

NOTICE OF DECISION

Case File: T2-2019-12287

Permit: Time Extension

Applicant(s): Penny Lytle

Owner(s): Penny and Gary Lytle

Location: 14180 NW Germantown Road
Tax Lot 1700, Township 1 North, Range 1 West, Section 09B, W.M.
Tax Account #R649703400 Property ID #R236843

Zoning: Rural Residential (RR)

Overlays: Significant Environmental Concern for Streams (SEC-s)
Significant Environmental Concern for Wildlife Habitat (SEC-h)

Proposal Summary: The applicant is requesting a time extension associated with Land Use Case #T2-2016-6339

Decision: **Approved with Conditions. A twelve (12) month, i.e. one (1) year, time extension is approved by the Planning Director extending the expiration date of T2-2016-6339 to August 8, 2020.**

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, November 15, 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 Rithy Khut, Staff Planner at 503-988-0176 or at rithy.khut@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:



Rithy Khut, Planner

For: Adam Barber,
Interim Planning Director

Date: Friday, November 1, 2019

Vicinity Map

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Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet the applicable approval criteria below:

Multnomah County Code (MCC): Procedures: MCC 39.1195 Extension of a Type II or Type II Decision

Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

Lot of Record – General Provisions: MCC 39.3005 Lot of Record – Generally

Lot of Record Requirements Specific to Each Zone: MCC 39.3090 Lot of Record – Rural Residential (RR)

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link *Chapter 39: Multnomah County Zoning Code*.

Conditions of Approval

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. 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. Permit Expiration:

- a. This time extension of T2-2016-6339 extends the length of time to commence construction for the Significant Environmental Concern for Wildlife Habitat permit that authorizes the establishment of a new single-family dwelling and accessory building for 12 months, i.e. one (1) year. T2-2016-6339 will expire on August 8, 2020 unless construction has commenced by that date. [MCC 39.1195(A)]
 - i. For the purposes of Conditional of Approval #1.a.i, commencement of construction for each structure shall mean actual construction of the foundation or frame of the approved structure.
 - b. Provided the property owner commences construction on each structure before August 8, 2020, this time extension of T2-2016-6339 extends the length of time to complete the structures for the Significant Environmental Concern for Wildlife Habitat permit that authorizes the establishment of a new single-family dwelling and accessory building for one year. T2-2016-6339 will expire on August 8, 2023 unless the structures have been completed. [MCC 39.1195(A)]
 - i. For the purposes of Conditional of Approval #1.b.i, completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.
2. All conditions of approval from land use case #T2-2016-6339 shall remain in effect and shall be incorporated in this decision by reference as exhibited in Exhibit B.3.

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*.

1.00 Project Description:

Staff: The applicant is requesting a time extension associated with Land Use Case #T2-2016-6339, which authorized the construction of a new single-family dwelling and detached garage within the Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay.

2.00 Property Description & History:

Staff: The subject property is located on NW Germantown Road within the Rural Residential (RR) zoning district in the West Hills Rural Area. The property has a Significant Environmental Concern for Streams (SEC-s) overlay on the western portion of the property along a tributary of Rock Creek and a Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay over the entirety of the property. The subject property is middle portion of larger partition plat, Partition Plat 1990-57 and is 4.58 acres.

The property was previously owned by Frank Singer and GeorgeAnn Skandis. In 2014, the subject property was acquired by the current property owners, Gary and Penny Lytle. As of 2018, it does not appear that work has begun on the construction of the new single-family dwelling and detached garage authorized under #T2-2016-6339. Land Use Planning has not signed off on building plans to allow into building plan check. The subject property is currently forested with a small clearing in the middle of the property and there are no buildings or structures.

The applicant has been unable to begin construction of the single-family dwelling and accessory buildings. As allowed in MCC 39.1195, the applicant has two years to commence construction of the single-family dwelling and accessory structure. If commencement of construction did not occur by Tuesday, August 8, 2019, land use case #T2-2016-6339 would expire. The applicant is now requesting a time extension to delay the expiration of #T2-2016-6339.

