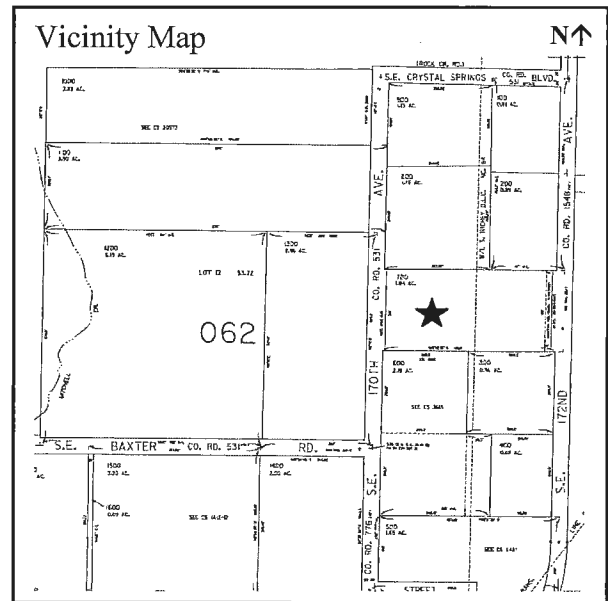


1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF DECISION

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

Case File: T2-2014-3658
Permit: Temporary Health Hardship Permit and Minor Variance
Location: 8314 SE 170th Avenue
Tax Lot 700, Section 19CD
Township 1 South, Range 3 East, W.M.
Tax Account #R993191000
Applicant: Coleen Warner
Owners: Ray and Coleen Warner
Base Zone: Rural Residential (RR)
Overlays: n/a



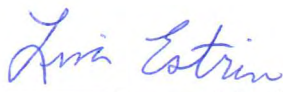
Summary:

1. The applicant is proposing to reauthorize the temporary health hardship dwelling on the property for the daily care of Harold Collins.
2. The applicant has requested a minor variance to allow the existing 28 ft by 12 ft well house and shed to remain within the 10-foot side yard. The building is currently 9 ft from the southern side property line.

Decision: Approved with Conditions

Unless appealed, this decision is effective Friday November 21, 2014, at 4:00 PM.

Issued by:

By: 
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Friday, November 7, 2014

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 or lisa.m.estrin@multco.us.

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 21, 2014 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): *Rural Residential Criteria* - MCC 11.15.2214 Accessory Uses, MCC 11.15.2216 Temporary Uses, MCC 11.15.2218 Dimensional Requirements, MCC 11.15.2222 Lot of Record,

Variance Criteria - MCC 11.15.8515 Variance Classification, 11.15.8505 Variance Approval Criteria

Temp. Health Hardship Criteria- MCC 11.15.8710 Temporary Health Hardship Permit

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>.

