

NOTICE OF DECISION

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

Case File: T2-2013-2959

Permit: Accessory Use Determination

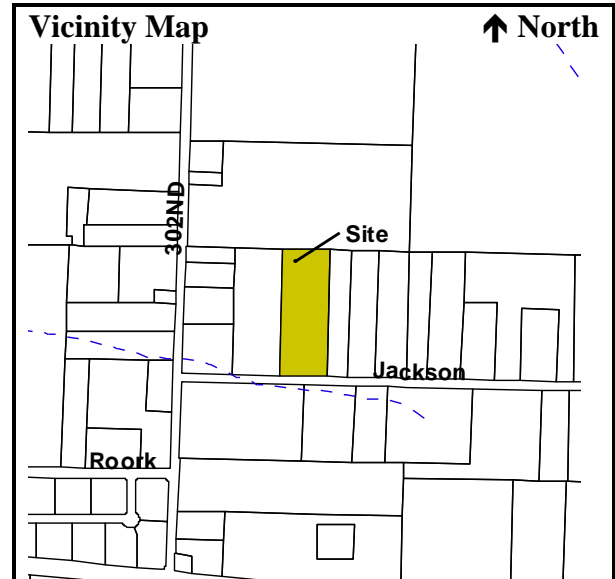
Location: 30439 SE Jackson Road
Tax Lot 400, Section 20BB
Township 1 South, Range 4 East, W.M.
Tax Account #R994200990

Applicant: Joe Turner

Owners: Patricia, Joe and Lynnette Turner

Base Zone: Multiple Use Agriculture – 20 (MUA-20)

Overlays: Significant Environmental Concern for
water resources (SEC-wr)



Summary: The property owners are proposing to construct a 1,425 square foot accessory structure that includes a two car garage, sink, two rooms and a bathroom with full bathing facilities.

Decision: Approved with Conditions

Unless appealed, this decision is effective November 1, 2013, at 4:00 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Friday, October 18, 2013

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 Lisa Estrin, Staff Planner at 503-988-3043, ext. 22597.

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, November 1, 2013 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): MCC 36.2825(I) Review Uses, Structures or Uses Accessory...., MCC 2855(C), (F) & (G), Multnomah County Code 37 and MCC 36.4515(A)

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) unless the building permit and actual construction of the building has commenced. 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. Prior to land use sign-off for building plan check, the property owners shall redesign the plans in one of two ways:

- a. The kitchen sink, related water and sewage piping, and 240 volt outlet shall be removed from the plans. These improvements shall not be installed in the completed structure.

OR

- b. The bathroom shall be modified to a 3-foot by 4-foot facility containing only a toilet and hand sink. The bathroom shall not have any shower or bathing facilities.
 - i. A separate cleaning station with the kitchen sink can be constructed in the ceramic and painting room. See Exhibit B.2 for cleaning station concept. [MCC 36.2805, MCC 36.0005 Def. Dwelling Unit, MCC 36.2825(I)]
2. Prior to land use sign-off for building plan check, the property owners shall sign and record a covenant indicating that the proposed accessory building is not a single family dwelling. [MCC 36.2805, MCC 36.0005 Def. Dwelling Unit, MCC 36.2825(I)]
3. Prior to land use sign-off for building plan check, the property owners or their representative shall obtain review from:
 - a. The Environmental Health Specialist to hook up the plumbing to the on-site sewage disposal system;
 - b. The Gresham Fire Department completion of the Fire Service Agency review form to determine compliance with the Oregon Fire Code requirements; and
 - c. A private, Oregon licensed engineer of the stormwater being generated by the new impervious surfaces. The engineer shall complete the County's Storm Water Certificate and provide size and details for any required storm water system. [MCC 36.2855(F) & (G), MCC 29.003(B)]
4. Prior to land use sign-off for building plan check, the property owners or their representative shall:
 - a. Revise the site plan to comply with the County's Building Permit Checklist and show that all existing and proposed buildings will be in compliance with the Dimensional Standards of MCC 36.2855(C).

and

- b. Move all non-permitted outbuildings to comply with the dimensional standards of MCC 36.2855(C) and contact Code Compliance at 503.988.5508 for a site inspection to verify that the building setbacks have been corrected. [MCC 37.0560]
5. Prior to land use sign-off for building plan check, the property owners or their representative shall demonstrate compliance with the County's Grading and Erosion Control ordinance. [MCC 36.2855(G)]
6. At no time shall the property owners have more than 3 pigs over the age of four months on the property without first obtaining a conditional use permit. [MCC 36.2830(B)(5) and MCC 36.2815 Uses]
7. Prior to the use of the accessory building or property for a business office or use, the person operating the business in the home shall first obtain approval of the appropriate home occupation permit. The use of the accessory building by a business prior to obtaining land use approval is a violation of this permit and MCC 36.2815 Uses

8. At no time shall the property owners allow the use of the accessory building as a dwelling unless authorized by Multnomah County Land Use Planning. [MCC 36.2815 Uses.]

