
NOTICE OF DECISION

Case File: T2-2020-12986

Permit: Significant Environmental Concern and Geologic Hazards

Applicants: Tony DiBenedetto **Owners:** Anthony, Susan, Anna & Adam DiBenedetto

Location: 1300 NW 53rd Drive, Portland
Tax Lot 800 & 100, Section 31AB, Township 1 North, Range 1 East, W.M.
Alt. Acct. #R590301110 & R590300610 Property ID #R223157 & R223151

Base Zone: Commercial Forest Use – 2 (CFU-2)

Overlays: Significant Environmental Concern – Wildlife Habitat (SEC-h); Geologic Hazards (GH)

Proposal Summary: Applicant proposes to amend a previous land use approval (T2-2018-10544) for a SEC-h and GH permit for a garage/shop addition to the existing single-family dwelling. The amendment includes a second-story to the garage to serve as a personal yoga studio and an in-ground swimming pool to be located adjacent to the garage/shop addition.

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, August 5, 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. Copies of all documents are available at the rate of \$0.35/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 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 Digitally signed by
Chris Liu
Date: 2020.07.21
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By: Chris Liu, Planner

For: Carol Johnson, AICP
Planning Director

Date: Wednesday, July 22, 2020

Instrument Number for Recording
Purposes: #2009-097827



Applicable Approval Criteria:

Multnomah County Code (MCC):

General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3030 Lot of Record – (CFU-2), MCC 39.6850 Dark Sky Lighting Standards

CFU-2 Zone: MCC 39.4070 Allowed Uses – (D) and (T), MCC 39.4105 Building Height Requirements, MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones, MCC 39.4115 Development Standards for Dwellings and Structures

Geologic Hazards: MCC 39.5075 Permits Required, MCC 39.5085 Application Information Required, MCC 39.5090 Geologic Hazards Permit Standards

Significant Environmental Concern: MCC 39.5510 Uses, SEC Permit Required, MCC 39.5520 Application for SEC Permit, MCC 39.5860 Criteria for Approval of Sec-h Permit

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. 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.

1. Permit Expiration – This land use permit shall **expire** as follows:
 - a. Within four (4) years of the date of the final decision for residential development on land zoned for Exclusive Farm Use or Commercial Forest Use outside of an urban growth boundary when construction has not commenced.
 - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
 - ii. For purposes of Condition 1.a, notification of commencement of construction will be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. 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.
 - i. For the purposes of Condition 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.

Note: The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

2. **Prior to land use sign-off for building plan check**, the property owners or their representative shall:
 - a. Record pages 1 through 5 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]
 - b. Record a Single Family Residence Covenant with the County Recorder. Per the Covenant, the present and future property owners shall maintain the building as a single-family dwelling with only one kitchen. [MCC 39.1515]
3. **At the time of land use sign-off for building plan check**, the property owner or their representative shall:
 - a. Demonstrate the addition to the existing dwelling has a fire retardant roof and have a spark arrester on any chimney. [MCC 39.4115(C)]
 - b. Demonstrate that all proposed exterior lighting complies with the Dark Sky Lighting Standards of MCC 39.6850(C).
4. As an on-going condition:
 - a. The property owner and all future property owners shall establish and maintain a primary fire safety zone extending a minimum of 30 feet in all directions around the dwelling. Trees within this safety zone shall be spaced with greater than 15 feet

between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height. [MCC 39.4110(D)]

- b. The required primary fire safety zones shall be established within the subject tract. [MCC 39.4110(D)]
- c. The required primary fire safety zones may not restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules. [MCC 39.4110(D)]
- d. 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. [MCC 39.5860(B)(7)]
- e. All ground disturbing activity shall be confined to the period between May 1st and October 1st of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October 1st the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December 1st the same year the development was begun. [MCC 39.5090(U)]
- f. Stripping of vegetation, ground disturbing activities, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction. [MCC 39.5090(H)]
- g. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development. [MCC 39.5090(J)]
- h. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical. [MCC 39.5090(L)]
- i. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary. [MCC 39.5090(M)].
- j. Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized. [MCC 39.5090(N)]
- k. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding. [MCC 39.5090(O)]
- l. Erosion and sediment control measures must be utilized such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to [MCC 39.5090(R)]:
 - (1) Energy absorbing devices to reduce runoff water velocity;
 - (2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule
 - (3) Dispersal of water runoff from developed areas over large undisturbed areas.
- m. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient

distance from water bodies; or by other sediment reduction measures. [MCC 39.5090(S)]

