

NOTICE OF DECISION

Case File: T2-2018-10691

Permit: Category 4 Land Division

Applicant: Cindy Coonrad

Owners: Cindy Coonrad & Jose Morales

Location: 6605 SE 302nd Ave.

Tax Lot 200, Section 19AA, Township 1 South, Range 4 East, W.M.

Tax Account #R994190680

Property ID #R342172

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

Overlays: None

Proposal Summary: A request for a Category 4 Land Division to correct an unlawful land division that created the subject property in 1965. The subject property has an existing dwelling constructed prior to zoning regulations in 1935. This case will replace land use case # T2-2017-9781, which expired and was not acted upon.

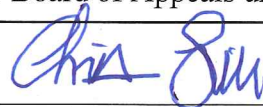
Decision: Approved with Conditions

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, November 12, 2018, at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact Chris Liu, Staff Planner at 503-988-2964 or at chris.liu@multco.us.

Opportunity to Appeal: 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 office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued By:



Chris Liu, Asst. Planner

For:

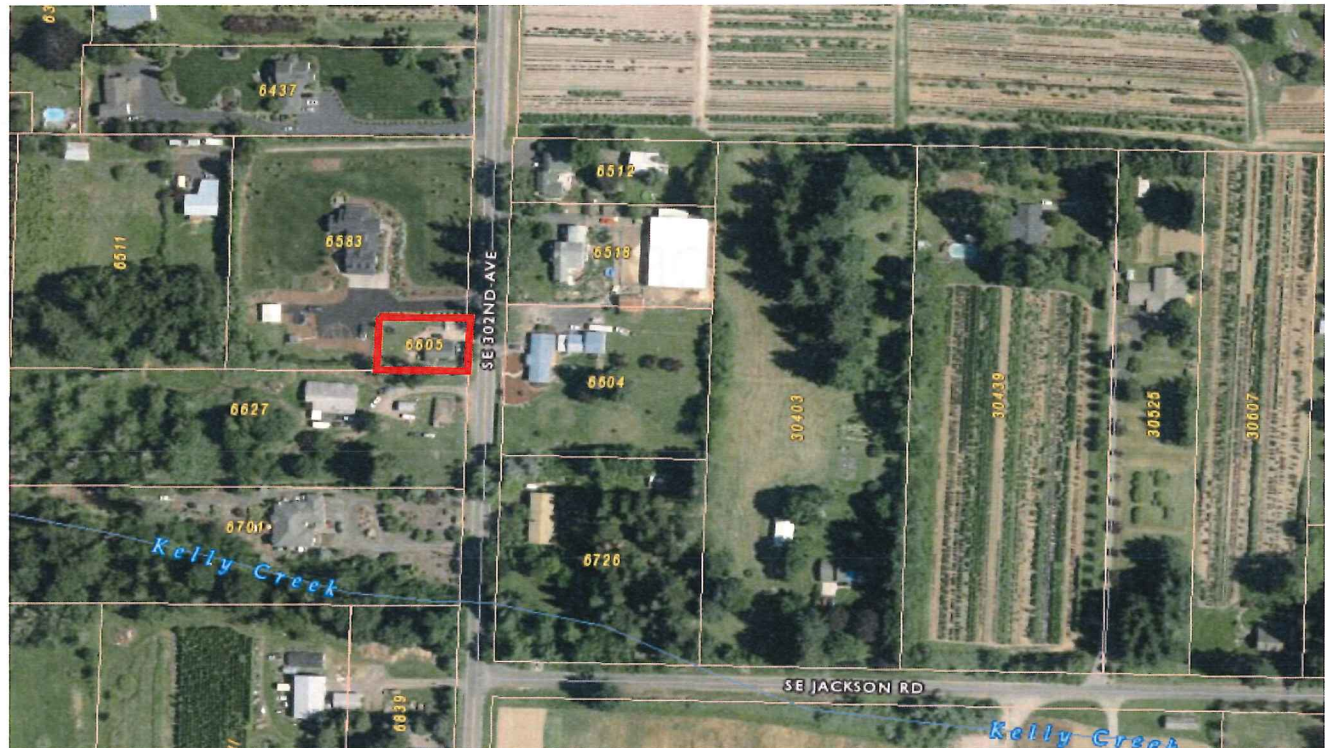
Michael Cerbone, AICP
Planning Director

Date:

Monday, October 29, 2018

Vicinity Map

N↑



Applicable Approval Criteria: Multnomah County Code (MCC): MCC 37.0560 Code Compliance; MCC 36.2855 Dimensional Standards and Development Requirements; MCC 36.7780 Category 4 Land Division; MCC 36.7785 Creation of Lots and Parcels That Were Unlawfully Divided; MCC 36.7935 Easements; MCC 36.7950 Water System; MCC 36.7955 Sewage Disposal; MCC 36.7960 Surface Drainage.

