

# NOTICE OF DECISION

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**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 March 25, 2014, at 4:00 PM.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 36.3500 et. al: OCI Zone and MCC 36.7200 et. al: Nonconforming Uses.

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.**

### **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. There shall be no auto wrecking on site. [MCC 36.3515]

2. The business owner shall ensure that motor vehicles towed to the site shall be stored within the fenced enclosure and the number of motor vehicle stored on site shall not exceed more than 24 motor vehicles at any one time. The business owner shall maintain the exterior of the fence for the storage yard to screen stored vehicles from sight of neighboring property from ground level (6 feet above ground surface). The fence shall be maintained as a neat and functioning fence. [36.7204(B)]
3. For the occasional sale of a motor vehicle, the vehicle for sale can be displayed in the front parking lot. This option shall be limited to predominately one vehicle at any given time with occasionally two vehicles at a time. [36.7204(B)]
4. The business owner shall maintain as current any required business licenses. [MCC 37.0560]

**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 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 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. Project Description:**

**Staff:** A request for an Alteration of a Nonconforming Use permit for a motor vehicle towing yard business to include repairs and alterations to the office/garage building and replace fencing in Orient Commercial/Industrial (OCI) Zone.

### **2. Property Description & History (if needed):**

**Staff:** The applicant states that the auto towing and former auto wrecking business was established in the 1940s. The building on site was established in 1940 with an addition in 1965 for which included is the building permit (#34600) card showing inspection including occupancy is attached Exhibit B.18. In the early 2000s the wrecking portion of the business was abandon and the last record County Land Use Planning has for DMV Auto Wrecking License was for 1999. The motor vehicle towing yard use continued through from 2001 to present.

### **3. ORIENT COMMERCIAL/INDUSTRIAL**

#### **3.1. Allowed Uses**

##### **MCC 36.3520 List of allowed uses**

**Staff:** Motor Vehicle Towing Yard is not a listed allowed use. The Motor Vehicle Towing Yard is not a listed use in the OCI Zone, but has existed prior to the zoning limiting that use, therefore is considered a nonconforming use (see Section 4 of this decision).

#### **3.2. Review Uses**

**MCC 36.3525** The commercial and industrial uses listed in this section may be permitted when found to meet the approval criteria in 36.3527 unless other approval criteria are listed for the use, and are subject to De-sign Review approval. Uses in this section shall be processed as Type II decisions pursuant to MCC 37.0510 through 37.0800.

**(A) Small-scale low impact rural service commercial uses such as local stores, shops, offices, repair shops, and similar uses including the uses listed below.**

- (1) Automobile Repair,**
- (2) Restaurant,**
- (3) Tavern,**
- (4) Professional Office,**
- (5) Garden supply store,**
- (6) Hardware store,**
- (7) Retail bakery,**
- (8) Service station,**

- (9) Beauty and barber shop,
- (10) Video tape rental,
- (B) The small-scale low impact industrial uses listed below.

**Staff:** Motor Vehicle Towing Yard is not a use that is listed as a small-scale low impact rural service commercial uses nor is it similar to a listed commercial use. Motor Vehicle Towing Yard is not a use that is listed under small-scale low impact industrial uses. The use is not a review use in the OCI zone. The Motor Vehicle Towing Yard is not a listed use in the OCI Zone, but has existed prior to the zoning limiting that use, therefore is considered a nonconforming use (see Section 4 of this decision).

### **3.3. Conditional Use**

**MCC 36.3530 List of Conditional Uses and Community Service Uses listed in MCC 36.6015.**

**Staff:** Motor Vehicle Towing Yard not a list as a Conditional Use and Community Service Use. The Motor Vehicle Towing Yard is not a listed use in the OCI Zone, but has existed prior to the zoning limiting that use, therefore is considered a nonconforming use (see Section 4 of this decision).

