

NOTICE OF DECISION

Case File: T2-2019-12506

Permits: Nonconforming Use and Significant Environmental Concern for Wildlife Habitat

Applicants: Cascades Fence & Deck **Owners:** Matthew & Nicole Williams

Location: 13626 NW Old Germantown Road
Tax Lot 1800 Township 1 North, Range 1 North, W.M. Section 19C,
Tax Account: R026703100 Property ID: R106149

Base Zone: Rural Residential

Overlays: Significant Environmental Concern for Wildlife Habitat (SEC-h) and Streams (SEC-s)
/ Geologic Hazard (GH)

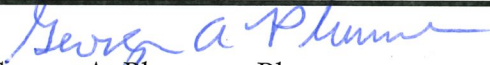
Proposal Summary: Obtain Land Use Permits for new construction of a 633 square foot deck along the south and southwest sides of the existing dwelling. The proposal requires approval of an Alteration to a Nonconforming Use for the 30-ft front yard requirements and a Type I Significant Environmental Concern Permit for Wildlife Habitat.

Decision: Approved with Conditions

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is February 27, 2020 at 4:00 pm.

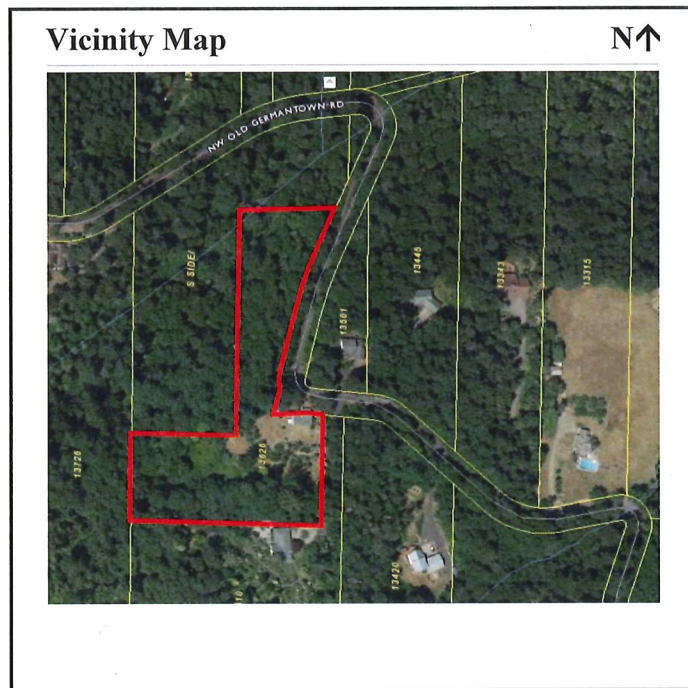
Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact George Plummer via email at george.a.plummer@multco.us or phone (503) 988-0202.

Opportunity to Appeal the Nonconforming Use Permit Decision: 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. The Type I Significant Environmental Concern Development Permit is not subject to appeal.

Issued by: 
George A. Plummer, Planner

For: Carol Johnson, AICP, Planning Director

Date: Thursday, February 14, 2020



1. Permit Expiration – This land use permit shall expire as follows:

- a. Within two (2) years of the date of the final decision when construction has not commenced. [MCC 39.1185(B)]
 - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
- b. Within four (4) years of the date of commencement of construction when the structure has not been completed. [MCC 39.1185(B)]
 - i. For the purposes of 1.b 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. The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property. [MCC 39.5850(C) and MCC 39.5860(B)(7)]

Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine
<i>Cirsium arvense</i>	Canada Thistle
<i>Cirsium vulgare</i>	Common Thistle
<i>Clematis ligusticifolia</i>	Western Clematis
<i>Clematis vitalba</i>	Traveler's Joy
<i>Conium maculatum</i>	Poison hemlock
<i>Convolvulus arvensis</i>	Field Morning-glory
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory
<i>Convolvulus sepium</i>	Lady's nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann's Lace
<i>Elodea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail

Scientific Name	Common Name
<i>Equisetum telemateia</i>	Giant Horsetail
<i>Erodium cicutarium</i>	Crane's Bill
<i>Geranium robertianum</i>	Robert Geranium
<i>Hedera helix</i>	English Ivy
<i>Hypericum perforatum</i>	St. John's Wort
<i>Ilex aquafolium</i>	English Holly
<i>Laburnum watereri</i>	Golden Chain Tree
<i>Lemna minor</i>	Duckweed, Water Lentil
<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Polygonum sachalinense</i>	Giant Knotweed

Scientific Name	Common Name
<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Rhus diversiloba</i>	Poison Oak
<i>Rubus discolor</i>	Himalayan Blackberry
<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Solanum dulcamara</i>	Blue Bindweed
<i>Solanum nigrum</i>	Garden Nightshade
<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Urtica dioica</i>	Stinging Nettle
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinosum</i>	Spiny Cocklebur
<i>various genera</i>	Bamboo sp.

