

NOTICE OF DECISION

Case File: T2-2018-11140

Permit: Adjustment and Accessory Use Determination

Applicant: Lorraine Newell **Owners:** Lorraine & Thomas Newell

Location: 32636 SE Hurlburt Rd.
Tax Lot 1000, Section 04BB, Township 1 South, Range 4 East, W.M.
Alternate Account #R994041190 Property ID #R341371

Zoning: Springdale Rural Center (SRC)

Overlays: Significant Environmental Concern – streams (SEC-s)


Proposal Summary: The applicant requests an Accessory Use Determination and an Adjustment to the minimum required west side yard for a 432 sq. ft. existing non-permitted shed. The Accessory Use Determination is necessary given the total combined footprint of all accessory buildings on the subject property would exceed the allowed 2500 sq. ft. limit by 92 sq. ft. Granting the adjustment would allow the shed to remain in its current position 6 feet from the western lot line.

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 Thursday, April 25, 2019 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, Assistant Planner

For: Michael Cerbone, AICP
Planning Director

Date: Thursday, April 11, 2019

Instrument # for recording
purposes: 2018-133599

Vicinity Map

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Applicable Approval Criteria: Multnomah County Code (MCC): MCC 37.0560: Code Compliance and Applications, MCC 35.0005: Definitions - Lot of Record, MCC 35.3370: Lot of Record – Springdale Rural Center (SRC), MCC 35.0565: Condition of Approval – Accessory Structures, MCC 35.0570: Dark Sky Lighting Standards, MCC 35.3320(F): Allowed Uses, MCC 35.3325(I): Review Uses, MCC 35.3355: Dimensional Requirements and Development Standards, MCC 35.7601 – 35.7611: Adjustments

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office or by visiting our website at multco.us/landuse/zoning-codes under the link *Chapter 35: East of the Sandy River Rural Plan Area* and *Chapter 37: Administration & 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 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** as described in (a) below pursuant to MCC 37.0560 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.

- a) When a final building permit has not been issued for the existing shed within **one (1) year of the date of the final decision**. The applicant shall provide Land Use Planning with a copy of the final building permit for the existing shed.
3. The applicant shall follow the requirements of the Voluntary Compliance Agreement initiated for compliance case #UR-2018-10024. [MCC 37.0560].
4. Prior to County sign-off on the building plans, the applicant shall:
 - (a) Record pages 1 through 3 of this notice of decision with the County Recorder. Proof of recording must be provided to County Land Use Planning. [MCC 37.0670]
 - (b) Record a covenant with the County Recorder that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. [MCC 35.0565]
 - (c) Any proposed exterior lighting must be shown on the building plans. All proposed exterior lighting shall be dark sky compliant as outlined in MCC 35.0570.

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 by land use planning, the applicant shall complete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, "Prior to land use sign-off for building plan check..." Be ready to demonstrate compliance with the conditions.
2. Contact Right-of-Way Permits at row.permits@multco.us, or schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/>, or at 503-988-3582 for an appointment to review your plans and satisfy any other requirements. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact Chris Liu, Staff Planner, at 503-988-2964 or chris.liu@multco.us, for an appointment for review of the conditions of approval and to sign the building permit plans. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department. At the time of this review, Land Use Planning will collect additional fees.

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 an Accessory Use Determination and an Adjustment to the minimum required west side yard for a 432 sq. ft. existing non-permitted shed. The Accessory Use Determination is necessary given the total combined footprint of all accessory buildings on the subject property would exceed the allowed 2500 sq. ft. limit by 92 sq. ft. Granting the adjustment would allow the shed to remain in its current position 6 feet from the western lot line.

2.0 PROPERTY DESCRIPTION & HISTORY:

Staff: The subject property is located in east Multnomah County in the Springdale Rural Center area. Smith Creek runs along the southern border of the property and the Sandy River is approximately ½ mile directly west of the property. Springdale is primarily a residential area with a few commercial businesses in the core of Springdale Center.

In 1980, a single-family dwelling was constructed on the subject property. In 1997, the county permitted a garage addition and construction of an approximately 32’ x 64’ (2,048 sq. ft.) accessory building. Sometime after 1997, a property owner moved the approximately 432 sq. ft. shed from its previous location to the current location without the proper land use approvals. Approval of this Adjustment and Accessory Use Determination application and subsequent issuance of a building permit will bring the shed back into compliance.

3.0 ADMINISTRATION & 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
- (2) It is necessary to protect public safety; or
- (3) It is for work related to and within a valid easement over, on or under an affected property.

Staff: The subject property has an existing compliance case (UR-2018-10024) related to a non-permitted dwelling in an accessory building and an existing shed within the required minimum yard (setback) for the west property line. The property owners entered into a Voluntary

Compliance Agreement (VCA) with the Code Compliance office to establish timelines to resolve the compliance issues.

