

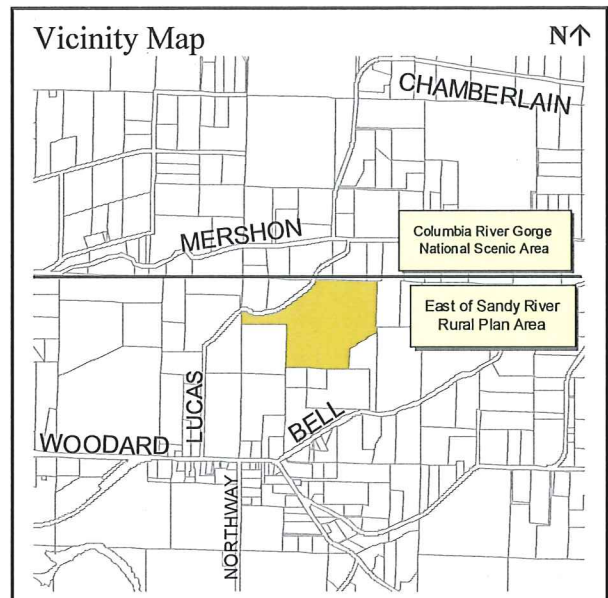


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.multco.us/landuse>

NOTICE OF DECISION

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

Case File: T2-2012-2374
Permit: Accessory Use Determination
Location: 400 NE Lucas Road
Tax Lot 300, Section 33C
Township 1N, Range 4E, W.M.
Tax Account #R944330160
Applicants/ Owners: Lonny and Sherri Hutchison
Base Zone: Exclusive Farm Use (EFU)
Overlays: None



Summary: Accessory Use Determination for an 86-foot x 45.5 foot area of a large building approved as an agriculture building to be converted to an accessory use area for the residential use of the property.

Decision: Approved

Unless appealed, this decision is effective Monday, October 8, 2012, 2012

Issued by:

By:


Don Kienholz, Planner

For: Karen Schilling- Planning Director

Monday, September 24, 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 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 Monday, October 8, 2012 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 37.0560 Code Compliance; MCC 35.2620(O)(2) & (3), MCC 35.2625(O).

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.

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.

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, 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 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. In addition, an erosion control inspection fee of \$77.00 may be required.

1. **The owner shall obtain building permits for the portion of the structure converted from farm use to residential accessory use. Prior to obtaining building permits, the owner shall receive zoning sign-off for the work [MCC 37.0560].**

2. **Prior to zoning approval for building permits, the owner shall record a deed restriction with County Records stating that the structure cannot be used as a dwelling (Exhibit B.7). Proof of recording shall be presented to the Land Use Planning program prior to building permits being issued [MCC 35.2620(O)(3)].**

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 and History:

Staff: The subject property had been the subject of a code compliance action resulting from an Under Review case (UR) opened in 2006, UR 06-058. Part of the complaint was for a commercial business being operated out of an existing structure and for an unlawful apartment located in the same structure. That structure was found to have been acknowledged as an exempt agricultural building under ORS 215.203 in the past for a farm use on property.

As a result of code compliance action on the property, the owners moved the commercial business off-site to an approved location. The apartment was also decommissioned. The majority of the structure is currently empty of any non-farm use items. Most of the structure is now used for horses as allowed in ORS 215.203— such as tack rooms, horse stalls, trailer storage, riding arena, trophy room etc. However, there is an 86-foot by 45.5-foot area that the applicants wish to use for the storage of their personal residential items. Such storage would need to be accessory to one or both of the lawfully established habitable dwellings on site (A determination was made of the dwellings’ lawful establishment and habitable status in T2-02-068) in order to be allowed. It should be noted that the proposed residential accessory space is completely separated from the farm use area by a structural wall and door, clearly delineating farm use from non-farm use.

Because the existing structure was originally acknowledged as an Exempt Agriculture Building, it was not subject to structural building permits as allowed under state statute. The conversion of the entire building, or a portion thereof, to a residential accessory use must be reviewed under the current code since it is a new use under the law.

The applicants have submitted a narrative (Exhibit A.2) that lists items they wish to store in the 86x45.5 foot portion of the building. Such a use would be considered a storage building or a detached garage. The current accessory use code, as shown in Finding 2, lists storage buildings, garages and similar structures as accessory to a residential use. However, if there is a cumulative area of more than 2500-square feet dedicated to accessory use, then the code requires a determination that the proposed use is customarily accessory or incidental to any use permitted or approved in the district. The area the applicants are seeking to be designated as Accessory Use measures 86-feet by 45.6-feet, or 3,913 square feet. As such, a land use decision is required to determine whether or not the proposed use is accessory.

2.00 Code Compliance:

MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

Staff: Currently, there is an open Under Review case on the subject property. Approval of this application will correct the violation and allow Code Enforcement to close the case. Therefore, the County can approve the application.

3.00 Base Zone Criteria:

A. MCC 35.2620(O) Accessory Structures:

(1) 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 footprint 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.