Conditions of Approval

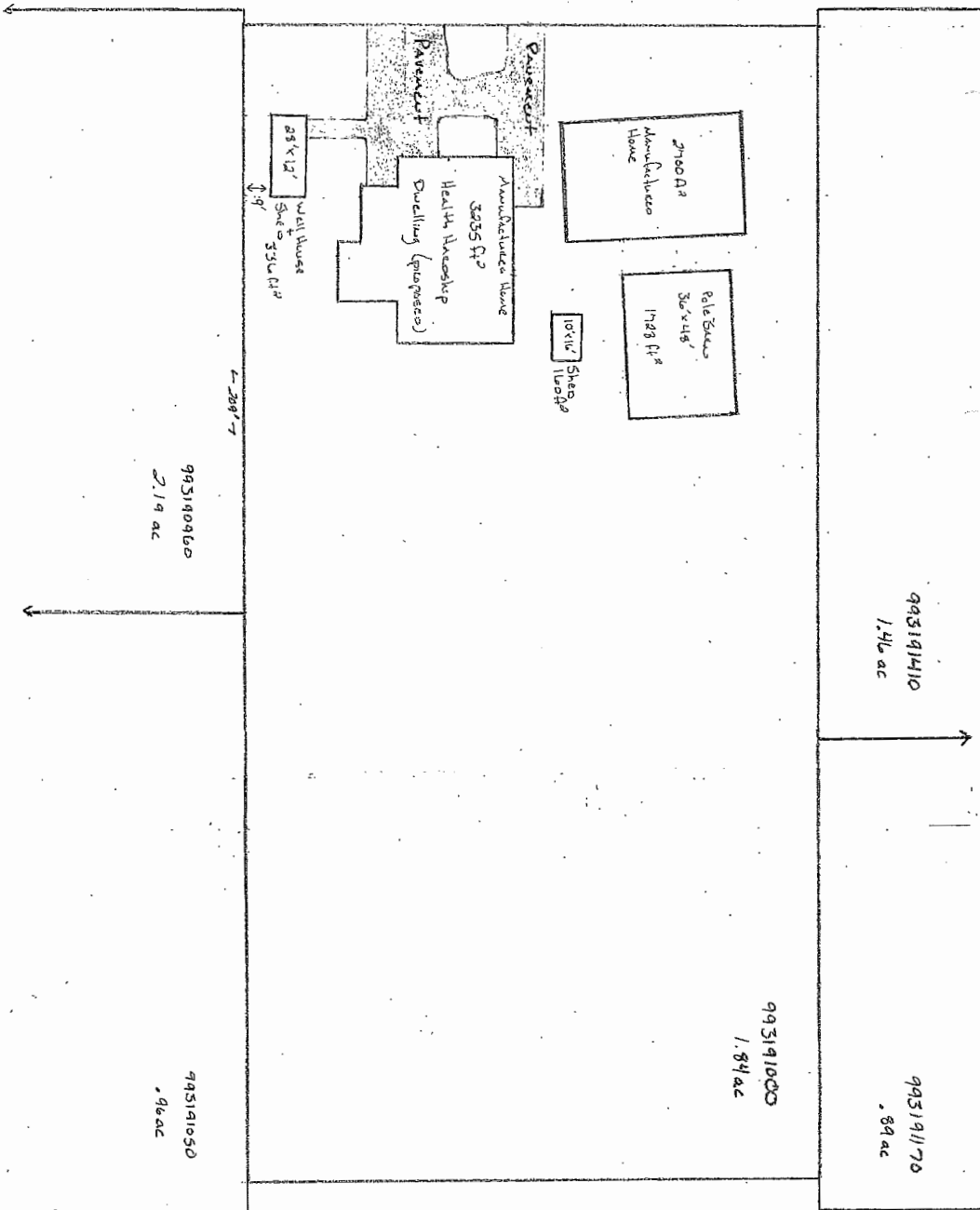
The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. **This Temporary Health Hardship permit shall expire two years from the approval date of this decision. This Temporary Health Hardship permit may be extended by submitting a renewal request in compliance with Condition No. 2 below. The request for a permit extension must be submitted prior to the two year time period expiring.**
2. Every two years from the approval date of this decision, Coleen and/or Ray Warner shall submit:
 - a. A recent (within 6 months prior to the two year deadline) Health Hardship Medical Verification Form completed by Mr. Harold Collins' physician. The physician will need to indicate whether Mr. Collins still requires assistance with daily care;
 - b. A letter from Coleen Warner describing the continuing assistance being given; and
 - c. A General Application form and the appropriate fee for the Health Hardship renewal shall be submitted.

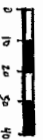
The above materials listed in a. through c. above shall be submitted to Land Use Planning prior to this Health Hardship permit expiring. If Mr. Harold Collins no longer needs daily assistance or the caregiver no longer qualifies pursuant to MCC 11.15.871(A)(1)(a) – (c), the Temporary Health Hardship permit shall not be renewed. [MCC 11.15.8710(A)(6) and MCC 11.15.8710(A)(1)]

3. This Temporary Health Hardship permit is for Mr. Harold Collins. The caregivers for Mr. Harold Collins shall be Ray Warner or Coleen Warner. The caregivers shall live in one of the dwellings on

SE 170th Avenue



SE 172nd Avenue



UR-04-071

8314 SE 170th Avenue

as of July 2, 2014

the property. Once Mr. Collins ceases permanently occupying the second dwelling on the property or the permit expires, one of the two manufactured dwellings shall be removed from the property within six months. Neither of the two manufactured dwellings shall be used as a rental dwelling until such time as one of the dwellings is removed from the property. [MCC 11.15.8710(A)(5)]