- n. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. [MCC 39.5090(T)]
5. The required trees and shrubs in condition #13 from land use case #T2-2018-10544 shall be maintained in a living state. If they are removed, become diseased, or die, the tree(s) and/or shrubs removed shall be replaced with the same or similar species native tree of at least 6-ft tall or 5-gallon similar species native shrub. Replanting shall occur within the next planting season.
 - a. The above referenced condition stated, *“The applicant shall plant 13 native tree species and 10 native shrub species as illustrated on the mitigation plan (Exhibit A.16.) by December 1, 2019. The trees shall be a minimum of 6-ft. tall at time of planting. The shrubs shall be of at least 5-gallon size.”*

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 Chris Liu, 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. 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.

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 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.

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 & PROPERTY DESCRIPTION:

Staff: The Applicant requests to amend a previous land use approval (T2-2018-10544) for a SEC-h and GH permit for a garage/shop addition to the existing single-family dwelling. The amendment includes a second-story to the garage to serve as a personal yoga studio and an in-ground swimming pool to be located adjacent to the garage/shop addition. No other changes to the previous approval are proposed.

The subject tract consisting of the properties identified as 1N1E31AB-00800 and 1N1E31AB-00100 is located in the West Hills Rural plan area in West Multnomah County. The subject tract is adjacent to Forest Park in the City of Portland boundaries. Existing development includes a two-story dwelling. The dwelling is in a relatively flat area of the tract with slopes less than 10 percent. South of the dwelling, the slopes become steep and exceed 25 percent.

2.0 GENERAL PROVISIONS:

2.1 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:

Staff: The code compliance office does not have any active compliance cases or zoning violation cases associated with the subject property. Staff is not aware of any compliance issues at this time. *Criteria met.*

2.2 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

MCC 39.3030 Lot of Record – CFU-2

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line

Staff: Land Use case # T2-2011-1953 found that the subject property is a Lot of Record as currently configured. The finding stated that, “Together Tax Lots 800 and 100 (as previously described) are both currently in the applicants’ ownership and are aggregated as one lot of record”. The configuration and ownership remains the same as noted in the 2011 decision. Therefore, the subject property remains a Lot of Record. *Criteria met.*

2.3 MCC 39.6850 Dark Sky Lighting Standards

(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: A condition of approval is included requiring the applicant to demonstrate compliance with the Dark Sky Lighting Standards. *As conditioned, the above criteria are met.*

3.0 CFU-2 CRITERIA:

3.1 MCC 39.4070 Allowed Uses

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

(D) Alteration, maintenance, replacement or restoration of an existing lawfully established habitable dwelling as defined in MCC 39.2000 and located within 100-feet from an existing dwelling.

(T) Accessory Structures subject to the following:

(1) The accessory structure is customarily accessory or incidental to any use permitted or approved in this base zone, is located within 100 feet of the dwelling and is a structure identified in the following list:

(i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;

Staff: The proposal includes a two-story addition to the existing dwelling that will include a garage/shop on the main floor and a personal yoga studio with bathroom on the second floor. Photo evidence provided by the Applicant demonstrated that the existing single-family dwelling meets the definition of ‘habitable’. Adjacent to the addition, the applicant proposes a swimming pool located in a non-forested area (Exhibit A.20).

Land use case #T2-2011-1953 previously approved the garage/shop addition to the existing single-family dwelling. Land use case #T2-2018-10544 reauthorized that proposal when the 2011 case expired. As the current proposal contains modifications to the previously approved

alterations to the existing single-family dwelling, new land use review is required. *Criteria met.*

3.2 MCC 39.4105 Building Height Requirements

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: As evidenced by the submitted preliminary building elevations (Exhibit A.18), the height of the addition with the proposed second-story is under 35 feet in height. *Criteria met.*

3.3 MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Use Description of use and location	Forest Practice Setbacks			Fire Safety Zones
	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Alteration and Maintenance of dwelling (greater than 400 sq. ft. additional ground coverage)	Nonconforming setback(s) of less than 30 ft. to property lines that existed as of August 26, 2006 may be maintained	30	30	Primary is required, except that if there was a nonconforming Forest Practice setback of less than 30 feet to property lines as of August 26, 2006, Primary is required to the full extent of the nonconforming Forest Practice setback as it existed on August 26, 2006
Accessory Structures within 100 ft. of the dwelling	N/A	30	30	Primary required

(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.