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, Lisa Estrin, at (503) 988-3043 ext. 22597, 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 property owners or their representative 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 \$61.00 will be collected. In addition, an erosion control inspection fee of \$82.00 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 has requested approval to construct a 25-foot by 57-foot accessory building with a concrete slab floor for use as a garage, art studio and future office. The building’s plans (Exhibits A.? through A.?) show:

- Two car garage with work bench, water heater, ceiling-mounted garage heater, electrical panel, attic access and an alarm for CO² and smoke detection;
- 12.33-foot by 11.58-foot sewing room with an exterior window;
- 12.33-foot by 11.58-foot train room or future office with exterior windows;
- Bathroom with shower, toilet and sink;
- 33-foot by 12-foot pottery and painting area containing a sink, exterior windows and French door, 240 volt outlet and smoke & CO² alarm.

2.00 Property Description & History (if needed):

§ 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; ...

Staff: At present, there appears to be a pool shed, pig shed, chicken house and feed storage shed in the required 10-foot side and/or 30-foot rear yard setbacks. The applicant has indicated that these structures are moveable. A condition of approval has been included requiring that the structures be moved outside of the required yard setbacks.

3.00 Multiple Use Agriculture – 20 (MUA-20):

3.01 § 36.2825 REVIEW USES.

Uses listed in this section may be permitted after required review as Type II decisions pursuant to MCC 37.0510 through 37.0800, or as specified for the use.

(I) 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 36.2820 Allowed Uses.

§ 36.0005 DEFINITIONS

As used in this Chapter, unless the context requires otherwise, the following words

and their derivations shall have the meanings provided below.

Accessory Building - A subordinate building, the use of which is clearly incidental to that of the main building on the same lot.

Accessory Use – A lawful use that is customarily subordinate and incidental to a primary use on a lot.

Dwelling Unit - A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Staff: The proposed accessory building has all of the components necessary to provide for an independent living facility and fits the definition of a dwelling unit. MCC 36.0005 Definitions defines a “*Dwelling Unit*” as “*A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.*” The proposed accessory building will be hooked up to the on-site sewage disposal system, and includes a sink centered in the center of a wall with a window centered over it (kitchen sink style), bathroom with bathing facilities, sleeping areas, storage/coat closet, water heater, and a 240 volt outlet available for a stove. After construction, the property owners would only need to install kitchen cabinets and a cooking unit to make the structure will be livable. The structure would even have its own two car garage for parking. A second dwelling unit is not an allowed accessory use in the Multiple Use Agricultural zone [MCC 36.2815]. Modifications of the proposed layout will be necessary in order to permit the accessory structure.

For the building to qualify as an accessory building or structure, the floor plan must be modified to comply with one of the following options.

Option 1 - Remove the kitchen. The kitchen sink, plumbing and 240 volt outlet would need to be removed and no plumbing be installed outside of the bathroom area. This is a viable option but the property owner’s narrative indicates that she needs a sink in the large room to do art projects. The 240 volt outlet would also be necessary for the kiln.

Option 2 – Remove the shower out of the bathroom. The proposed floor plan can be altered so that the bathroom only has room for a toilet and sink (3-foot by 4-foot). The extra area can be added to the sewing room or train room. No shower could be installed in any of the private areas of the building. A combination shower/kitchen sink area could be established in the main room. This non-enclosed area could be tiled or protected with appropriate water safe materials and would allow for the tile, glass and paint projects the property owner discusses as the use for the shower. It could also be used to wash the bike as discussed in the narrative. Planning staff has done a rough sketch of a combination area that would fulfill the requested needs while altering the floor plan so that it does not qualify as a dwelling (Exhibit B.2).

Staff considered whether removing of the interior walls for the two rooms would modify the building so that it would not qualify as a dwelling unit pursuant to MCC 36.0005. The removal of the train and sewing rooms would not remove the sleeping areas from the building. As the property owner indicates in her narrative, a couch could be used to take naps or sleep (Exhibit A.3). Removing the train and sewing rooms would not remedy the situation.

A condition of approval has been included requiring that either the kitchen improvements be removed or the shower area be altered to a cleaning station. This will allow for the

finding that the building does not qualify as a dwelling unit pursuant to MCC 36.0005 Definitions.