3. The project shall meet the applicable stormwater and ground disturbing activity requirements of MCC 39.6200 through 39.6235.

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.

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 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 to review your plans, obtain your access permit, and satisfy any other requirements. You may schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/> or leave a message at 503-988-3582. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation at 503-823-6892 or e-mail septic@portlandoregon.gov for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.
4. Contact George Plummer, Planner II via email at george.a.plummer@multco.us or phone (503) 988-0202, from 8 am to 4 pm Tuesday through Friday, for an appointment for review of the conditions of approval and to sign the building permit plans. Please ensure that any items required under, “At the time of land use sign-off for building plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department.
5. The above must be completed before the applicant can obtain building permits from the City of Portland. Five (5) sets each of the site plan (attached) to the front of each set) and building plans are needed for building permit sign off. At the time of building permit review, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

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*. Quotations may all be in *italic*.

1. PROJECT DESCRIPTION

Staff: Obtain Land Use Permits for new construction of a 633 square foot deck along the south and southwest sides of the existing dwelling with nonconforming front yard setbacks within the Significant Environmental Concern for Wildlife Habitat. The proposed deck will be built on the south and west sides of the dwelling. The deck will match the west side of the dwelling’s setback of 25 feet from NW Old Germantown Road right-of-way. The previous Verification and Alteration Nonconforming Use Case T2-2013-3142 verified and approved the reduced front minimum yard setback to 25 feet for the west side of the dwelling. This review for an Alteration of a Nonconforming Use is to allow the deck to match the reduced front minimum yard setback to 25 feet to match the west side of the dwelling. In addition, a Type I

Significant Environmental Concern permit for wildlife habitat is needed to authorize the expansion of the dwelling in the overlay zone.

The application for a Nonconforming Use Permit is a Type II Administrative Review and the Significant Environmental Concern for Wildlife Habitat Permit is a Type I Development Review.

The Type I Development Permit does not require an Opportunity to Comment notice and it is not subject to appeal.

2. PROPERTY DESCRIPTION AND HISTORY

Staff: The property known as 13626 NW Old Germantown Road (a.k.a. 1N1W09C – 1800) consists of portions of lots 31, 33, and 34 of Andrew Acres, which were property line adjusted into a single parcel of land in 1985. The subject parcel currently contains one single family dwelling with an attached garage. The dwelling was originally constructed in 1939.

In 2013 the property owner applied for a Verification and Alteration of a Nonconforming Use, Case T2-2013-3142 to allow various improvements within the required yard areas. Case T2-2013-3142 provide details about the history of the single family dwelling with its non-conforming front yard setback. In that case, the nonconforming setback was verified as a nonconforming use. The approval in Case T2-2013-3142 to alter and expand the nonconforming use authorized various improvements within the front yard including a covered porch and enclosure of a 4-foot by 4-foot area for garage purposes constructed in 1995-1997, a four-foot by five-foot deck on the east side of the house and garden stairs.

3. CODE COMPLIANCE AND APPLICATIONS

MCC 39.1515: 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.

Staff: Case T2-2013-3142 and the sequent building permit resolved a code compliance issue. There are no known code compliance issues at this time.

4. RURAL RESIDENTIAL ZONE

4.1. Allowed Uses

MCC 39.4360: The following uses and their accessory uses are allowed, subject to all applicable supplementary regulations contained in MCC Chapter 39.

(A) Residential use consisting of a single family dwelling on a Lot of Record.

Staff: The application is to allow a deck addition to a single family dwelling. The County found the subject property was a Lot of Record in land use case T2-2013-3141. Please see Section 4.3 for additional findings regarding the Lot of Record.