(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 39.4155 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

(C) The minimum forest practices setback requirement shall be increased where the setback abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional setback requirements in consultation with the Road Official.

Staff: Per the preliminary site plan submitted as Exhibit A.20, the proposal includes the alteration in excess of 400 sq. ft. additional ground coverage for an existing single-family dwelling and a new accessory structure (pool) within 100 ft. of the dwelling. A primary fire safety zone of 30 feet around all structures is required. The applicant did not request a reduction to the Forest Practices Setback or an Exception to the Secondary Fire Safety Zone. County Transportation has not indicated insufficient right-of-way requiring additional setbacks (Exhibit A.11). *Criteria met.*

3.4 (D) Fire Safety Zones on the Subject Tract.

(1) Primary Fire Safety Zone.

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended farther down the slope from a dwelling or structure as follows:

(c) The building site must have a slope less than 40 percent.

(2) Secondary Fire Safety Zone. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 39.4155.

(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.

(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: A primary fire safety zone is required. A secondary fire safety zone is not required per Table 1 above. Conditions of approval are included to ensure compliance with (3), (4), and (5) above. *As conditioned, the above criteria are met.*

3.5 MCC 39.4115 Development Standards for Dwellings and Structures

All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:

(C) The dwelling or structure shall:

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

Staff: A condition of approval requiring compliance with (C)(3) - (C)(4) above is included in this decision. A condition of approval requiring compliance with the Dark Sky Lighting Standards of MCC 39.6850 is also included in this decision. The proposal does not include a mobile home. *As conditioned, the above criteria are met.*

4.0 GEOLOGIC HAZARDS:

4.1 MCC 39.5075 Permit Required

Unless exempt under this code or authorized pursuant to a Large Fill permit, no development, or ground disturbing activity shall occur: (1) on land located in hazard areas as identified on the Geologic Hazards Overlay map, or (2) where the disturbed area or the land on which the development will occur has average slopes of 25 percent or more, except pursuant to a Geological Hazards permit (GH).

Staff: The project does not qualify for one of the listed exemptions. Therefore, a Geologic Hazards (GH) permit is required. Approval criteria for the GH permit are discussed below. *Criteria met.*

4.2 MCC 39.5085 Geologic Hazards Permit Application

An application for a Geologic Hazards Permit shall include two copies of each of the following:

Staff: The Applicant provided the required application materials as Exhibits A.1 – A.22.

4.3 MCC 39.5090 Geologic Hazards Permit Standards

A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(A) The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. For purposes of this provision, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

(B) Fill shall be composed of earth materials only.

(C) Cut and fill slopes shall not exceed 33 percent grade (3 Horizontal: 1 Vertical) unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in excess of 33 percent is safe (including, but not limited to, not endangering or disturbing adjoining property) and suitable for the proposed development.

Staff: Per the revised report from the Applicant’s Geotechnical Engineer (Exhibit A.21), the trench for the new sanitary line will be excavated and backfilled to existing grade. The north foundation retaining wall for the garage/shop will replace an existing landscape wall and will be backfilled as well. No slopes will exceed 33 percent grade per the Applicant’s submitted materials. *Criteria met.*

4.4 (D) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property.

(E) Fills shall not encroach on any water body unless an Oregon licensed Professional Engineer certifies in writing that the altered portion of the waterbody will continue to provide equal or greater flood carrying capacity for a storm of 10-year design frequency.

(F) Fill generated by dredging may be deposited on Sauvie Island only to assist in flood control or to improve a farm's soils or productivity, except that it may not be deposited in any SEC overlay, WRG overlay, or designated wetland.

Staff: Per the Applicant's submitted materials, the proposal does not include unsupported cuts/fills between 1- 4 ft. in height. The proposal does not include fill near a water body or fill deposition on Sauvie Island. *Criteria met.*

- 4.5 (G) On sites within the Tualatin River drainage basin, erosion, sediment and stormwater drainage control measures shall satisfy the requirements of OAR 340-041- 0345(4) and shall be designed to perform as prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. Ground-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340-041-0345(4) is approved for alterations within the buffer area.**

Staff: The subject property is within the Balch Creek watershed and drains to the Willamette River Basin. *Therefore, as the subject property is not located with the Tualatin River Drainage Basin, the above criterion does not apply.*

- 4.6 (H) Stripping of vegetation, ground disturbing activities, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction.**

(I) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff.

