



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

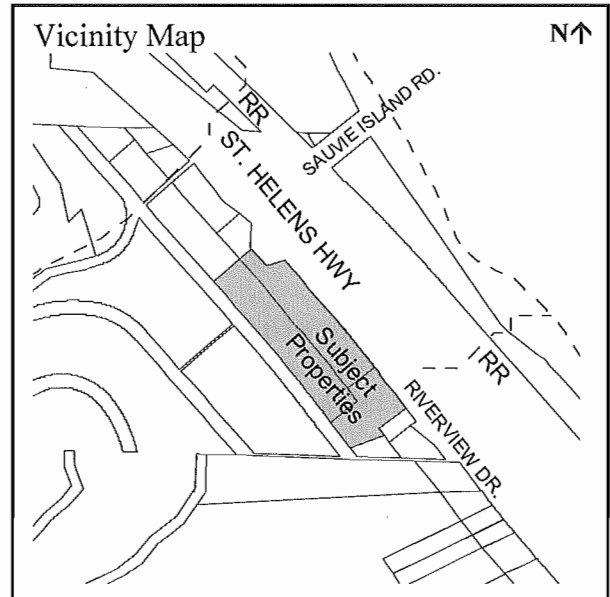
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-2012-2525
Permit: Property Line Adjustment
Location: 14120 & 14200 NW Riverview Drive
Tax Lots 600, 700 and 1100,
Section 28CA,
Township 2 North, Range 1 West, W.M.
R514000140, R514000330 and
R514000250

**Applicants/
Owners:** Arthur Marx and
Frank & Claudia Berlingen

Base Zone: Commercial Forest Use - 1

Overlays: Significant Environmental Concern for
Wildlife Habitat and Scenic View and
Slope Hazard Overlays



Summary: Property Line Adjustment within the Commercial Forest Use – 1 Zone between
contiguous Lots of Record

Decision: Approved with Conditions

Unless appealed, this decision is effective January 4, 2013, at 4:00 PM.

Issued by:

By:


George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Friday, December 21, 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 January 4, 2013 at 4:00 PM.

Applicable Approval Criteria: Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): MCC CFU-1 Property Line Adjustment, MCC 33.2075: Lot of Record and MCC 33.7790 Property Line Adjustment.

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(A) 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.**

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. The Lot of Record – property line adjustment shall be finalized through filing a Replat with the County Surveyor that vacates the subdivision lot lines and labels Tract 1 as Parcel 1 (shown on Exhibit A.8) and Tract 2 as Parcel 2. [MCC 33.2056]
2. For the Replat the applicant is to complete the procedures given in the enclosed “Applicant’s Instructions for Finishing a Land Division.” (Exhibit B.5) They are also to provide their surveyor the enclosed “Surveyor’s Instructions for Finishing a Land Division” (Exhibit B.6) which provides instructions for drafting required materials. Before the final plat is submitted to the Multnomah

County Surveyor's Office, two (2) copies of the plat are to be filed with the Planning Director. Within 10 business days of filing, the Director will determine whether the plat complies with this decision and the conditions of approval contained herein. [MCC 34.8015(A) and (B)]

3. The property owners shall established a primary fire safety zone to the extent practicable surrounding both dwelling as described in the following [MCC 33.2056 and MCC 33.2070(A)(3)]

(1) Primary Fire Safety Zone

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope (on the property) from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

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

Staff: Property Line Adjustment within the Commercial Forest Use – 1 Zone for an adjustment of the common lot line between contiguous Lots of Record (Exhibit A.1 and A.8).

2. DESCRIPTION AND HISTORY OF PROPERTIES

Staff: The subject properties are within the CFU-1 Zone District (Exhibit B.3). Both of the properties are made up of several subdivision lots of Block 2 Lucerne Subdivision (Exhibit B.2 and B.4). The owner of Tract 1 sold one of these lots to the owners of Tract 2 because the dwelling’s porch straddled the lot line. However, that resulted Tract 1 and Lot 17 being out of compliance with the Lot of Record requirements in the CFU-1 and the porch continued to straddle Lot 17 property line. The proposed Lot of Record property line adjustment with a Replat final resolves these issues.

3. COMMERCIAL FOREST USE – 1

3.1. Lot Line Adjustment; Property Line Adjustment

MCC 33.2070 (A) Pursuant to the applicable provisions in MCC 33.7790, an adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:

Staff: The proposed property line adjustment is an adjustment is between two contiguous Lots of Record (see Section 3.3 of this decision) which will be finaled as a replat of multiple subdivision lots resulting in two parcels shown on the plan as Tracts 1 and 2 (Exhibit A.8). This will bring the properties coming into compliance with the Lot of Record requirements.