4.2. Dimensional Requirements and Development Standards

MCC 39.4375(C): Minimum Yard Dimensions

Front	Side	Street Side	Rear
30 feet	10 feet	30 feet	30 feet

Staff: The proposed deck will be built on the south and west sides of the dwelling. The deck will match the west side of the dwelling's setback of 25 feet from NW Old Germantown Road right-of-way, encroaching five feet into the 30 foot minimum front yard setback. The previous Verification and Alteration Nonconforming Use Case T2-2013-3142 verified and approved the reduced minimum front yard setback to 25 feet for the west side of the dwelling. Based on the findings in Section 6 below, the Alteration of a Nonconforming Use application will allow the deck to match the existing front yard on the west side of the dwelling at 25 feet.

4.3. Lot of Record

MCC 39.3005(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.

MCC 39.3005 (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.)

- (c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.
 - 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.
 - 2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

MCC 39.3090 LOT OF RECORD – RURAL RESIDENTIAL (RR).

(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 previous 2013 Verification and Alteration Nonconforming Use Case T2-2013-3142 decision verified the subject property is a Lot of Record. Staff in that decision stated the following:

“Multnomah County Land Use Planning granted a Lot of Exception (LE3-85) and Exempt Minor Partition in 1985 for the creation of the subject parcel (1N1W09C – 01800) consisting of a portion of Lots 31, 33, and 34, Andrews Acres. The new legal description was recorded in May 1985 creating the 4.14 acre parcel. The subject property is a Lot of Record.”

5. TYPE I SIGNIFICANT ENVIRONMENTAL CONCERN FOR WILDLIFE HABITAT

5.1. Clear and Objective Standards

- 5.1.1. MCC 39.5850(A): At the time of submittal, the applicant shall provide the application materials listed in MCC 39.5520(A) and 39.5860(A). The application shall be reviewed through the Type I procedure and may not be authorized unless the standards in MCC 39.5860(B)(1) through (4)(a)-(c) and (B)(5) through (7) are met. For development that fails to meet all of the criteria listed above, a separate land use application pursuant to MCC 39.5860 may be submitted.

Staff: The application materials submitted were found to be adequate for the review of the permit. The submittal is being reviewed as a Type I SEC-h permit per MCC 39.5850. Clear and Objective Standards findings per MCC 39.5860(B) are under the following Section 5.2 of this decision. These standards are met through the proposal and implementation of conditions of approval.

- 5.1.2. MCC 39.5850(B): The proposed development shall meet the applicable stormwater and ground disturbing activity requirements of MCC 39.6200 through 39.6235. Ground disturbing activity within 100 feet of a water body as defined by MCC 39.2000 shall be limited to the period between May 1st and September 15th. Revegetation and soil stabilization must be accomplished no later than October 15th.**

Staff: There is no stream within 200 feet of the project location. These non-discretionary code criteria will be met at time of land use review for building permit.

- 5.1.3. MCC 39.5850 (C): The nuisance plants listed in MCC 39.5580 Table 1 shall not be used as landscape plantings within the SEC-h Overlay Zone.**

Staff: A condition of approval will require that nuisance plants listed in MCC 39.5580 Table 1 not be used as landscape plantings. *This Clear and Objective Standards is met through implementation of conditions.*

- 5.1.4. MCC 39.5850 (D) For development that fails to meet all of the standards listed in this section,**

Staff: The proposed development, a deck addition, meets all of the standards listed in this section or is conditioned to meet all of the standards in this section. *This standard is met.*

5.2. Development Standards

- 5.2.1. MCC 39.5860(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 deck needs to be next to the dwelling because it is an addition to the dwelling. The dwelling is in a cleared area. *This standard is met.*

- 5.2.2. MCC 39.5860(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 deck northern edge is at 25 feet from the public road and is completely within 200 of the public road. *This standard is met.*

- 5.2.3. MCC 39.5860(B)(3): The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

Staff: The driveway is less than 500 feet in length. *This standard is met.*

5.2.4. MCC 39.5860(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 driveway 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.
- (c) Diagram showing the standards in (a) and (b) above. For illustrative purposes only.

