

1600 SE 190th Ave, Portland OR 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: T2-2017-9731

Permit: Significant Environmental Concern for Wildlife Habitat and Scenic View

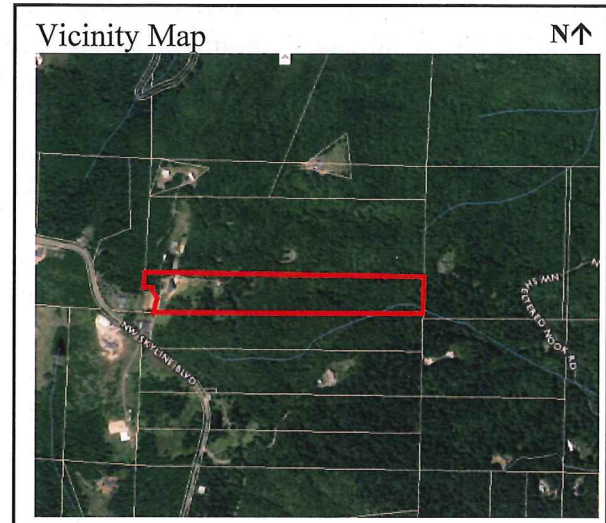
Location: 16940 NW Skyline Blvd
Tax Lot 600, Section 24B,
Township 2 North, Range 2 West, W.M.
R972240040

Applicant: Donis McArdle

Owners: Brian and Monica Spangler

Base Zone: Commercial Forest Use – 2 (CFU-2)

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



Summary: Request for a Significant Environmental Concern permit for Wildlife Habitat (SEC-h) and Scenic View (SEC-v) to construct an in-ground swimming pool accessory to the single-family dwelling.

Decision: Approved with Conditions

Unless appealed this decision is effective **Friday, April 6, 2018** at 4:00 PM.

Issued by:

By: Chris Liu
Chris Liu, Asst. Planner

For: Michael Cerbone, AICP
Planning Director

Date: Friday, March 23, 2018

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 staff planner Chris Liu at chris.liu@multco.us or (503) 988-2964 (8:00 am to 4:00 pm, Tuesday through Friday).

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, April 6, 2018 at 4:00 PM.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC Chapter 37: Administration and procedures; MCC 33.2200-33.2310: CFU-2; MCC 33.4500-33.4550: SEC General; MCC 33.4565: SEC-v; MCC33.4567 & .4570 SEC-h.

Copies of the referenced Multnomah County Code sections can be obtained by contacting the Land Use Planning office or online at multco.us/landuse/zoning-codes under the link *Ch. 33, West Hills Rural Plan Area*.

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. 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.
3. The property owner shall ensure that a Primary Fire Safety Zone is established according to (a) below and continuously maintained. [MCC 33.2256(D)(1)]. Based on the site conditions of the subject property, the required Primary Fire Safety Zone extends 105 ft. east and south of the proposed pool structure.

- (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.
4. The planting of any invasive non-native or noxious vegetation as listed in MCC 33.4570(B)(7) is prohibited. A list of native plants can be found in the latest edition of the Metro Native Plant List.

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall contact staff planner Chris Liu at chris.liu@multco.us or (503) 988-2964 (8:00 a.m. to 4:00 p.m., Tuesday through Friday) **for an appointment** for zoning review to sign the building permit plans. Please note, Multnomah County Land Use Planning and Multnomah County Transportation Right-of-Way must review and sign off on five sets of the building permits (site plan with erosion control on front of each set) before the applicant submits building plans to the City of Portland. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee 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

The applicant is requesting a Significant Environmental Concern Permit for Wildlife Habitat and Scenic Views to install an in-ground swimming pool accessory to the single-family dwelling. The pool will be approximately 20’ x 40’ and within 8 feet of the existing dwelling. No pool house or changing rooms are proposed as part of the project. All pool equipment will be in the basement of the existing dwelling.

