

TYPE 1 LOT LEGALIZATION

Case File: T1-2020-12927

Request: The applicant proposes to legalize a lot through the provisions of Multnomah County Code (MCC) 39.9700 – Legalization of Lots and Parcels That Were Unlawfully Divided. Specifically, the applicant proposes to utilize MCC 39.9700(C), which pertains to a property that is an unlawfully established unit of land that was issued a land use permit for a dwelling prior to January 1, 2007.

Location: 28725 SE Powell Valley Road, Gresham
Tax Lot 400, Township 1 South, Range 4 East, Section 19, W.M.
Tax Account #R994190560 Property ID #R342159

Applicant(s): Leonid Zakhariya

Owner(s): Leonid & Natalia Zakhariya

Base Zone: Exclusive Farm Use (EFU)

Overlays: None

Decision: Approval of this Lot Legalization request under MCC 39.9700(C). The applicant shall finish the Lot Legalization process as described in the following pages.

Issued by:

By:



Chris Liu, Planner

For: Carol Johnson, AICP
Planning Director

Date: Thursday, February 13, 2020

Vicinity Map

N↑



ORDINANCE REQUIREMENTS:

MCC 39.9700 (C), (D), (E), (F), (G), (H) specifies the following:

1. (C) A lot legalization application to create a lot or parcel may be made through a Type I application process when the County issued a land use permit prior to January 1, 2007 for a dwelling or other building on an unlawfully established unit of land, provided the following criteria are met:
 - (1) The land use permit was issued after the sale of the unlawfully established unit of land to a new property owner; and
 - (2) There is a clear property description on the permit for the unlawfully established unit of land for which the building or placement permit was issued. The description may be confirmed by tax lot references, tax lot maps, site plans, or deeds recorded at the time; and
 - (3) The land use permit was for a building for a new principle use, such as a new dwelling, commercial, industrial, community service, or conditional use; and
 - (4) There is a copy of the land use permit in the records of Multnomah County or its authorized agents and the land use permit indicates that the proposed development on the unlawfully established unit of land complied with zoning and land division requirements; and

Staff: The subject property is known by the alternative tax lot #R994190560 ('Tax Lot 56') and its area is represented in the 1978 and 1999 County Tax Maps (Exhibit B.2 & B.4). Staff reviewed this application under the Type 1 application process; submitted Type 1 Application Form included as Exhibit A.1. Following the sale of a portion of a larger property in 1979 (Exhibit B.3), the unlawfully established unit of land shaped in its current configuration resulted as evidenced by County Tax Lot Maps from 1978 and 1999 (Exhibit B.2 and B.4). The County subsequently issued Permit no. 841571 (Exhibit A.4) authorizing a new single-family dwelling on 'Tax Lot 56' in 1984. A copy of Permit no. 841571 is in the County Archives and all building and zoning signatures were completed (Exhibit A.4).

2. **(5) If the approved land use permit was for a dwelling, the building currently qualifies as a habitable dwelling as defined in MCC 39.2000; and**

(6) The building was constructed under a valid building permit and the building remains on the unlawfully established unit of land described in Subsection (2) of this Subsection (C).

(a) A County building permit was issued at the time and does not include plumbing, mechanical, electrical or other type of trade permit. An exempt farm structure approval is not a building permit.

Staff: A former property owner placed the manufactured single family dwelling under a valid building permit. The applicant provided photo evidence, utility bills, and a permit record for the dwelling (Exhibit A.4 – A.6) to demonstrate the home meets the definition of a 'Habitable Dwelling' per MCC 39.2000. This information shows the dwelling: a) Has intact exterior walls and a roof structure; b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system; c) Has interior wiring for lights; d) Has a heating system; and e) Was lawfully established. The dwelling exists on the unlawfully established unit of land known as Tax Lot '56'.

3. **(D) Within 90 days of a final decision being approved under Subsection (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.**

(E) If an application to legalize a unit of land is approved under Subsection (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: The property owner will have 90 days from the issuance date of this permit to record a partition plat legalizing the property under this permit. When the plat is recorded, the date of creation for the parcel will be the date the plat is recorded. The above criteria are included as ongoing restrictions of this approval.

4. **(F) Development of a parcel or lot approved pursuant to this section shall be subject to the laws in effect at the time of the development application pursuant to ORS 215.427(3)(a). No retroactive use of land use laws is authorized by this code provision once the parcel or lot is lawfully created.**

Staff: There is no development request as part of this Type 1 Lot Legalization application.

5. **(G) From January 5, 1966 to December 31, 2000, the County's zoning ordinance specified that in cases where a building permit is required under the Multnomah County Building Code, such building permit shall be deemed to be a land use permit. When reviewing a lot legalization application under Subsection (C) of this Section, building permits during this time period shall constitute a land use permit.**

Staff: The building permit included as Exhibit A.4 serves as a land use permit per this criteria.

6. **(H) The following do not qualify to legalize a lot or parcel under this Section: (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) A mortgage lot. (4) An area of land created by court decree.**

Staff: The subject property is not an area of land described as a tax lot solely for assessment and taxation purposes; an area of land created by the foreclosure of a security interest; a mortgage lot; nor an area of land created by court decree (Exhibit A.2). The parcel can be legalized through the recording of a partition plat.

ON-GOING RESPONSIBILITIES, OBLIGATIONS, MODIFICATIONS, AND LIMITATIONS:

General Requirements:

1. This decision shall expire **90 days** following the date of issuance if the lot legalization process is not finished as outlined below. No extension of this timeline is allowed.

TO FINISH THE LOT LEGALIZATION PROCESS:

2. Within 90 days of this approval, the property owner(s) shall record a partition plat with the County Surveyor in accordance with the requirements of ORS Chapter 92. [MCC 39.9700(D)]
 - a. Prior to submitting the partition plat to the County Surveyor, the applicant shall bring the draft plat to the Land Use Planning office for review.
 - b. The date of creation of the legalized lot shall be the date the partition is recorded. [MCC 39.9700(E)]

Exhibits:

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included and reduced to a size of 8.5” x 11” as part of the mailed decision. All other exhibits are available for review in Case File T1-2020-12927 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	2	Type 1 Application Form & Application Fee Waiver Email	01.24.2020
A.2	2	Warranty Deed recorded August 30, 2020 as instrument no. 2019-091554	01.24.2020
A.3	1	Record of Survey (Tentative Plan Map)	01.24.2020
A.4	2	Permit Record no. 841571	01.24.2020
A.5	4	Utility Bills in support of habitable dwelling demonstration	01.24.2020
A.6	9	Photos in support of habitable dwelling demonstration	01.24.2020
‘B’	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1S4E19 – 00400 (#R342159)	01.24.2020
B.2	1	1978 Tax Map for 1S4E19	01.24.2020
B.3	5	Contract of Sale recorded March 20, 1979 in Book 1338, Page 1730-1734	01.24.2020
B.4	1	1999 Tax Map for 1S4E19	01.24.2020
‘C’	#	Procedural Exhibits	Date
C.1	1	Complete Letter	01.28.2020
C.2	5	Lot Legalization Report	02.13.2020