATION OF NONCONFORMING USE STATUS

- 4.1. MCC 35.7204 (A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:**
 - (1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and**
 - (2) Has not been abandoned or interrupted for a continuous two year period.**

MCC 35.0005: Definitions - 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: County Assessment records show that the three dwellings on the property were established in 1915, 1928, and 1941 (Exhibit B.1). The applicant has submitted photos (Exhibit A.8) showing that the three

dwelling have the features meeting the code definition of habitable dwelling. Documents the applicant has submitted including water district documents (Exhibit A.4), tax forms (Exhibit A.5), rental agreements (Exhibit A.6) and building permit records (Exhibit A.7) demonstrate no interruption of use for a continuous two year period during the last ten years. *This criterion is met.*

- 4.2. **MCC 35.7204(B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:**
- (1) Description of the use;
 - (2) The types and quantities of goods or services provided and activities conducted;
 - (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;
 - (4) The number, location and size of physical improvements associated with the use;
 - (5) The amount of land devoted to the use; and
 - (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.
 - (7) A reduction of scope or intensity of any part of the use as determined under this subsection (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

Staff: The use is three single family dwellings established prior to zoning in 1915, 1928 and 1941 (Exhibit B.1). The dwellings are in the locations they were built and appear to be the same as they were when zoning was adopted. We have no evidence there have been any changes in the dwellings since zoning was adopted and the photographs (Exhibit A.8) indicate these dwellings are old. Dwelling (#2) address 32510 E Bell Rd, is located very close (less than one foot) to the right-of way line. Dwelling (#3), address 32570 E Bell Rd, is located approximately 10 feet from the right-of way line. *The use is the same location, nature and extent of the use at the time of zoning code adoption. The property is verified as having a three dwelling nonconforming status as well a reduced front yard nonconforming status for dwelling (#2) and (#3).*

- 4.3. **MCC 35.7204(C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.**

Staff: The Zoning Code allowing a single family dwelling per lot of record was adopted in 1958. According to County Assessment Records (Exhibit B.1) the three dwellings were established prior to that date. *This criterion is met.*

* * *

- 4.4. **MCC 35.7204(E): An applicant may prove the continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven,**

existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.

Staff: We used the 10-year period for the verification finding in Section 4.1 above. *This criterion is met.*

4.5. (F) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately proceeding the date of application. Evidence proving the continuity, nature and extent of the use for the 20-year period preceding application does not create a rebuttable presumption that the use law-fully existed at the time the applicable zoning ordinance or regulation was adopted.

4.6. Staff: We used the 10-year period for the verification finding in Section 4.1 above. *This criterion is met.*

5. Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Verification of a Nonconforming Use to establish nonconforming status for the three existing dwelling and the nonconforming front yard status for Dwelling (#2) and (#3).

6. Exhibits

'A' Applicant's Exhibits

'B' Staff Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	10/13/11
A.2	1	Site Plan and Minimal Impact Erosion Control Plan	11/9/11
A.3	1	Narrative	10/13/11
A.4	2	Water District records	10/13/11
A.5	7	Tax records related to renting the three dwellings	10/13/11
A.6	26	Rental Agreements 1998 through 2008	10/13/11
A.7	26	Permit records from 2001, 2005 and 2006 for work on dwellings	10/13/11
A.8	25	Floor plan for each of the dwellings and photos show habitable dwelling features for each of the three dwellings	10/13/11
A.9	2	Title insurance company document from 1980 showing three rented dwellings with tenants names	10/13/11
A.10	2	Portland General Electric document sated August 1, 1987 showing three dwelling connections	10/13/11

A.11	3	Fire district review form	10/13/11
A.12	5	Certification of On-Site Disposal forms	11/9/11
'B'	#	Staff Exhibits	Date
B.1	3	County Assessment Property Information	na
B.2	1	County Assessment Map with Property Highlighted	na
B.3	4	Maps showing Partition Plat 1999-48 (signed by County Land Use Planning staff) series of previous Property Line Adjustments	na
B.4	31	Lot of Exception Case LE 4-97 for Property Line Adjustment	na
B.5	36	Property Line Adjustment PLA 6-97	na
B.6	52	Lot of Exception Case LE 1-97 for Property Line Adjustment	na
B.7	25	Lot of Exception Case LE 5-96 to Combine and Divide 5 Lots	na