Staff: As described in the report completed by the Applicant's Geotechnical Engineer (Exhibit A.21), the proposed development is in areas that are fairly level and were previously graded, graveled, or covered with concrete. Therefore, cuts and fills are limited to ensure that the proposed development does not create significant new impervious surface for the site. *Criterion met.*

Criterion (H) is included as a condition of approval for this decision. *As conditioned, this criterion is met.*

- 4.7 (J) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.**

(K) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

(1) A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;

(2) The buffer required in subsection (K)(1) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment, and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041-0345(4).

(L) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical.

Staff: The proposal does not include work within 100 ft. of a stream, water body, or wetland. Conditions of approval requiring compliance with (J) and (L) above are included in this decision. *As conditioned, the above criteria are met.*

4.8 (M) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary.

(N) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized.

(O) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding.

Staff: The Applicant's Geotechnical Engineer states that the north garage/workshop foundation wall shall have perforated subsurface drainage pipe installed at the lowest foundation level to prevent saturation of wall backfill. The north foundation wall should be backfilled to its design exterior grade with free draining granular fill such as sand and gravel or crushed rock. Care should be taken not to over-compact retaining wall drainage backfill and add stress to the foundation wall (Exhibit A.21). Conditions of approval requiring compliance with (M), (N), and (O) above are included in this decision. *As conditioned, the above criteria are met.*

4.9 (P) All drainage measures shall be designed to prevent erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system.

(Q) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion.

Staff: Gutters and splash blocks handle stormwater onsite. The applicant does not propose any drainage swales. *Criteria met.*

4.10 (R) Erosion and sediment control measures must be utilized such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to:

(1) Energy absorbing devices to reduce runoff water velocity;

(2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

(3) Dispersal of water runoff from developed areas over large undisturbed areas.

(S) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient distance from water bodies; or by other sediment reduction measures;

(T) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.

Staff: The above requirements are conditions of approval for this decision. *As conditioned, the above criteria are met.*

4.11 (U) On sites within the Balch Creek drainage basin, erosion, sediment, and stormwater control measures shall be designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. All ground disturbing activity within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

Staff: As the subject property is within the Balch Creek drainage basin, a condition of approval requires ground disturbing activity to be confined to the period between May 1st and October 1st. *As conditioned, the above criterion is met.*

4.12 (V) Ground disturbing activities within a water body shall use instream best management practices designed to perform as prescribed in the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual.

(W) The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes, unless mitigated as approved by the County Transportation Division.

(X) Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way.

(Y) No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill.

Staff: The proposed project does not include any ground disturbing activities within a water body. The proposed project does not include any fill activities; hence, no fill trucks will enter or exit the site and the property owner will not receive any compensation for fill placement.
Criteria met.

5.0 SIGNIFICANT ENVIRONMENTAL CONCERN:

5.1 MCC 39.5860 Criteria for Approval of SEC-H Permit – Wildlife Habitat

(A) In addition to the information required by MCC 39.5520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

Staff: The applicant submitted the required information as Exhibits A.1 – A.22.

5.2 (B) Development standards:

(1) Where a parcel contains any nonforested "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: Approximately 100 sq. ft. and 11 trees were cleared to accommodate the project as part of the 2018 land use decision. An amended wildlife conservation plan is proposed and discussed in section 5.7 – 5.9 of this decision. *Standard not met.*

5.3 (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 development is greater than 200 feet from NW 53rd Ave., a public road.
This standard is not met.

5.4 (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

(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.

Staff: The driveway is approximately 298 feet in length (Exhibit A.2 & A.10). The nearest driveway across NW 53rd Ave. is within 50 feet of the existing driveway for the subject property (Exhibit A.5). *Standards met.*

5.5 (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.

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

Staff: Per aerial photos of the subject property, the subject property is configured such that adjacent properties do not have a common side yard. No fencing within a required setback is proposed. *These standards are not applicable.*

5.6 (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 is included in this decision prohibiting the planting of nuisance plants listed in MCC 39.5580. *As conditioned, the above standard is met.*

5.7 (C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

(1) The applicant cannot meet the development standards of subsection (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or

(2) The applicant can meet the development standards of subsection (B), but demonstrates that the alternative conservation measures exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).