### **3.4. Dimensional Standards and Development Requirements**

**MCC 36.3550: All development proposed in this district shall comply with the applicable provisions of this section.**

- (A) Except as provided in MCC 36.3560, 36.3570, and 36.3575, the minimum lot size shall be one acre.
- (B) Minimum Yard Dimensions – in feet  
Front: 30 Side: 10 Rear: 30  
Maximum Structure Height - 35 feet

**Staff:** The subject property is one acre meeting the minimum lot size (Exhibit B.1 and B.2). The building on site meets minimum yard dimensions for all yards, with the side yard setback the closet at 12 feet and all other yards exceeding 50 feet (Exhibit A.3). There is a public parking area in the 30 foot front yard setback, however that configuration has existed for at least 27 years according to the 1987 Aerial Photo (Exhibit B.17). The building is two stories meeting the 35 foot maximum height. *These standards are met.*

### **3.5. Lot of Record**

**MCC36.3570(A): In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, SR and R zones applied;
- (2) July 10, 1958, F-2 zone applied;
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (4) October 6, 1977, RC zone applied, Ord. 148 & 149;

**MCC 36.0005: 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 de-scribed in MCC 36.7785. 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

**Staff:** The subject property has appeared in its current configuration on Tax Assessment maps since the first zoning map in 1962 (B.10 – B.13). County Land Use Planning has approved several licenses for the operation of a wrecking yard for the subject project in its current configuration starting in 1965 (Exhibit B.9) and continuing these approvals as a nonconforming use from 1977 (Exhibit B.7 and B.8). The County Assessment Parcel Record shows a deed for the one acre property was filed in Book 852, Page 220 on April 20, 1944. In 1944 there was no zoning requirements and no land division requirement. *The subject property is a Lot of Record.*

#### **4. ALTERATION OF NONCONFORMING USE**

##### **4.1 Nonconforming Uses**

**MCC 36.7200(C):** Nonconforming uses shall be allowed to continue without additional permission, except that such uses may be replaced, altered or expanded only as provided in MCC 36.7209 and 36.7214 after verification under MCC 36.7204.

**Staff:** The application requests a nonconforming review of a use, Motor Vehicle Towing Yard, which is not a use that is listed as an allowed use, a review use or a conditional use in the OCI Zone (Exhibit B.14). The findings in the following sections include a verification of the nonconforming use status and a review of the minor alteration of the building. *This standard is met.*

##### **4.2. Verification of Nonconforming Use Status**

- 4.2.1. MCC 36.7204 (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.**

**Staff:** The application narrative states the towing company has operated in the same location for 48 years. The business was originally operated as a towing and wrecking yard (Exhibit A.2). Records from County Land Use Office show the business operation obtain Auto Wrecking License approval from 1965 through 1999. When zoning was first adopted for the property in 1958, the applicant states the business was already established. The 1958 zoning was General Manufacturing (M-2) as showing on the 1962 Zoning Map (Exhibit B.13) for which automobile wrecking was an allowed use (Exhibit B.16). The motor vehicle towing yard was a component of the wrecking yard business. On October 6, 1977 the zoning for the property changed to Rural Center (Exhibit B.12) which did not include auto wrecking or towing yard as an allowed use, review use or conditional use (Exhibit B.15). It was on that dated the business became nonconforming. The Rural Center (RC) zoning designation remained until the property was rezoned on January 6, 2003 to Orient Commercial/Industrial (OCI) as shown on Exhibit B.10). The OCI zoned does not including vehicle towing yard or auto wrecking yard as a use allowed in the zone.

There is no record of Auto Wrecking License approval in the file after 1999. It appears from the records submitted and County Land Use Planning records that no Auto Wrecking Licenses were obtained after 1999 discontinuing the wrecking use after the 1999 Auto Wrecking License expired. Thus the auto wrecking portion of the nonconforming use was abandon according to MCC 36.7204(A)(2) two years after the 1999 Auto Wrecking License expired. The auto wrecking use component of the business was abandoned or interrupted for a continuous two year period and thus no longer has a nonconforming use status.