Copies of the referenced Multnomah County Code sections are available by contacting our office at 503-988-3043 or by visiting our website at multco.us/landuse/zoning-codes under the link *Chapter 36: West of the Sandy River Rural Plan Area* and *Chapter 37: Administration and Procedures*

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 division is based on the submitted written narrative(s) and plan(s). The final plat shall be consistent with the submitted Tentative Plan Map.
2. Within 90 days of the date the decision is final, the property owner(s) shall record a single lot partition plat, in accordance with the requirements of ORS Chapter 92. [MCC 36.7785(D)]
3. The applicant is to complete the procedures given in the enclosed "Applicant's Instructions for Finishing a Land Division." They are also to provide their surveyor the enclosed "Surveyor's Instructions for Finishing a Land Division" which provides instructions for drafting required materials. Before the final plat is submitted to the Multnomah County Surveyor's Office, two (2) copies of the plat are to be filed with the Planning Director.

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*.

1.0 Project Description:

Staff: The applicant requests a Category 4 Land Division to correct an unlawful land division that created the subject property in 1965. This case will replace land use case # T2-2017-9781, which expired and was not acted upon.

2.0 Property Description & History:

Staff: The subject property is located on 302nd Ave in an area with a mixture of residential and agricultural uses; it is zoned Multiple Use Agriculture (MUA-20). Records indicate this unit of land was created as a remainder lot when it was listed as an exception in the parent parcel’s recorded contract of sale (Book 270, Page 23) in 1965. The subject property did not meet the minimum lot size for the SR zoning in place at that time; thus, the parcel was not created legally. The proposal is to legalize the parcel through the procedures listed in MCC 36.7785 *Creation of Lots and Parcels That Were Unlawfully Divided*.

The subject property has an existing dwelling constructed prior to zoning regulations in 1935. It appears the dwelling may have been the original home for the parent parcel.

3.0 Administrative Procedures Criteria:

3.1 Code Compliance and Applications

MCC 37.0560: 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; or

Staff: The property has an open compliance case, number UR-03-041 regarding a non-permitted addition to the dwelling. Through the approval of this application to legalize the lot, the property owners will be able to seek retroactive building permits to resolve the matter. The property owners are working with the Land Use Planning Code Compliance Office under the voluntary compliance program. *Criterion met.*

4.0 Multiple Use Agriculture – 20 Criteria:

4.1 Dimensional Requirements and Development Standards

MCC 36.2855 (A): Except as provided in MCC 36.2860, 36.2870, 36.2875, and 36.4300 through 36.4360, the minimum lot size shall be 20 acres.

Staff: The current MUA-20 minimum parcel size is 20 acres. As mentioned in section 2.0 above, the property was created as a remainder when it was listed as an exception in the parent parcel's recorded contract of sale (Book 270, Page 23) in 1965. The area was zoned Suburban Residential (SR) in 1965 and the minimum lot size was subject to features of the specific property. This property had all the features listed for a 10,000 sq. ft. minimum lot size. While the subject property did not meet the minimum lot size, 10,000 sq. ft., it met the density standard.

The minimum lot size for the SR zone was tiered between 10,000 sq. ft. and 40,000 sq. ft. based on features of the specific property. The parent parcel from which the subject property was divided was approximately 200,000 square feet. Including the subject property, three lots were created from the parent parcel. Given the size of the parent parcel, five 40,000 sq. ft. lots could have been created under the SR zone regulations. Therefore, the subject parcel conformed to the density standard in effect when it was created.

Per MCC 36.7785(A)(1)(b) a parcel that was unlawfully created can be legalized if the parcel met the density and other zoning standards in effect when the parcel was created. Section 5.0 of this decision addresses the standards for legalizing a parcel that does not meet the current minimum lot size of 20 acres. *This standard is met.*

4.1.1 MCC 36.2855(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

* * *

Minimum Front Lot Line Length – 50 feet.

Staff: The current front yard dimension is approximately 20'. The existing house was constructed in 1935 prior to zoning and building permit regulations. The parcel has approximately 75 feet of street frontage meeting the minimum front lot line standard of 50 feet. *This standard is met.*

4.2 MCC 36.2885 ACCESS.

All lots and parcels in this district shall abut a public street or shall have other access determined 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 preexisting lot and parcel that constitutes a Lots of Record described in MCC 36.2870(B).

Staff: The property abuts SE 302nd Ave, which is a public street.

Criterion met.