Given the presence of the VCA and the fact that approval of this Adjustment and Accessory Use Determination application will resolve one of the compliance issues, staff may issue this decision.

4.0 SPRINGDALE RURAL CENTER CRITERIA:

4.1 Dimensional Standards

MCC 35.3355(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

Staff: This application is for an adjustment to the minimum required west side yard for an existing non-permitted shed, which would reduce the minimum required side yard from 10 feet down to 6 feet. The structure complies with all other required minimum yard dimensions (Exhibit A.3). *Criteria met.*

4.2 Lot of Record

MCC 35.0005: 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 described in MCC 35.7785. 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: ...**

MCC 35.3370: Lot of Record

(A) In addition to the Lot of Record definition standards in MCC 35.0005, 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;**
- (5) October 13, 1983, zone change to RC for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004 applied a minimum 2 acre lot size to RC zoned areas outside “acknowledged unincorporated communities” except where properties are within one mile of the Urban Growth Boundary the minimum is 20 acres;**

(7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 35.3385, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 35.3360, 35.3375, and 35.4300 through 35.4360, 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.

(D) The following shall not be deemed to be a lot of record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;
- (2) An area of land created by the foreclosure of a security interest.
- (3) An area of land created by court decree.

Staff: The subject property (32636 SE Hurlburt Rd.) was part of a Lot of Record Verification land use case (case #T1-2017-8003). The decision for T1-2017-8003 found that the subject lots/parcels are each a Lot of Record. Staff verified that the subject property is in the same configuration currently as the configuration noted in T1-2017-8003. Therefore, the subject property commonly known as 32636 SE Hurlburt Rd. is a Lot of Record. *Criteria met.*

4.3 MCC 35.0565: Condition of Approval – Accessory Structures

Prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use.

Staff: A condition of approval can be added to this decision requiring compliance with the above provision. *This criterion can be met through a condition of approval.*

4.4 MCC 35.0570: Dark Sky Lighting Standards

(A) The purpose of the Dark Sky Lighting Standards in this section is to protect and promote public health, safety and welfare by preserving the use of exterior lighting for security and the nighttime use and enjoyment of property while minimizing the obtrusive aspects of exterior lighting uses that degrade the nighttime visual environment and negatively impact wildlife and human health...

(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

- (1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding. Shielding must be permanently attached.
- (2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.

Staff: No exterior lighting is shown on the submitted plan (Exhibit A.3). A condition of approval will be added to this decision ensuring any future proposed lighting complies with these provisions. *These criteria can be met through a condition of approval.*

5.0 ACCESSORY USE DETERMINATION CRITERIA:

5.1 MCC 35.3320(F): Accessory Structures subject to the following:

- (1) The Accessory Structure is customarily accessory or incidental to any use permitted or approved in this district and is a structure identified in the following list:

- (c) Garden Sheds;
- (d) Workshops
- (e) Storage Sheds...

- (2) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.

- (3) The Accessory Structure may contain one sink.

- (4) The Accessory Structure shall not contain:

- (a) More than one story;
- (b) Cooking Facilities;
- (c) A toilet;
- (d) Bathing facilities such as a shower or bathing tub;
- (e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or
- (f) A closet built into a wall

Staff: The existing shed stores equipment (recreational and garden), furniture, tools, and other items accessory to the residential use occurring on the subject property. Examples include gardening equipment, extra furniture, and tools (Exhibit B.2).

The shed does not have any plumbing or sewage disposal. The shed does not have a sink, toilet, bathing facilities, a mattress/bed or other item designed to aid in sleep as a primary purpose, nor does it have a closet built into a wall (Exhibit A.10 and B.2).

5.2 (5) Compliance with MCC 35.0565 is required.

(6) The combined footprints of all Accessory Buildings on a Lot of Record shall not exceed 2,500 square feet.

(7) An Accessory Structure exceeding any of the Allowed Use provisions above shall be considered through the Review Use provisions.

Staff: A condition of approval will be added to this decision requiring compliance with MCC 35.0565. The combined total footprint of all Accessory Buildings on the subject property, a lot of record as described in section 4.2 above, is approximately 2592 square feet (Exhibit A.3). Hence, this decision addresses the Review Use Criteria in sections 5.3 – 5.5 below as required. *These criteria are met.*

5.3 MCC 35.3325(I): Structures or uses customarily accessory or incidental to any use permitted or approved in this district, which do not meet the “accessory structures” standard in MCC 35.3320 Allowed Uses, but which meet the following provisions:

- (1) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.**
- (2) The Accessory Structure shall not contain a bathing tub.**
- (3) Any toilet or bathing facilities, such as a shower, shall be located on the ground floor of any multi-story building.**
- (4) An Accessory Structure containing a toilet or bathing facilities shall not contain Cooking Facilities.**
- (5) The Accessory Structure shall not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage.**

Staff: As noted in the applicant’s narrative addendum (Exhibit B.2) and described in section 5.1 above, the shed does not contain any features such as plumbing or a sewage disposal system. The shed does not contain a tub, toilet or other bathing facilities, cooking facilities, bed or any other similar item designed to aid in sleep as a primary purpose (Exhibit A.10). *These criteria are met.*

5.4 (6) The applicant must show that building features or combined building footprints exceeding the Allowed Use provisions are the minimum possible departure from the Allowed Use standards to accommodate the use.

