

NOTICE OF DECISION

Case File: T2-2019-12490

Permit: Lot of Record Verification

Applicants: Phil Tran **Owners:** Phil Tran

Location: 17608 SE McKinley Road, Gresham
Tax Lot 1900, Section 19A, Township 1 South, Range 3 East, W.M.
Alternate Account #R993190750 Property ID #R340638

Base Zone: Rural Residential (RR)

Overlays: None

Proposal Summary: The applicant requests a Lot of Record Verification for the subject property. The County will review the creation of the subject property to verify that the creation of the unit of land satisfied all applicable zoning and land division laws in effect on the date of its creation.

Determination: The subject property (1S3E19A -01900) is a Lot of Record in its current configuration.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is October 30, 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 may be purchased for \$0.30/per page. For further information on this case, contact Staff Planner Chris Liu at 503-988-2964 or at chris.liu@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 39.1160. 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 or at (503) 988-3043. This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by:



Chris Liu, Planner

For:

Adam Barber, Interim Planning
Director

Date:

Wednesday, October 16, 2019

Instrument Number for Recording
Purposes: #2018-045932



Applicable Approval Criteria: Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3090 Lot of Record – Rural Residential

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office or by visiting our website at <http://multco.us/landuse/zoning-codes/> under the link Chapter 39 – Zoning Code

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. Record pages 1 through 2 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]

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*.

1.0 PROJECT DESCRIPTION:

Staff: The applicant requests a Lot of Record Verification for Tax Lot 1900, Section 19A, Township 1 South, Range 3 East, W.M. (the “subject property”). The subject property is located adjacent to SE McKinley Road and identified as 17608 SE McKinley Road.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot or unit of land involved in the request. The County then verifies that the creation or reconfiguring of the unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. If the unit of land met all the applicable zoning and land division laws in effect at the time, it may be determined to be a Lot of Record.

2.0 PROPERTY DESCRIPTION:

Staff: The Subject property is located in unincorporated Multnomah County within the Metro’s urban growth boundary. The subject property is approximately 5.00 acres. Assessment and Taxation records show the property is occupied by a single-family dwelling, detached garage, carport and shed.

3.0 GENERAL PROVISIONS:

3.1 MCC 39.1515 Code Compliance and Applications

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 Zoning 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 Zoning 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.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that

situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: As noted in Section 1.0 above, this application is a request for a Lot of Record Verification, which does not require the County to approve development, a land division, a property line adjustment, or a building permit. Therefore, this standard is not applicable. Nonetheless, there are no known compliance issues on the subject property at this time.

4.0 LOT OF RECORD CRITERIA:

4.1 MCC 39.3005: Lot of Record – Generally:

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

Staff: To qualify as a Lot of Record, the subject property, when created or reconfigured, must have (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

Applicable Zoning Laws

To satisfy all applicable zoning laws at the time of creation, the subject property must have been created in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

The applicant submitted a recorded deed from November 1940 describing the subject property (Exhibit A.4) in its current configuration. At the time of recording of the aforementioned deed, zoning regulations were not yet in effect. Interim zoning regulations were not in effect until 1953 (Exhibit B.2). Therefore, by recording the 1940 deed, the property owner at that time completed all necessary steps to legally create the subject property.

Applicable Land Division Laws

In 1940, by recording the deed, the property owner at that time completed all necessary steps to legally create the subject property.

Based on the information discussed above, the creation of this parcel in 1940 satisfied all applicable zoning and land division laws at the time.

4.2 MCC 39.3090: Lot of Record – Rural Residential:

(A) In addition to the standards in MCC 39.3005, for the purposes of the RR district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone 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, RR zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;**
- (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 39.4395, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: The subject property is currently zoned Rural Residential (RR) which requires a 5.0 acre minimum lot size and a minimum front lot line length of 50 feet. The subject property is approximately 5.0 acres and has a front lot line length of approximately 190 feet. The parcel meets the minimum lot size requirements of the RR zone and is a legally created parcel under finding 4.1 of this land use decision.

- 4.3 (C) Except as otherwise provided by MCC 39.4380, 39.4385, and 39.5300 through 39.5350, 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 current configuration (Exhibit A.2) of the subject property matches the description from 1940. The structures on the subject property do not have any known issues with the required minimum yard requirements. As stated in section 4.2 of this land use decision, the lot meets the minimum front lot line length requirement for the RR zone.

- 4.4 (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 was not created by the foreclosure of a security interest or a court decree. The subject property is not an area of land described solely for assessment and taxation purposes. *Criteria met.*

Based upon the findings in 4.1 through 4.4, the approximately 5.00 acre subject property is a Lot of Record.

5.00 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 T2-2019-12490 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	09.19.2019
A.2	2	Warranty Deed recorded May 1, 2018 as Instrument no. 2018-045932	09.19.2019
A.3	1	Deed recorded February 28, 1991 in Book 2390, Page 1134	09.19.2019
A.4	1	Warranty Deed recorded in 1940 in Book 577, Page 576	09.19.2019
'B'	#	Staff Exhibits	Date

B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1S3E19A-01900	09.19.2019
B.2	6	Interim Zoning Ordinance – May 26, 1953	09.19.2019
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	09.25.2019
C.2	2	Opportunity to comment & mailing list	09.26.2019
C.3	7	Administrative decision & mailing list	10.16.2019