3.1.1 (1) The permitted number of dwellings will not thereby be increased above that otherwise allowed in this district;

Staff: Each Lot of Record contains an existing dwelling (Exhibit A.8). The adjustment will not increase number of dwellings above that other-wise allowed in this district. *This standard is met.*

3.1.2. (2) The resulting lot configuration is at least as appropriate for the continuation of the existing commercial forest practices in the area as the lot configuration prior to adjustment;

Staff: The resulting Lot of Record configuration will have no impact on continuation of the existing commercial forest practices in the area. The proposal adjusts a Lot of record line between two relatively small properties currently used as residential properties. There will be no additional impacts commercial forest practices in the area other than what has existed since the dwellings were built in 1936. *This standard is met.*

3.1.3. (3) The new lot line is in compliance with the dimensional requirements of MCC 33.2056; and

Staff: The new Lot of Record is in compliance with the dimensional requirements of MCC 33.2056 and will result in proposed Tract 2 being brought into compliance with the dimensional requirements (Exhibit A.8). MCC 33.2056 allows existing nonconforming setbacks to remain. For both properties the existing front setback is close to the property front property line (that line is not changing) within 10 to 15 feet, however given those setback where established in 1936 when the dwelling were built they predated the zoning requirement this setback is nonconforming. After the replat both dwelling will meet the 30 foot setback from all other property lines for existing dwellings. The primary fire safety zone must be met to the extent possible which can be included as a condition. *This standard is met and can be met for the primary fire safety zone requirement through a condition.*

3.1.4. (4) Neither of the properties is developed with a dwelling approved under the provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use; and

Staff: Neither of the properties is developed with a dwelling approved under the provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use. *This standard is met.*

3.1.5. (5) If the properties abut a street, the required access requirements of MCC 33.2073 are met after the relocation of the common property line.

Staff: Both properties abut a street and meet the requirements of MCC 33.2073 after the relocation of the common property line (Finding 4.3 of this decision). *This standard is met.*

3.2. Lot Size Requirements

MCC 33.2063 (C) The minimum Front Lot Line Length is 50 feet, except for flag lots as provided in MCC 33.7895(D).

Staff: Both proposed parcel will meet the minimum Front Lot Line Length is 50 feet. *This standard is met.*

3.3. Access

MCC 33.2073 All lots and parcels in this district shall abut a public street or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 33.2075(C)

Staff: Both adjusted Lots of record, will abut NW Riverside Drive, a public road (Exhibit A.8).

3.4. Lot of Record

MCC 33.2075 (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.
- (3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

MCC 38.0005: 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 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;

* * *

4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978;

Staff: Both Lots of Records are made up of several subdivision lots of the Lucerne Subdivision approved and filed on August 30, 1909 (Exhibit A.4). On February 20, 1990 the ownership for Tract 1 was in 1990 was Lucerne Subdivision Block 2, Lots 18, 19, 24 and 25 and the ownership for Tract 2 was Lucerne Subdivision Block 2, Lots 9 through 17, Lots 26 through 36 and partial Lots 7 and 8. These are the Lot of Record configuration for the two ownerships according to the aggregation requirement of MCC 33.2075(A)(2)(b). Lot 17 was sold to the owners of proposed Tract 2 some time after 1990 to resolve a dwelling encroachment issue for a porch, however that broke up the Lot of Record for Tract 1 thus currently Tract 1 is not in compliance with the Lot of Record status requirements. The proposed Property Line Adjustment to adjust the Lot-of-Record line will result in compliance with the Lot of Record definition [MCC 38.0005(a) and (b)(4)]

4. PROPERTY LINE ADJUSTMENT (Lot Adjustment and Replat)

MCC 33.7790: A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:

Staff: This property line adjustment is adjusting the common Lot of Record line between two Lots of Record and will vacate the subdivision lines through a replat. *This standard is met.*

4.1. (A) No additional lot or parcel shall be created from any parcel by the property line adjustment; and

Staff: No additional lot or parcel will be created from any parcel by this approval. *This standard is met.*

4.2. (B) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and

Staff: The owners of both properties signed the application form (Exhibit A.1). *This standard is met.*

4.3. (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district; and

Staff: See the Findings in Section 3.1 of this decision. *This standard is met.*

(D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.

Staff: The procedure for finishing this Lot of Record adjustment will require a replat that vacates the existing subdivision lines. The submitted forms are the necessary forms for the adjustment. *This standard is met.*

5. TRANSPORTATION STANDARDS

Access to County Roads

MCRR 4.100 Required Information: Applicants for a new or reconfigured access onto a road under County Jurisdiction may be required to provide all of the following:

Staff: The existing accesses, one for each property, that have served the dwellings since 1936 will not be reconfigured for this adjustment. No record has been found for the access permits for the subject properties. If and when the property owners apply for a building permit in the future, an access permit will be required at that time. The proposed permit has no additional transportation impact. *This standard is met.*

6. Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Property Line Adjustment approval to adjust the Lot of Record property line through a replat the Lots of Record in the CFU-1 zone. This approval is subject to the conditions of approval established in this report.

7. Exhibits

'A' Applicant's Exhibits

'B' Staff Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application form	9/18/12
A.2	1	County Assessment map	9/18/12
A.3	5	Legal descriptions (metes and bounds) for the proposed replat of subdivision lots.	9/18/12
A.4	4	Certificate of On-site Sewage Disposal	9/18/12
A.5	3	Deed for the Marx property	9/18/12
A.6	1	Boundary survey of subject properties	9/18/18
A.7	1	Proposed adjustment plan map	9/18/12
A.8	1	Oversize adjustment plan map	9/18/12
'B'	#	Staff Exhibits	
B.1	6	A&T Property Information	NA
B.2	1	A&T Tax Map with Property Highlighted	NA
B.3	1	Zoning map	NA
B.4	1	Lucerne Subdivision Plat	NA
B.5	1	Applicant's Instructions for Finishing a Land Division.	NA
B.6	1	Surveyor's Instructions for Finishing a Land Division	NA