Staff: The applicant noted that the main shop building contains two primary areas that occupy the available space in the building. These areas include an exercise/workout area and an area designated for two older personal vehicles and their associated repair equipment and parts (Exhibit B.2). There is a small area (approximately 500 sq. ft. or less) in the main shop building leftover for general storage purposes, which leads to the request for additional storage space available via the existing approximately 432 sq. ft. shed (Exhibit A.10). The remaining area in the main shop building combined with the footprint of the existing shed allows the applicant to

have ample storage space for their tools, garden and recreational equipment, furniture, and other general storage items accessory to the residential use on the subject property.

Based on the information above, granting the Accessory Use Determination to allow an additional 92 square feet over the 2500 sq. ft. combined footprint limit for accessory buildings is the minimum necessary departure from the Allowed Use standards. *This criterion is met.*

5.5 (7) Compliance with MCC 35.0565 is required.

Staff: As noted in section 5.2 above, a condition of approval will be added to this decision requiring compliance with this provision. *This criterion can be met through a condition of approval.*

6.0 ADJUSTMENT APPROVAL CRITERIA

6.1 MCC 35.7611: The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 35.7606 upon finding that all the following standards in (A) through (E) are met...

MCC 35.7606: Scope - (A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following...

Staff: The applicant requests a 40% modification of the west side yard, which is within the scope of MCC 35.7606. Findings for MCC 35.7611 (A) – (E) are listed in sections 6.1 – 6.6 below. *This criterion is met.*

6.2 MCC 35.7611(A): Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Staff: The purpose of yards between buildings and property lines is to provide adequate space, light, air circulation and safety from fire hazards. Per the applicant, there are no buildings on the neighboring property adjacent to the shed. The existing site conditions ensure that the general purpose of the yard requirement is met following the adjustment, as space would remain allowing light and air circulation between the subject property and the neighboring property (Exhibit A.2). *This criterion is met.*

6.3 MCC 35.7611(B): Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

Staff: Per the applicant's narrative, the property owner removed overgrown vegetation immediately adjacent to the shed. The property owner then placed gravel in the area to prevent future growth. Neighboring property owners have not voiced concerns surrounding light, privacy, drainage, or access impediments from the shed placement (Exhibit A.2). *This criterion is met.*

6.4 MCC 35.7611(C): If more than one adjustment is being requested, the cumulative effect

of the adjustments results in a project which is still consistent with the overall purpose of the zoning district; and

Staff: The applicant requests a single adjustment; hence, this criterion is not applicable. *This criterion is not applicable.*

6.5 MCC 35.7611(D): If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and

Staff: The property is zoned Springdale Rural Center; hence, this criterion is not applicable. *This criterion is not applicable.*

6.6 MCC 35.7611(E): If in a Rural Residential (RR) or Springdale Rural Center (SRC) zone, the proposal will not significantly detract from the livability or appearance of the residential area

Staff: The shed is approximately 432 sq. ft. (Exhibit A.10). The roof and body paint color match the accessory building and home. Sheds are common structures in residential areas that are often used to store garden equipment, tools, or other items used for residential purposes. Therefore, reducing the required side yard from 10 feet down to 6 feet should not significantly detract from the livability or appearance of the area. *This criterion is met.*

7.0 CONCLUSION:

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Accessory Use Determination and Adjustment to reduce, by 40%, the required minimum yard for west property line on the subject property in the Springdale Rural Center zone. This approval is subject to the conditions of approval established in this report.

8.0 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 T2-2018-11140 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	11.7.2018
A.2	1	Narrative	11.7.2018
A.3	1	Site Plan	11.7.2018
A.4	3	Septic Review Certification	11.7.2018
A.5	4	Fire Service Agency Review	11.7.2018

A.6	2	Memorandum from Multnomah County Transportation Planning	11.7.2018
A.7	1	Property owner letter of authorization	11.7.2018
A.8	1	Certification of Water Service	11.7.2018
A.9	1	Miscellaneous Property Information	11.7.2018
A.10	1	Floor Plan for Shed	3.13.2019
A.11	1	Revised Application Form	3.15.2019
'B'	#	Staff Exhibits	Date
B.1	1	A&T Property Information	11.7.2018
B.2	1	Applicant Narrative Addendum (via telephone).	3.13.2019
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	12.4.2018
C.2	2	Opportunity to Comment	1.3.2019
C.3	1	Applicant Decision Clock Extension Request	3.13.2019
C.4	2	Corrected Opportunity to Comment	3.18.2019
C.5	11	Administrative Decision	4.11.2019