Staff: The access is approximately 74 feet from the east property line. The driveway on the adjacent property to the east is approximately 16 feet from the shared property line. The distance between the two driveways is 90 feet. *This standard is met.*

MCC 39.5860(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: Neither of the adjacent properties to the east or the north/west along the road have a dwelling within 200 of a shared side yard that abuts the road. *This standard is met.*

MCC 39.5860(B)(6) Fencing within a required setback from a public road shall meet the following criteria:

- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.
- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.
- (c) Cyclone, woven wire, and chain link fences are prohibited.
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.
- (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development. (See Figure 4 below.)

Staff: No fencing is proposed. *This standard is met.*

MCC 39.5860(B)(7) The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.

Staff: A condition of approval requires nuisance plants in MCC 39.5580 Table 1 not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property. *This standard is met by implementing conditional of approval.*

6. ALTERATION OF A NONCONFORMING USE

6.1. Definitions

MCC 39.2000: As used in this Chapter, unless the context requires otherwise, the following terms and their derivations shall have the meanings provided below:

Nonconforming Use – A legally established use, structure or physical improvement in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the use regulations of the base zone. A use approved under criteria that have been modified or are no longer in effect is considered nonconforming.

Staff: The proposal is a request for an Alteration of a Nonconforming Use Permit to allow the addition of a deck that will match the existing west side of the dwelling's encroachment of five feet into the 30-foot required front yard. The location of the dwelling at 25 feet on the west side of the structure was approved through the previous Verification and Alteration/Expansion of a Nonconforming Use Case T2-2013-3142 approval.

6.2. Verification of Nonconforming Use Status

6.2.1 MCC 39.8305(A): The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:

- (1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and
- (2) Has not been abandoned or interrupted for a continuous two year period.

Staff: In the previous Verification and Alteration Nonconforming Use Case T2-2013-3142 staff found that,

"A dwelling was constructed on Lot 33 of Andrews Tracts in 1939. The right-of-way for Old Germantown Road was realigned in 1947 which reduced the distance from the public right-of-way to the dwelling to 10 feet. On October 6, 1977, the dwelling became nonconforming to the 30-foot front yard requirement when it was rezoned to Multiple Use Agriculture – 20. The dwelling remained nonconforming to the 30-foot front yard standard when in October 1983 the County rezoned it to its present zoning of Rural Residential (RR). The dwelling was lawfully established in 1939 before zoning and is nonconforming to the current 30-foot front yard requirement of MCC 33.3155(C)."

The dwelling continues to exist as a dwelling since the 2013 case.

6.2.2. MCC 39.8305(B): The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:

- (1) Description of the use;

Staff: The subject property contains an existing dwelling that is nonconforming to the current 30-foot front yard requirement of MCC 39.4375(C). The dwelling has been located 10 feet from the public right-of-way since 1947. The dwelling was built as and is currently used a single family dwelling. The west side of the dwelling has a setback of 25 feet from NW Old Germantown Road right-of-way where the proposed deck is proposed to be located.

(2) The types and quantities of goods or services provided and activities conducted;

Staff: No goods or services are provided from the single family dwelling. Activities conducted within the building and on the property are related to the primary use of the building as a single family dwelling. No other primary uses exist within the building.

(3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

Staff: The use is a single family dwelling, there is no fluctuations in the level of activity.

(4) The number, location and size of physical improvements associated with the use;

Staff: The proposed deck encroachment is very minor, about 10 feet by 5 feet or 50 square feet of the deck is proposed to encroach five feet into the 30 foot minimum front yard setback to match the dwelling setback..

(5) The amount of land devoted to the use; and

Staff: The dwelling is 1,208 square feet with a finished daylight basement of 1,056 square feet and a covered porch of 114 square feet. There is approximately 1 acre of land of the 4.14 acre parcel is used for the dwelling, driveway, parking and landscaped areas. The garden stairs allow for the movement of people from one terraced area to another on the site.

(6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.

Staff: No other factors have been considered.

(7) A reduction of scope or intensity of any part of the use as determined under this subsection (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

Staff: The level of use has been a single family dwelling which has been continually maintained since the previous Verification and Alteration Nonconforming Use Case T2-2013-3142 verified and approved the nonconforming use.

6.2.3. MCC 39.8305(C): In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined

above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.

Staff: The original 1939 dwelling building was constructed prior to the County implementing zoning in 1958. The initial Suburban Residential general district had a flexible front yard standard for nonconforming situations. It was not until October 6, 1977 that the smaller 10-foot distance to the public right-of-way became nonconforming. The previous 2013 review a Verification and Alteration Nonconforming Use Case T2-2013-3142 verified and approved the nonconforming use.