3.00 Violations, Enforcement, and Fines Criteria:

§ 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: There are no active code compliance issues associated with the subject property. Additionally, since the authorization to establish a new single-family dwelling and detached garage under land use case #T2-2016-6339, no new code compliance issues have been associated with the subject property. The property was previously found to be a Lot of Record as it was created as part of a partition plat. Further, the property has not changed configuration since the land use permit authorized in 2016. Therefore, it appears the subject property is in full compliance with all applicable provisions of Multnomah County Code and the County has the authority to issue this land use decision. *These criteria are met.*

4.00 Procedures Criteria:

§ 39.1195 EXTENSION OF A TYPE II OR TYPE III DECISION.

(A) The Planning Director shall grant one extension period of 24 months for approvals of dwellings listed in MCC 39.1185 (C) and shall grant one extension period of up to 12 months for all other approvals provided:

- (1) An applicant makes a written request for an extension of the development approval period;**

Staff: The applicant, Gary and Penny Lytle, have submitted a request for a one-year time extension to commence construction of a single-family dwelling and accessory building. The request for the time extension was in writing (Exhibit A.2). *This criterion is met.*

- (2) The request is submitted to the county prior to the expiration of the approval period;**

Staff: The request was submitted to the county prior to the expiration of the approval period. The extension was submitted on July 25, 2019, which is 14 days before the expiration of T2-2016-6339's approval period on August 8, 2019 (Exhibit A.1). *This criterion is met.*

- (3) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and**

Staff: As part of the narrative, the applicant discusses the reasons that prevented the applicant from beginning the development within the approval period. The applicant states:

“We started working with the designer immediately in August of 2017. The designer gave us no set schedule or process to follow . . . in September of 2018, we went back to the Builder for a rough quote based on the current plan. That estimate came back about \$250,000 higher than we have been discussing with him before the detailed design process started. In December of 2018 we decided that the plan was not salvageable. . .” (Exhibit A.2).

Based on this information from the applicant, it appears that the estimated timeline with the Designer was longer than expected and the cost was higher than anticipated. Two reasons were provided, which prevented commencement of construction. *This criterion is met.*

(4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

Staff: Based on the applicant’s narrative, the applicant was unable to begin commencement of construction for reasons for which the applicant was not responsible. As discussed previously, the initial cost estimate compared to the detailed design estimate was much higher than anticipated. The narrative also discussed the fact that the Designer did not, “give [them] a set schedule or process to follow” (Exhibit A.2). This caused a full year to elapse before a detailed estimate could be reviewed by the applicant. Based on this information, it does not appear that the applicant was responsible for the time it took to move from initial design to detailed cost estimate nor were they responsible for the increase in the cost of construction. *This criterion is met.*

(B) Pursuant to OAR 660-033-0140, approval of an extension in EFU and CFU districts is an administrative decision, is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision. All other extension requests authorized by this section are land use decisions and shall be reviewed under the Type II procedures set forth in MCC 39.1125.

Staff: The subject property is not located in the EFU or CFU zoning district. The property is zoned Rural Residential (RR). Therefore, this standard is not applicable. As required above, this time extension is land use decision and is required to be reviewed under the Type II procedures set forth in MCC 39.1125. *This criterion is met.*

. . . .

5.00 Conclusion:

Based on the findings and other information provided above, the applicant has carried the burden necessary for the time extension of a period of 12 months to establish a single-family dwelling and accessory building as authorized in #T2-2016-6339 in the Rural Residential (RR) Zone. This approval is subject to the conditions of approval established in this report.

6.00 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 T2-2019-12287 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	07/25/2019
A.2	2	Narrative	07/25/2019
'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records, and Taxation (DART) Property Information for 1N1W09B -01700 (#R649703400)	07/25/2019
B.2	1	Department of Assessment, Records, and Taxation (DART) Property Information Map with 1N1W09B -01700 (#R649703400) highlighted	07/25/2019
B.3	18	Land use case #T2-2016-6339	10/28/2019
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	08/22/2019
C.2	4	Opportunity to Comment	09/20/2019
C.3	7	Administrative Decision	