5.0 Category 4 Land Division

5.1 MCC 36.7780: Partitions not listed in MCC 36.7770 to 36.7775 are designated Category 4 Land Divisions.

(A) The Planning Director may approve a Category 4 Land Division based on findings that:

(1) The proposed parcels comply with the area and dimensional requirements of the zoning district in which the land division site is located; and

(2) The proposed parcels satisfy the applicable General Standards and Requirements of MCC 36.7885 through 36.7965.

(B) Notwithstanding (A) above, compliance with the area and dimensional requirements of the zoning district is not required to approve a lot or parcel that was unlawfully divided prior to January 27, 1994, as provided in MCC 36.7785(A). The applicable approval criteria are those listed in MCC 36.7785(A) and 36.7935 Easements, 36.7950 Water System, 36.7955 Sewage Disposal, and 36.7960 Surface Drainage.

Staff: The subject property was unlawfully divided prior to January 27, 1994. Applicable criteria referenced above for easements, water system, sewage disposal, and surface drainage are discussed in section 6.0 below. *Criteria met.*

5.1.1 (C) The procedure and forms for review and approval of a Category 4 Land Divisions shall be as provided for by the Planning Director. The contents of the tentative plan shall include those maps, written information and supplementary material listed for contents of a Category 3 tentative plan in MCC 36.7860 that are determined by the Planning Director to be adequate to demonstrate compliance with the applicable approval criteria.

Staff: The applicant has submitted the information (see Exhibits A.2 - A.8) necessary for approval of a Category 4 Land Division.

Criterion met.

5.2 Creation of Lots and Parcels That Were Unlawfully Divided

MCC 36.7785: This Code section provides the mechanism to review and, based upon findings of compliance with specific approval criteria, to approve certain unlawfully divided lots or parcels. The review mechanism to correct an unlawfully divided unit of land differs according to the date the unlawful lot or parcel was divided as provided in (A) and (B) below, or under (C) if a land use permit was issued for a primary use. For the purposes of this section, an “unlawfully divided” lot or parcel means a lot or parcel that, when divided, did not satisfy all applicable zoning and land division laws.

(A) An application to create a legal lot or parcel from an unlawfully divided unit of land divided before January 27, 1994 (eff. date of Mult. Co. Ord. 781) shall be a Category 4 Land Division and be reviewed as a Type II process. In addition to the applicable Category 4 Land Division requirements, the application shall satisfy the following approval criteria:

Staff: The above criteria are discussed in sections 5.2.1 through 5.8 below.

5.2.1 MCC 36.7785(A)(1): The lot or parcel either:

(a) Conforms to current dimensional, access and area standards,

(b) Conforms to the dimensional, access and density standards in effect when the lot or parcel was unlawfully divided, or

(c) The lot or parcel has a property line that is contiguous to a road, street or zone boundary that intersected the property and the applicable zoning district on the date the lot or parcel was unlawfully divided allowed a land division when a County-maintained road, street or zoning district boundary intersects a parcel of land. The zoning districts and effective dates that apply to this provision are as follows:

1. The Rural Center (RC), Rural Residential (RR), and Multiple Use Agriculture-20 (MUA-20) zoning districts on or after October 6, 1977 (eff. date of Mult. Co. Ord. 148) and before January 27, 1994;
2. The Multiple Use Forest-20 (MUF-20) zoning district on or after October 6, 1977 (eff. date of Mult. Co. Ord. 148) and before August 14, 1980 (eff. date of Mult. Co. Ord. 236); and
3. The Multiple Use Forest-19 (MUF-19) and Multiple Use Forest38 (MUF-38) zoning districts on or after August 14, 1980 (eff. date of Mult. Co. Ord. 236) and before January 7, 1993 (eff. date of Mult. Co. Ord. 743).

Staff: The parcel abuts SE 302nd Ave, which is a public road. When the parcel was unlawfully divided, the area was zoned SR (Suburban Residential). The SR zone required 50 feet or more of street frontage; the parcel meets this requirement as discussed in section 4.02 above.

The subject property is approximately 9,000 square feet; the minimum lot size for the SR zone was tiered between 10,000 sq. ft. and 40,000 sq. ft. based on features of the specific property.

The subject property had the listed features necessary for a 10,000 sq. ft. minimum lot size.

However, the parent parcel from which the parcel was divided from was approximately 200,000 square feet. Including the subject property, three lots were created from the parent parcel. Given the size of the parent parcel, five 40,000 sq. ft. lots could have been created under the SR zone regulations. Therefore, the subject parcel conformed to the density standard in effect of the SR zone. *Criteria met.*

- 5.2.2 MCC 36.7785(A)(2):** The owner or applicant demonstrates that the resulting lot or parcel can physically accommodate a use allowed in the zone, including necessary facilities and utilities, in compliance with all applicable siting standards of this zoning code chapter.