4. Should this Health Hardship permit not be renewed in compliance with Condition No. 1 above, one of the two manufactured dwellings shall be removed from the property within six months of this decision expiring. If one of the two manufactured dwellings are not removed within the six month period, the \$1000 penal bond and any interest owing shall be forfeit. [MCC 11.15.8710(A)(5)]
5. Within 90 days from this permit becoming final, the property owners shall provide documentation that the 36-ft by 48-ft accessory building obtained building permits for the entire square footage. If the building or a portion of the building did not obtain building review, the property owners shall obtain a building permit and complete the inspections for that portion of the building within six months of this permit becoming final. [MCC 37.0560 and MCC 37.0690(E)]
6. Within 90 days from this permit becoming final, the property owners shall provide documentation that the 28-ft by 12-ft wellhouse/shed obtained the necessary building permits at the time of its construction. If no building permit was obtained, the property owners shall obtain a building permit and complete all inspections or obtain documentation from the building department that no permits are necessary for this accessory structure.
7. Within 90 days from this permit becoming final, the property owners shall demonstrate that both driveway connections to 170th Avenue are lawful, apply for the necessary permits from the Right-of-Way section of Transportation to remove one of them, or apply for a Transportation Variance. [MCRR 4.200 and MCC 37.0560]

Note: Please note, Multnomah County must review and sign off on any 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 \$70.00 will be collected.

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.

the property. Once Mr. Collins ceases permanently occupying the second dwelling on the property or the permit expires, one of the two manufactured dwellings shall be removed from the property within six months. Neither of the two manufactured dwellings shall be used as a rental dwelling until such time as one of the dwellings is removed from the property. [MCC 11.15.8710(A)(5)]

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Notice to Mortgagee, Lien Holder, Vendor, or Seller:

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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 is requesting a temporary health hardship permit to allow the continued use of a second manufactured dwelling located on the property to house and provide for the daily care of Harold Collins in the temporary health hardship dwelling. In addition, the applicant has requested a minor variance to allow an existing wellhouse/storage building to remain within a side yard setback.

2.00 Property Description & History:

Staff: Presently, the property contains two manufactured dwellings, one 36-ft by 48-ft accessory building, a 10-ft by 16-ft shed, two access points onto SE 170th, and a 28-ft by 12-ft wellhouse/shed. The property has frontage on 170th Avenue and 172nd Avenue. In 1991, the County granted a Temporary Health Hardship approval to allow the placement of a second manufactured dwelling on the property for the housing and daily care of Bertha Mae Collins. Condition No. 3 of Health Hardship Permit 1-99 required the applicant to submit a recent physician’s statement for Bertha Mae Collins and a letter from the care providers every two years to renew the Temporary Health Hardship permit. Health Hardship Permit 1-99 was not renewed in a timely fashion and expired.

As part of the initial review of the property for this application, it was discovered that the wellhouse/shed was located within the southern side yard setback. The building is located nine feet from the southern property line. To be able to authorize the wellhouse in its current location, a minor variance will need to be granted. The wellhouse and large accessory structures have outstanding issues that will need to be corrected in order for the temporary health hardship permit to be approved. Pursuant to MCC 37.0560, conditions of approval have been included to correct the issues for each of these buildings.

3.00 Rural Residential Criteria:

3.01 MCC 11.15.2214 Accessory Uses

* * *

D. Other structures or uses customarily accessory or incidental to any use permitted or approved in this district; and...

Staff: Currently there is a 36-ft by 48-ft (1,728 sq. ft.) accessory building on the site (Exhibit A.2). The August 2000 land use approval for the building authorized a 36-ft by 36-ft building (Exhibit B.2). A condition of approval has been included for the property owners to provide documentation regarding the building permit and authorize this buildings expansion. Additionally, on the site are a 10-ft by 16-ft (160 sq. ft.) shed and a 28-ft by 12-ft (336 sq. ft.) wellhouse/shed. The 160 sq. ft. shed is below the 200 sq. ft. building permit threshold. The 336 sq. ft. building would have required a building permit. No evidence of building permit has been found for this building. The primary single family dwelling was authorized in September 1986. The total square footage of 2,224 square feet of accessory structures is customarily accessory to residential uses in the area. *As conditioned, this criterion will be met.*

3.02 MCC 11.15.2216 Temporary Uses

When approved pursuant to MCC .8705 and .8710.

Staff: The applicable criteria for the Temporary Health Hardship are listed in MCC 11.15.8710.

3.03 MCC 11.15.2218 Dimensional Requirements

C. Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet.

Minimum Front Lot Line Length – 50 feet.