Staff: Because the area of the existing building proposed to be used as accessory use is over 2,500 square feet, it does not qualify as an outright use and must be reviewed as a Type 2 land use decision under MCC 35.2625(O). However, that does not negate the requirement that if there are bathroom or kitchen facilities in the building that a deed restriction needs to be recorded with County Records stating that the structure cannot be occupied as a dwelling. The past use of a portion of the structure as an apartment also makes such a restriction paramount for future owners. A condition of approval will require the owner to record a deed restriction stating that no portion of the structure may be occupied as a dwelling.

B. MCC 35.2625(O) 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 35.2620, Allowed Uses.

Staff: The proposed area to be used as an accessory use is greater than the 2500-square feet permitted as an allowed use in MCC 35.2620(O). Therefore the proposed use is subject to this provision.

The applicant has provided a narrative description of the proposed use (Exhibit A.2) that includes the storage of lawn mowers, weed eaters, 2 tractors, a manure spreader, 2 pick up trucks, a boat, and 4-wheeler ATVs. Additionally, a portion of the floor area is proposed to be used as a personal shop, which would contain personal tools and materials.

Garages and shops are commonly permitted accessory uses in the rural area of Multnomah County as evidenced by their inclusion in the accessory use list of MCC 35.2620(O). The applicant is proposing use of portion of a building that would be used as a garage and a shop but is larger than the 2500-square foot threshold allowed outright in the zone. Because of the size, the applicant must demonstrate that the proposed building is accessory to a primary use on the property, two lawfully established dwellings.

The applicant has demonstrated that the items and uses to be housed in the building are accessory to a dwelling. Since there are two lawful dwellings on the subject property, it stands to reason that there would be a greater need for the storage of residentially accessory items and should have a commiserate allowance for space. As such, with two dwellings on the property, the amount of area allowed to be dedicated to residential accessory use would be double that of a single dwelling. A doubling of the threshold in MCC 35.2520(O) would be 5,000-square feet, which is nearly 2,000-square feet more than the applicant is proposing.

The applicant submitted a list of properties by address that contains large residential accessory structures in the Corbett area. Staff obtained information on the square footage and use from Assessment and Taxation as well as building permit records and submitted the data into the table below:

Property Address		Structure square footage	Use
	Proposed Accessory Use	3,913	Storage/Garage/Shop
	Existing Residential shed on subject property	624	Detached Garage
1	34067 NE Mershon Road	2,208	Farm Use
2	34085 NE Mershon Road	1,296	Garage
3	31625 NE Wand Road	1,344 2,592 720	Shed Shed Garage
4	31963 NE Wand Road	1,288	Garage
5	18 NE Evans Road	4,480	Storage, Utility
6	34001 SE Smith Road	2,592 180	Storage/Garage Shed
7	33233 E. Historic Columbia River Highway	120 3,200	Shed Shop

The applicant is proposing using 3,913 square feet for accessory use, which would amount to a cumulative total of 4,537 square feet of residential accessory use. On the provided list was one property that contained a single accessory structure larger than the proposed accessory use at 4,480 square feet, but 57-square feet less than the total cumulative square footage of the subject property. One other accessory structure was near in size at 3,200 square feet. Two accessory structures were sizable but still smaller at 2,592 square feet. One of the properties that has a 592 square foot structure also has a 1,344 square foot residential shed and another 720 square foot residential shed for a total of 4,656 of accessory use square footage which is cumulatively more than the subject property.

A cursory review of the submitted data shows that the proposed accessory use fits within the general size of accessory structures in the area. One structure is roughly 500-square feet larger; one structure is roughly 700 feet smaller, and one property has a cumulative 4,656 square feet of residentially accessory area. Furthermore, considering that there are two lawful dwellings on the subject property, it is reasonable to believe that there should be a greater need and allowance for accessory use space than a property with one dwelling.

Considering the above facts, the proposed use is considered customarily accessory or incidental to a primary use, and is therefore an Accessory Use.

4.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for an Accessory Use Determination to establish a 3,913 square foot space in a separated portion of an existing farm building as a shop, storage area and garage in the EFU zone. This approval is subject to the conditions of approval established in this report.

5.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff 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 T2-2012-2374 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit
A.1	1	General Application Form
A.2	2	Applicant’s June 27, 2012 Narrative
A.3	2	Fire Service Agency Review Form
A.4	5	On-Site Sewage Disposal Certification Form; City of Portland Sanitation Permit Record
A.5	1	Pictures of the Separation of the Proposed Accessory Use Area From Farm Use Area
A.6	1	Oversized Site Plan
A.7	1	Oversized Floor Plan
‘B’	#	Staff Exhibits
B.1	2	A&T Property Information
B.2	1	A&T Tax Map with Property Highlighted
B.3	1	Complete Letter
B.4	3	Opportunity to Comment and Mailing List
B.5	1	A&T Improvement Information for Subject Property
B.6	11	A&T Improvement and Building Permit Information for Applicant’s Identified Properties
B.7*	2	Accessory Structure Covenant