The nonconforming use request is to verify the nonconforming use status of the motor vehicle towing yard business on the property. Motor vehicle towing was a component of the auto wrecking business operation until the 1999 Auto Wrecking License expired. At that point the motor vehicle towing business component of the business continued at a reduce extent of the previous nonconforming use and continues to have nonconforming status because that component of the use was not abandoned or interrupted for a continuous two year period.

The applicant submitted documents for demonstrating the motor vehicle towing yard business obtained business licenses from the City of Gresham for Motor Vehicle Towing from 2001 through 2013 (Exhibit A.9 and A.10). The documents submitted demonstrated that the motor vehicle towing yard business use has not been abandoned or interrupted for a continuous two year period. The applicant has demonstrated that the motor vehicle towing business is a nonconforming use.

**4.2.2. MCC 36.7204(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 be-came 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:** At the time of enactment or amendment of the Zoning Code provision disallowing the use was a wrecking yard which included an motor vehicle towing yard component. The wrecking yard use was discontinued, however the motor vehicle towing yard use component was continued as a nonconforming use. This analysis examines the auto towing yard component. The towing yard is a fenced yard from which motor vehicle towing business is operated and towed vehicles are stored. Vehicles are often towed back to the yard and stored until retrieval or are hauled to another location (business), a licensed auto wrecking yard for recycling. Occasionally, one or two vehicles are sold from the front parking area; however this is a minor part of the business, with occasionally one or two vehicles parked in the front lot with for sale signs. The nature of a motor vehicle towing business is that it is a 24 hour operation.

The site has a two story building that has a footprint of about 1700 square feet. About four-fifths of the property is fenced blocking the view of the vehicle storage area from nearby properties. A public parking area is located between Dodge Park Blvd. right-of-way and the fenced storage area. This has been the design of the property at least since 1987 as shown in Exhibit B.17.

The level of vehicle storage as show in Exhibit B.3 aerial photo series for the summers of 2008, 2010 and 2012 showing about between 12 and 16 vehicles on site. The most recent Google Maps aerial photo shows 19 vehicles. It is reasonable to consider an average number of vehicles on site to be around 14 vehicles. It is reasonable for this business to consider that sometimes there will be more than average and sometimes less than average. A few more vehicles than the larger number shown on aerial photos is reasonable to assume is common for this business. Thus we find that the upper level of auto vehicle storage on the property should be capped at about 24 vehicles on site at one time, given the numbers of vehicles shown on the aerial photos. A condition of approval will limit the number of stored vehicles to about 24.

- 4.2.3. MCC 36.7204(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:** At the time of enactment or amendment of the Zoning Code provision disallowing the use, motor vehicle towing yard. The use was established prior to zoning, thus was in compliance. *This standard is met.*

**4.2.4. MCC 36.7204(D) Except for nonconforming uses considered under MCC 36.7214 (B), the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification.**

**Staff:** Conditions will be imposed limiting the number of stored vehicles to 24 per Finding 4.2.2 and requiring the vehicles be stored within the screened and fenced area except for parking one or two vehicles being offered for sale in the front parking lot. A condition will require vehicles offered for sale at the site shall be limited to predominately one at a time with occasionally two at a time.

**4.2.5. MCC 36.7204(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:** The applicant provided evidence for the continuity, nature and extent of the nonconforming use for the 10-year period immediately preceding (Exhibit A.9, A.10 and A.12).

**4.2.6.. MCC 36.7204(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 preceding 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 lawfully existed at the time the applicable zoning ordinance or regulation was adopted.**

**Staff:** Information from the County Land Use Planning auto wrecker file for the property was used to demonstrate existence of the use beyond the 10-year period (Exhibits B.3 through B.9).