D. The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional requirements not otherwise established by Ordinance.

Staff: SE 170th Avenue is a Local Road with a 45-foot wide right-of-way along the property frontage. The County's standard for a *Local* right-of-way is 50 feet. The subject property has dedicated five feet along the entire length, so no increase to the minimum yard setback is required. All buildings meet the 30-foot front yard setback from the front lot line (Exhibit A.2). All buildings, except the 28-ft by 12-ft wellhouse/shed meet the side yard and rear yard setbacks. The wellhouse/shed meets the rear yard setback along with the northern side yard. The wellhouse/shed is only 9-ft from the south lot line. A minor variance will need to be granted for this side yard encroachment. Section 4.0 below addresses compliance with the minor variance criteria therefor with approval of the minor variance, the wellhouse/shed meets the above yard requirements. *Criteria met.*

3.04 MCC 11.15.2222 Lot of Record

A. For the purposes of this district, a Lot of Record is a parcel of land:

- 1. For which a deed or other instrument dividing land was recorded with the Department of Administrative Services, or was in recordable form prior to October 6, 1977; and**
- 2. Which, when established, satisfied all applicable laws.**

B. A Lot of Record which has less than the area or front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

C. Separate Lots of Record shall be deemed created when a street or zoning district boundary intersects a parcel of land.

D. Except as otherwise provided by MCC .2220, .2224, and .7720, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

Staff: The subject property was established prior to zoning in 1958. Except for right-of-way dedications, the property remains in the same configuration as on the 1962 zoning maps. *The property is a Lot of Record.*

4.00 Variance Criteria

4.01 MCC 11.15.8515 Variance Classification

B. A Minor Variance is one that is within 25 percent of an applicable dimensional requirement. The Planning Director is authorized to grant a Minor Variance in accordance with the following procedures and conditions:

- 1. Application shall be made on forms provided by the Planning Director and shall be accompanied by the written consent of the owner or owners of each lot**

adjoining and across any street from the subject property;

2. The form to be presented to each owner must include the zoning requirement, the amount of relief requested by the applicant and a declaration by the owner that the granting of the variance shall not harm the value and livability of his property.

3. The filing fee for the variance will be as set by Board resolution;

4. The Planning Director may, without hearing, grant the variance for which the application is made and may attach reasonable conditions thereto.

5. Written findings that MCC .8505(A)(3) and (4) are satisfied.

Staff: The encroachment of the wellhouse/shed into the 10-ft side yard is one foot. The applicant is requesting a 10% reduction to the side yard setback. The applicant has provided signatures from the adjoining and across the street property owners. The applicant has used the appropriate forms and paid the filing fee. Written findings have been made below for MCC 11.15.8505(A)(3) and (4) and have been satisfied (see Section 4.03 And 4.04 Below.) *Criteria met.*

4.02 11.15.8505 Variance Approval Criteria

A. The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall meet criteria (3) and (4).

Staff: The subject property is located within the Rural Residential (RR) district. The minimum lot size in the RR zone to create a new parcel is 5 acres. The subject property is 1.84 acres. As the property is nonconforming to the minimum lot size of the zone, a practical difficulty arises in placing all the existing buildings on the subject site off of 170th. As Transportation road rules limit one access point to the property from the local road, the buildings are clustered off of 170th for access. This creates a practical difficulty in meeting the 10-foot side yard setback for the wellhouse building. *Criterion met.*

4.03 3. The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.

Staff: The properties that surround the subject site are all currently developed with existing dwellings and various outbuildings. The wellhouse/shed has existed on the site for a number of years without complaint. An opportunity to comment was sent to the surrounding property owners and no comments were received. It appears that the authorization of the variance will not be materially detrimental to the public right-of-way or injurious to properties in the neighborhood. *Criterion met.*

4.04 4. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.

Staff: The subject property is designated as Rural Residential lands in the existing Comprehensive Plan. The Rural Residential zone allows for accessory buildings and a single family dwelling on a Lot of Record. The granting of a 10% variance to allow the wellhouse to encroach one foot into the side yard setback will not adversely affect surrounding development

or allow a use not listed in the underlying zone. *Criterion met.*

5.00 Temporary Health Hardship Criteria

5.01 MCC 11.15.8710 Temporary Health Hardship Permit

The purpose of the Temporary Health Hardship Permit is to allow the convenient provision of daily health care needs to a person with a demonstrated health hardship by allowing the placement of a mobile home on a lot with an existing single family residence. The permit is temporary in nature and not intended to encourage an increase in the residential density beyond that envisioned by the Comprehensive Plan and its implementing ordinances.