2. Property Description & History

Staff: The 18.71 acre subject property is located in the Tualatin Mountains southeast of the intersection of NW Elliot Road and NW Skyline Boulevard. The property is zoned Commercial Forest Use-2 (CFU-2) with zoning overlays on the entire property for Significant Environmental Concern-Scenic View (SEC-v) and SEC-Wildlife Habitat (SEC-h). A zoning overlay for SEC-streams (SEC-s) is located towards the rear (eastern third) of the property and a Slope Hazard overlay is located on portions of the rear (eastern) half of the property. This application includes development in the CFU-2, SEC-v and SEC-h zones.

The property does not front a public road but is accessed to NW Skyline by private easement according to the applicant’s narrative. The subject property was found to be a Lot of Record (legally created property) in county land use permit T2-09-057 which approved a new replacement single family dwelling.

3. COMMERCIAL FOREST USE - 2

3.1. Forest Practices Setbacks and Fire Safety Zones

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Accessory structures within 100 ft. of the dwelling	N/A	30	30	Primary required

3.1.1. Forest Practices Setbacks

MCC 33.2256: Accessory Structure within 100 feet of the dwelling. The forest practices setbacks are a minimum of 30 feet.

Staff: The proposed pool location shown on the submitted site plan (Exhibit A.4) is within 8 feet of the dwelling. The site plan also indicates the setbacks from the property lines exceed the 30 feet minimum. *Forest practices setbacks minimum met.*

3.1.2. Fire Safety Zones

MCC 33.2256(D)(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 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

- (c) The building site must have a slope less than 40 percent.

Staff: The proposed building site's slope is between 20-21%. In land use case T2-09-057, the increased primary fire safety zone of 105 feet to the south and east of the dwelling was required and subsequently established. Depending on the final location of the swimming pool, the existing 105 feet primary fire safety zone established for the dwelling would require an additional 1-8 feet to ensure the pool also has a primary fire safety zone of 105 feet to the south and east. A condition of approval (Condition #3) for this decision requires the establishment and maintenance of the above mentioned primary fire safety zone for the pool.
Criteria met through a condition of approval.

3.2. Development Standards for Dwellings and Structures

MCC 33.2061 All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A). All exterior lighting shall comply with MCC 33.0570.

MCC 33.2061(C) The dwelling or structure shall:

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;

Staff: All plans and specifications for the swimming pool will be provided to County Land Use Planning for zoning sign-off prior to application for the building permits with the City of

Portland. All requirements, standards, and building codes for constructing the swimming pool will be met through the building permit process with the City of Portland. The proposal does not include any exterior lighting. Underwater lighting is proposed; however, MCC 33.0570(B)(13) exempts underwater lighting from the Dark Sky Lighting Standards. *These standards are met.*

3.3. Access

MCC 33.2273: 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 33.2275(C).

Staff: The subject property does not abut a public street; however this pre-existing parcel was determined to be a Lot of Record in county land use permit T2-09-057. The property does not front a public road but is accessed to NW Skyline by private easement according to the applicant's narrative. *Criterion met.*

4. SIGNIFICANT ENVIRONMENTAL CONCERN FOR WILDLIFE HABITAT

4.1 Development standards:

- 4.1.1 MCC 33.4570(B)(1):** Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Staff: The proposed pool location is in a cleared area in the back yard. No shrubs or trees are proposed to be removed as part of the project. *This standard is met.*

- 4.1.2. MCC 33.4570(B)(2):** Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Staff: The proposed pool is located adjacent to the dwelling, which is approximately 400 feet from the public road. Given this standard is not met, a wildlife conservation plan is required under MCC 33.4570(C). *This standard is not met.*

- 4.1.3. MCC 33.4570(B)(3):** The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Staff: The existing approved driveway accessing the site is in excess of 500 feet. Given this standard is not met, a wildlife conservation plan is required under MCC 33.4570(C). *This standard is not met.*

- 4.1.4. MCC 33.4570(B)(4):** For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:
- (a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or drive-way approach within 200 feet of that side property line; or

(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

Staff: The proposed development will utilize an existing approved access point and driveway. *This standard is met.*

4.1.5. MCC 33.4570(B)(5): The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

Staff: The proposed swimming pool will be located within 8 feet of dwelling; which is within 300 feet of the side property line. *This standard is met.*