- 6.2.4. MCC 39.8305(D): Except for nonconforming uses considered under MCC 39.8315 (B), the Planning Director may impose conditions to any verification of nonconforming use status to ensure compliance with said verification.**

Staff: At present, staff has not identified the need to impose conditions on the verification portion of this decision.

- 6.2.5. MCC 39.8305(E): An applicant may prove the continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.**

MCC 39.8305 (F) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the continuity, nature and extent of the use for a period exceeding 20 years immediately proceeding the date of application. Evidence proving the continuity, nature and extent of the use for the 20-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.

Staff: Multnomah County Assessment and Taxation records indicate that the value of the dwelling building has increased every year since 2013, the date of the previous review (Exhibit B.1). A single family dwelling is an Allowed Use in the Rural Residential zone. The nonconforming status of the building is related to not meeting the 30 foot front minimum yard setback, and not the use.

6.3. Alteration of a Nonconforming Use

- 6.3.1. MCC 39.8315(A): Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements.**

Staff: The proposed deck is an expansion of 50 square foot area increase of the nonconforming minimum front yard setback area at the same distance matching of encroachment as the west side of the existing dwelling. The proposal meets the alteration, expansion a nonconforming use requiring the following review.

- 6.3.2. MCC 39.8315(C): After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 39.8305, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.**

Staff: As discussed in the above sections, the subject property contains an existing single family dwelling partially within the 30-foot front yard setback that was verified, altered and expanded through a previous Case T2-2013-3142. Findings below address criteria below for the addition of approximately 50 square foot of deck.

(1) The character and history of the use and of development in the surrounding area.

Staff: The addition of deck area will not change the character and history of the use the character of the use is a single family dwelling the decks will not result in any change to that use other than having a deck. It will not result in a change development in the surrounding area, given decks are common additions to single family dwellings.

(2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;

Staff: The addition of deck area will have comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood as the existing single family dwelling and other single family dwellings in the area.

(3) The comparative numbers and kinds of vehicular trips to the site;

Staff: The addition of deck area will change the numbers and kinds of vehicular trips to the site

(4) The comparative amount and nature of outside storage, loading and parking;

Staff: The addition of deck area will have comparative amount and nature of outside storage, loading and parking as the existing single family dwelling.

(5) The comparative visual appearance;

Staff: The comparative visual appearance for the addition of the deck to a single family dwelling is common and the minor amount of area will hardly be noticeable if at all from the road given the size and vegetation.

(6) The comparative hours of operation;

Staff: The single family dwelling operates 24 hour a day and there will no change in that.

(7) The comparative effect on existing flora;

Staff: The addition of deck area will not that any impact on the on existing flora, the area is now graveled.

The staff conclusion is that the addition of deck area, including a minor expansion of a nonconforming structure of an additional approximately 50 square feet within the reduced setback, has met the criteria listed above.

6.4. Conclusion for Alteration of a Nonconforming Use

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Alteration/Expansion of a Nonconforming Use to authorize addition existing dwelling in the Rural Residential zone of a deck on the west side of the dwelling with about 50 square feet encroaching five feet into the 30 foot front minimum yard. This approval is subject to the conditions of approval established in this report.

7. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for a Nonconforming Use Alteration/Expansion Permit approval with conditions for the addition of a deck to an existing nonconforming dwelling with the deck encroaching five feet into the 30 foot minimum front yard in the Rural Residential Zone. This approval is subject to the conditions of approval established in this report. This decision also includes the approval of a Type I Significant Environmental Concern for Wildlife Habitat Permit for which the applicant has carried the burden necessary for an approval.

8. EXHIBITS

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

Exhibits are available for review in Case File T2-2019-12801 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Signed Application Form	9/24/19
A.2	2	Site Plan	9/24/19
A.3*	1	Narrative	9/24/19
A.4*	6	Building Plans with elevation drawings	9/24/19
A.5	5	Storm Water Drainage Control Certificate	9/24/19
A.6	3	Septic Review Certificate	9/24/19
A.7	3	Fire Service Agency Review	9/24/19

A.8	7	Significant Environmental Concern for Wildlife Habitat Worksheet for Type I Review	9/24/19
'B'	#	Staff Exhibits	Date
B.1	2	County Assessment Property Information for	NA