Staff: The applicant proposes a Wildlife Conservation Plan (Exhibit A.2, A.10, and A.13) per (C)(2) discussed below as required by this standard. The proposed wildlife conservation plan

and mitigation measures ensure impacts to the forested habitat are limited to the minimum necessary to accommodate the development. *Standard met.*

- 5.8 **(3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), the wildlife conservation plan must demonstrate the following:**
- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**
 - (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**
 - (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

Staff: The applicant cleared approximately 100 sq. ft. and 11 trees to accommodate the original addition and to establish the required primary fire safety zone. These trees were replaced at a 1:1 ratio as shown in Exhibit A.10 & A.13. The completed clearing was the minimum necessary to physically accommodate the addition and ensure the required primary fire safety zone was established. Therefore, the applicant demonstrates conformance with the requirement to reduce impacts to the forested areas by limiting clearing activities to the minimum necessary to serve the development.

No new fencing is proposed and the site plan does not show any existing fencing (Exhibit A.20). *Standards met.*

- 5.9 **(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.**
- (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

Staff: In land use case T2-2018-10544, the applicant proposed to plant 200 sq. ft. of trees in an existing cleared area not serving the development to mitigate the 100 sq. ft. removed (Exhibit A.10. & A.13) and meet the 2:1 ratio revegetation requirement. Thirteen trees (Douglas Fir and Western Red Cedar) were to be planted along with ten shrubs (Red Flowering Currant and other species from the Metro Native Plant list). Photos of the completed plantings are included in Exhibit A.13. A condition of approval requires that any mitigation tree or shrub that dies or is removed must be replanted (Condition #5). The subject tract is not located along a stream. *Standards met.*

5.10 (4) For a property meeting subsection (C)(1) above, the applicant may utilize the following mitigation measures for additions instead of providing a separate wildlife conservation plan:

(5) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, the wildlife conservation plan must demonstrate the following:

(6) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

Staff: The applicant elected to address the criteria found in subsection (C)(3) of this section. The subject property is not within the PAM Overlay. *Criteria met.*

5.10 (D) Optional Development Impact Area (DIA). For the purpose of clustering home sites together with related development within the SEC-h overlay, an applicant may choose to designate an area around the home site for future related development and site clearing. For the purposes of establishing the appropriate mitigation for development within the DIA, existing vegetation within the DIA is presumed to be ultimately removed or cleared in the course of any future development within the DIA. Establishment of a DIA is subject to all of the applicable provisions in this section and the following:

Staff: The proposal does not include the clustering of homes requiring the designation of an optional DIA. *These criteria are not applicable.*

6.0 PUBLIC COMMENT:

Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 (Exhibit C.4). Staff did not receive any public comments during the 14-day comment period. As Staff did not receive any public comments, this decision has satisfied the requirements of MCC 39.1105.

7.0 CONCLUSION:

Based on the findings and other information provided above, the applicant has carried the burden necessary to amend a previous land use approval (T2-2018-10544) for a SEC-h and GH permit for a garage/shop addition to the existing single-family dwelling. The approved amendment includes the establishment of the alteration to the existing single-family dwelling described in this decision and new pool in the CFU-2 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