**4.3. Alteration of Nonconforming Uses**

- 4.3.1. MCC 36.7214(B) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 36.7204, the Planning Director shall authorize alteration of a nonconforming use when it is demonstrated that:**
- (1) The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements, or**
  - (2) The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity.**

**Staff:** Most of the alteration work is necessary to maintain in good repair the existing building associated with the nonconformity. This work includes installation of a new roof, gutters, siding windows, rebuilding the stairs to second story office, repainting inside and out as well as fence maintenance and landscaping maintenance. It is staff understanding that the work also includes minor changes to the outside of the building such as the installation of an awning. Most of the proposed work as described meets the maintenance standard of Subsection (2).

- 4.3.2. MCC 36.7214(C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 36.7204, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.**
- (1) The character and history of the use and of development in the surrounding area;**
  - (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;**
  - (3) The comparative numbers and kinds of vehicular trips to the site;**
  - (4) The comparative amount and nature of outside storage, loading and parking;**
  - (5) The comparative visual appearance;**
  - (6) The comparative hours of operation;**
  - (7) The comparative effect on existing flora;**
  - (8) The comparative effect on water drainage or quality; and**
  - (9) Other factors which impact the character or needs of the neighborhood.**

**Staff:** Minor changes to the existing building exterior are proposed but will not expand the footprint and will not result in any greater adverse impacts on the neighborhood. *This standard is met.*

## **5. ~~4.3.2.~~ Transportation Standards**

### **MCRR 4.000 Access to County Roads**

**Staff:** The proposal will not result in any increase in transportation systems impacts. The applicant has submitted an application for a Right-of-Way Access Permit.

## **6. Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for a Verification of a Nonconforming Use and an Alteration of the Nonconforming Use for building repairs and improvements OCI 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	7/26/13
A.2	2	Narrative	7/26/13
A.3	4	Email from Erin Mick, City of Portland Sanitarian and receipt of payment for evaluation	7/26/13
A.4	1	Police Services Review	7/26/13
A.5	2	Fire District Review	7/26/13
A.6	4	Application for Public Road Right o Way Access Permit	7/26/13
A.7	1	Aerial photo of subject property	7/26/13
A.8	1	1998 DMV Auto Wrecking License application	7/26/13
A.9	3	City of Gresham Business License Database information regarding Lucky Towing for 2001-2007	7/26/13
A.10	4	City of Gresham Business License Database information showing motor vehicle towing business license from 2001 - 2013	1/3/14
A.11	1	Certificate of On-Site Sewage Disposal	1/3/14
A.12	1	Lusted Water District letter verifying water service for “many years”	1/3/14
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information	NA
B.2	1	A&T Tax Map with Property Highlighted	NA
B.3	1	2012, 2010 & 2008 Aerial Photos of subject property	NA
B.4	1	2002 Aerial Photo of subject property	NA
B.5	1	1998 Aerial Photo of subject property	NA
B.6	1	1994 Google Earth Aerial Photo of subject property	NA
B.7	5	1992, 1994, 1997 and 1999 for County Wrecker Review documents for DMV Auto Wrecking License from County Land Use Wrecker Yard File for property	NA
B.8	1	1979 Board Order approving Auto Wrecker license for the property from County Land Use Wrecker Yard File for property	NA
B.9	2	1965 and 1968 Board of County Commissioners approving Auto Wrecker license	NA

B.10	1	Current Rural Center Zoning Map adopted 1/6/2003 showing subject property zoned OCI	NA
B.11	1	1999 Zoning Map showing subject property zoned RC	NA
B.12	1	1977 Zoning Map adopted 10/6/1977 showing subject property zoned RC	NA
B.13	1	1962 Zoning Map showing subject property zoned RC	NA
B.14	3	OCI Zoning Code adopted 1/6/2003	NA
B.15	3	RC Zoning Code adopted 10/6/1977	NA
B.16	1	M-2 Zoning Code adopted 7/18/1958	NA
B.17	1	1987 Aerial Photo showing subject property	NA