A personal use art studio and a personal use detached garage are considered accessory uses when customarily accessory or incidental to a dwelling permitted in the MUA-20 zone. Bathrooms and detached kitchens are not listed uses and must be found to be incidental and supportive of the proposed accessory use in an accessory building. Planning staff finds that having a bathroom without a shower is acceptable and will not allow for non-permitted use of the building as a second dwelling unit. *As conditioned, this building with an art studio and garage has been determined to be an accessory use.*

The property owners' narrative (Exhibit A.3) indicates a 750 square foot shop, a 64 square foot pool shed, 64 square foot pig shed, a 64 square foot shed and a 80 square foot feed storage shed exist on the subject property. The Plan, Site (Exhibit A.5) and the Plan showing the whole property (Exhibit A.10) also shows another little outbuilding, and a pool with attached decks. Staff found the permit for the shop. No permits were found for the other structures. Staff contacted the property owners who indicated that only two pigs were raised at a time to feed the family. The various other buildings serve the residential needs of the property owners. A condition of approval has been included that no more than 3 pigs over the age of four months shall be raised on the property unless a conditional use permit is first obtained [MCC 36.2815 and MCC 36.2830(B)(5)].

In the narrative (Exhibit A.3), the property owners indicate that one or more of the proposed rooms in the accessory building may be used for a home business/office. The use of an accessory building for a business requires the review and approval of either a Type B or C home occupation depending on level of business activity. Use of the property for business operations, even just a home office, requires at a minimum a Type A home occupation. A condition of approval has been included that the accessory building or property not be used without first obtaining a home occupation approval [MCC 36.2815].

3.02 § 36.2855 DIMENSIONAL STANDARDS AND DEVELOPMENT REQUIREMENTS.

All development proposed in this district shall comply with the applicable provisions of this section.

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Staff: The Plan, Site (Exhibit A.5) shows the proposed accessory building 30 feet from the rear property line, over 10 feet from both side property lines and over 600 feet from the front property line adjacent to Jackson Road. There does appear to be at least five buildings within the above yard setbacks. A condition of approval has been included requiring their movement out of the yard setbacks before the building can be constructed. *As conditioned, the yard setbacks can be met.*

3.03 (F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious

surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The property is currently served by an on-site sewage disposal system. A condition of approval has been included requiring that the property owners obtain review by the Environmental Health Specialist before land use sign-off for building plan check. The proposed building is 1,425 square feet (Exhibit A.6). The property owner will need to have an engineer review the amount of stormwater being created by these new impervious surfaces and design a storm water system to comply with (2) above. *As conditioned, these criteria can be met.*

3.04 (G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.

Staff: The proposed accessory building will involve ground disturbance to install the support poles and prepare the ground for the concrete slab. A condition of approval has been included requiring compliance with the County's Grading and Erosion Control ordinance. *As conditioned, this criterion can be met.*

4.00 Significant Environmental Concern for Water Resources

4.01 § 36.4515 USES - SEC PERMIT REQUIRED.

(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that development, including but not limited to, the location and design of any use, or change, replacement or alteration of a use, except as provided in MCC 36.4520, shall be subject to an SEC permit.

Staff: The proposed development is located outside of the SEC-wr overlay zone. No SEC permit is required.

5.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Accessory Use Determination to establish a detached garage with art studio in the MUA-20 zone. This approval is subject to the conditions of approval established in this report.

6.00 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural 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 T2-2013-2959 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	6.27.2013
A.2	1	Existing Building Layout Plan	6.27.2013
A.3	3	Narrative discussing Proposed Accessory Uses	6.27.2013
A.4	1	Project Information – Sheet A0.1 (02/18)	6.27.2013
A.5	1	Plan, Site – Sheet A0.1 (03/18)	6.27.2013

A.6	1	Plan, Main Floor – Sheet A3.1 (05/18)	6.27.2013
A.7	1	Electrical Plan, Art Side – Sheet A7.1 (15/18)	6.27.2013
A.8	1	Electrical Plan, Garage Side – Sheet A7.2 (16/18)	6.27.2013
A.9	1	Plumbing Plan – Sheet A.7.3 (18/18)	6.27.2013
A.10	1	Plan showing Whole Property and Existing Improvements	6.27.2013
A.11	1	Email regarding Number of Pigs	10.15.2013
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information	6.27.2013
B.2	1	Cleaning Station Concept	10.16.2013
‘C’	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1 – 7.27.2013)	8.06.2013
C.2	9	Opportunity to Comment	8.07.2013
C.3	9	Administrative Decision	10.18.2013