4.1.6. MCC 33.4570(B)(6): Fencing within a required setback from a public road shall meet the following criteria

Staff: No fencing is proposed and the property is not adjacent to a public road. *This standard is met.*

4.2 Wildlife Conservation Plan

4.2.1 MCC 33.4570(C): Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

- (1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or**
- (2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).**

Staff: The development does not meet the standards of MCC 33.4570(B) due to the fact that the property is an interior lot, the property is further than 200 feet from a public road, and the driveway exceeds 500 feet. As required by MCC 33.4570(C)(1) above, the applicant has addressed the Wildlife Conservation Plan requirements below. *This standard is met.*

4.2.2 MCC 33.4570(C)(3): Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), the wildlife conservation plan must demonstrate the following:

Staff: The criteria in subsection (C)(5) are discussed in section 4.2.3 below. *This standard is met.*

4.2.3 MCC 33.4570(C)(5): Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, the wildlife conservation plan must demonstrate the following:

MCC 33.4570(C)(5)(a): That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

Staff: There are no anticipated impacts to the forested area as the proposed location is adjacent to the dwelling in a cleared yard area. *This standard is met.*

MCC 33.4570(C)(5)(b): That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

Staff: The applicant is not proposing to clear additional areas as part of this project. The proposed pool will be 20' x 40' with 2' of concrete decking around the north side, 4' concrete decking around the east side, 3' of concrete decking on the south side, and concrete decking on the west side will adjoin the existing concrete patio. Total decking is approximately 720 sq. ft., which brings the total development area to approximately 1520 sq. ft. *This standard is met.*

MCC 33.4570(C)(5)(c): That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes. Existing fencing located in the front yard adjacent to a public road shall be consistent with MCC 33.4570(B)(6).

Staff: No fencing is proposed as part of this project. There is existing partial fencing delineating property lines placed on adjacent tax lots. *This standard is met.*

MCC 33.4570(C)(5)(d): For mitigation areas, all trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the total developed area (including buildings, pavement, roads, and land designated as a Development Impact Area) on a Lot of Record will be one acre or more, the applicant shall comply with Mitigation Option 2:

- (1) Mitigation Option 1. In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the development site. Trees that are removed from the development site shall be replaced as shown in the table below. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.**

Staff: The applicant does not propose to remove any trees as part of this project. The proposed location of the pool is in the cleared back yard and the total development area is approximately 1520 square feet. *This standard is met.*

5. SIGNIFICANT ENVIRONMENTAL CONCERN FOR VIEWS

5.1. Criteria for Approval of SEC-Views

MCC 33.4565(C): Any portion of a proposed development (including access roads, cleared areas and structures) that will be visible from an identified viewing area shall be visually subordinate

Staff: The proposed swimming pool is an in-ground structure and no above-ground structures to support the swimming pool are proposed. Therefore, the swimming pool structure is not topographically visible from key viewing areas in the area. *The standard is met.*

6. Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for approval of an in-ground pool accessory structure in the Commercial Forest Use -2 zone and the Significant Environmental Concern for Wildlife Habitat and Scenic View overlay. 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	11.17.17
A.2	1	Applicant’s Exhibit List	11.17.17
A.3	9	Narrative	11.17.17
A.4	1	Site Plan Existing Conditions (Applicant’s Exhibit 1)	11.17.17
A.5	2	Site Photos (Applicant’s Exhibit 2)	11.17.17
A.6	1	Aerial map of property (Applicant’s Exhibit 3)	11.17.17
A.7	2	Site Photos (Applicant’s Exhibit 4)	11.17.17
A.8	1	Aerial map showing fencing on adjacent lots (Applicant’s Exhibit 5)	11.17.17
A.9	1	Storm Water Certificate (Applicant’s Exhibit 6)	11.17.17
A.10	1	Fire Service Review Form	11.17.17
‘B’	#	Staff Exhibits	Date
B.1	2	County Assessment Property Information	11.17.17
B.2	1	Opportunity to Comment	1.2.18
B.3	1	Complete Letter	12.15.17