A. The Planning Director may grant a Temporary Health Hardship Permit to allow occupancy of a mobile home on a lot with a single family residence based on the following findings:

- 1. The person with the health hardship is either one of the property owners or is a relative of one of the property owners.**
 - a. If the person with the health hardship is one of the property owners, then the care provider in the other residence is not required to be a relative.**
 - b. If the person with the health hardship is a relative of one of the property owners, then the care provider must be a relative.**
 - c. For the purposes of this section, a relative is defined as a grandparent, parent, child, brother or sister, either by blood or legal relationship.**

Staff: Mr. Harold Collins is the person with the demonstrated health hardship (Exhibit A.3). Mr. Collins is Coleen Warner's father (Exhibit A.6). Coleen Warner is one of the property owners of the subject property (Exhibit B.1). *Criterion met.*

- 5.02 2. The person with the health hardship is unable to adequately provide daily self-care needs because of a physical and/or medical impairment based upon a statement from a licensed physician describing the nature of the impairment and its resultant limitations. The physician shall indicate that those limitations are severe enough to warrant daily assistance, and that at least one of the residents of the property is capable of providing that assistance.**

Staff: Mr. Collins' physician has indicated that he requires assistance with daily care (Exhibit A.3). The physician has indicated that Coleen Warner is capable of providing the assistance needed for his daily care. *Criterion met.*

- 5.03 3. There is a demonstrated lack of appropriate alternative accommodations within the area entitled to notice, including, but not limited to, rental housing or space within the existing residence.**

Staff: There appears to not be any alternative accommodations within the area entitled to notice. No space exists in the primary residence for Mr. Collins to live. *Criterion met.*

- 5.04 4. The following locational criteria are satisfied:**

- a. The proposed siting of the mobile home will satisfy the applicable setback and lot coverage standards of the zoning district without variance.**

Staff: Both dwellings meet the minimum yard setbacks of MCC 11.15.2216(C). The RR zone does not have a lot coverage maximum. *Criterion met.*

- 5.05 b. The mobile home shall be located in a manner which satisfies the locational requirements of a second residence on properties capable of being**

divided under the existing zoning within those areas designated as urban by the Comprehensive Framework Plan.

Staff: The subject temporary health hardship dwelling is located on a parcel zoned Rural Residential (RR). The subject parcel is 1.84 acres and is not dividable under the current RR zone. *Criterion not applicable.*

- 5.06** **c. The mobile home will not require any new main connections to public facilities or services (e.g., sewer, water or power mains, curb cuts, etc.) unless sited in the manner allowed in subsection (b) above, in which case those services may be extended to the area on the property which satisfies the locational requirements of a second residence.**

Staff: No new sewer connections or water service will be extended to the subject temporary health hardship dwelling. *Criterion met.*

- 5.07** **d. The mobile home will not require any attached or detached accessory structures other than wheelchair ramps to accommodate the health care needs of the proposed occupant.**

Staff: The applicant has not indicated that any attached or detached accessory structures are needed for Mr. Collins. *Criterion met.*

- 5.08** **5. A penal bond in the amount of \$1,000 is posted to insure removal of the mobile home within six months after the health hardship ceases to exist.**

Staff: The County has received a penal bond as part of the original Health Hardship application, HH 1-99. *Criterion met.*

- 5.09** **6. As a condition of approval, every two years from the approval date the applicant shall submit:**
- a. A recent (within 6 months prior to the two year deadline) physician's statement verifying that the situation described in (2) above still exists; and**
 - b. A letter from the care provider describing the continuing assistance being given.**

Staff: A condition has been included.

6.00 Transportation Standards

- 6.01 MCR 4.200 Number:** Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property will be the standard for approval. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system.

Staff: The subject property is served by two driveway(s). Both driveways connect to 170th Avenue. Transportation Planning found authorization for a single driveway off of 170th Avenue in its records. Pursuant to MCR 4.200, a condition of approval has been included requiring the Warners to demonstrate that both driveway connections to 170th Avenue are lawful, remove one of them, or apply for a Transportation Variance. *As conditioned, criterion met.*

7.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Minor Variance and Temporary Health Hardship permit to authorize the encroachment of a shed into the side yard and allow the continued use of a Temporary Health Hardship Dwelling in

the Rural Residential zone. This approval is subject to the conditions of approval established in this report.

8.00 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 T2-2014-3658 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	8/27/2014
A.2	1	Site Plan	8/27/20014
A.3	2	Health Hardship Medical Verification Form	8/27/2014
A.4	1	Property Owner Consent of Variance Request	8/27/2014
A.5	1	Variance Narrative	8/27/2014
A.6	1	Health Hardship Narrative	8/27/2014
A.7	1	Aerial Photograph dated 7/10/2014	8/27/2014
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1S3E19CD – 00700	8/27/2014
‘C’	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	9/26/2014
C.2	2	Opportunity to Comment	9/26/2014