Staff: Necessary facilities and utilities are discussed in sections 5.7 through 5.9 below. *Criteria met.*

- 5.2.3 MCC 36.7785(A)(3):** Practical physical access to the site currently exists from a public road or can be provided through an irrevocable easement or equivalent means. Practical physical access at a minimum must meet the standards of MCC 29.003 and allow emergency vehicle access to the building site.

Staff: The parcel has access from SE 302nd Ave, which is a public road. *Criteria met.*

- 5.2.4 MCC 36.7785(A)(4):** The application shall include a tentative plan consisting of maps, written information and supplementary material adequate to provide the information required for a Category 4 land division.

Staff: The applicant provided a tentative plan consisting of maps, written information and supplementary material (see Exhibits A.2-A.8). *Criteria met.*

- 5.3 MCC 36.7785(D):** Within 90 days of a final decision being approved under (A), (B) or (C) of this section, the property owner(s) shall record a partition plat or subdivision plat, as appropriate, in accordance with the requirements of ORS Chapter 92.

Staff: A condition of approval for this decision (condition #2) requires this criterion be met. *Criterion met through a condition of approval.*

- 5.4 MCC 36.7785(E):** If an application to legalize a unit of land is approved under (A), (B) or (C) of this section, the date of creation of the legalized parcel or lot shall be the date the partition or subdivision plat is recorded.

Staff: This criteria will be applied. *Criteria met.*

- 5.5 MCC 36.7785(B), (C), (F), (G), and (H)**

Staff: These criteria are not applicable to this proposal. *Criteria not applicable.*

5.6 EASEMENTS

MCC 36.7935: Easements shall be provided and designed according to the following:

- (A)** Along the front property line abutting a Street, a five foot utility easement shall be required. The placement of the utility easement may be modified as requested by a public or private utility provider. Utility infrastructure may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.
- (B)** Where a tract is traversed by a water course such as a drainage way, channel or stream, a storm water easement or drainage right-of-way adequate to conform substantially with the lines of the water course shall be provided. In a drainage district or water control district, such easement or right-of-way shall be approved by the district board, in accordance with ORS 92.110. If not within such District, approval shall be by the County Engineer.
- (C)** Easements for pedestrian paths and bikeways shall be not less than 10 feet in width.

Staff: The current public right-of-way provides the necessary space required for utilities. No additional dedications will be necessary per the County Right-of-way permits office. (B) is not applicable as a water course does not traverse the property. *Criteria met.*

5.7 WATER SYSTEM

MCC 36.7950: The provision of domestic water to every lot or parcel in a land division shall comply with the requirements of subsections (4) (a), (b), or (c) of ORS 92.090 and MCC 36.7985 of this Chapter.

Staff: The Lusted Water District has served this property since 1950; the district continues to provide water service to the property today. *Criterion met.*

5.8 SEWAGE DISPOSAL

MCC 36.7955: The provision for the disposal of sewage from every lot or parcel in a land division shall comply with the requirements of subsection (5) (c) of ORS 92.090 and MCC 36.7990 of this Chapter. Each parcel or lot shall contain adequate land area to accommodate both a primary and reserve septic system drainfield area, and for surface and storm drainage systems.

Staff: There is an existing sewage disposal system on the property. The applicant submitted a Septic Review Certification form and the County Sanitarian indicated there were no septic concerns. The primary drainfield is entirely on the property and there is sufficient area for repair. *Criteria met.*

5.9 SURFACE DRAINAGE

MCC 36.7960: Surface drainage and storm water control systems shall be provided as required by section MCC 36.7995. On -site water disposal or retention facilities shall be adequate to insure that surface runoff rate or volume from the new parcels after development is no greater than that before development.

Staff: The applicant submitted a Storm Water Certification completed by Ray L. Moore, PE, that indicated construction of an on-site storm water drainage control system is not required as the rate of surface storm water run-off or volume is no greater than that occurring before the division. *Criteria met.*

6.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for approval of the Category 4 Land Division to legally establish the subject parcel in the Multiple Use Agriculture - 20 zone. This approval is subject to the conditions of approval established in this report.

7.0 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 T2-2018-10691 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	7.20.2018
A.2	3	Narrative	7.20.2018
A.3	6	Storm Water Certification completed by Ray L. Moore, PE.	7.20.2018
A.4	3	Septic Review Certification	7.20.2018
A.5	1	Fire Service Agency Review	7.20.2018

A.6	6	Copy of the SR Zoning Code in effect when the property was created.	7.20.2018
A.7	1	Topographical Survey	7.20.2018
*A.8	1	Tentative Partition Plan	7.20.2018
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	7.20.2018
B.2	1	A&T Tax Map with Property Highlighted	7.20.2018
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	7.25.2018
C.2	2	Opportunity to Comment	8.3.2018
C.3	9	Administrative Decision	10.29.2018