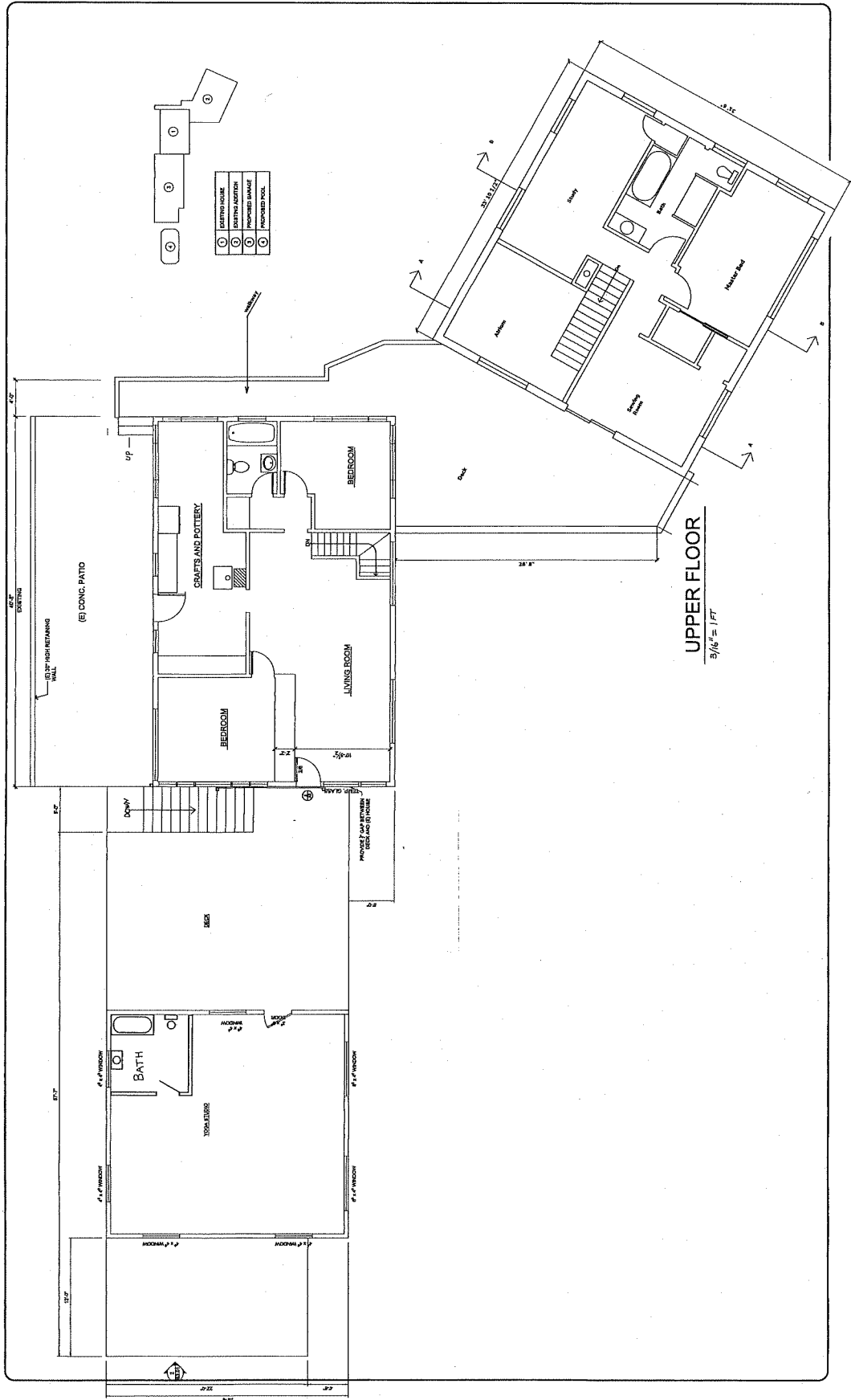
Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2020-12986 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	02.12.2020
A.2	6	Significant Environmental Concern Worksheet	02.12.2020
A.3	1	Site Plan	02.12.2020
A.4	1	Site Contour Map	02.12.2020
A.5	2	Aerial Photos of Site	02.12.2020
A.6	5	Fire Service Agency Review	02.12.2020
A.7	1	Floor Plan – yoga studio (not-to-scale)	02.12.2020
A.8	1	Site Fire Safety Zone Plan	02.12.2020
A.9	18	Geotechnical Report completed by Chinook Geoservices Inc.	02.12.2020
A.10	5	Addendum to Significant Environmental Concern Worksheet	02.12.2020
A.11	15	Transportation Planning Review Form	03.04.2020
A.12	6	Septic Review Certification	05.15.2020
A.13	3	Revised Planting / Conservation Plan	05.20.2020
A.14	1	Revised Erosion Control Plan	05.20.2020
A.15	1	Revised Primary Fires Safety Zone Plan	05.20.2020
A.16	3	Revised Pool Location Plan	05.20.2020
A.17	16	Revised Engineering Details	05.20.2020
A.18	4	Revised Elevation Drawings	05.20.2020
A.19	1	Revised Sanitary Line Elevation Drawing	05.20.2020
A.20*	1	Revised Site Plan	05.20.20202
A.21	6	Revised Geotechnical Report	05.21.2020
A.22*	2	Revised Floor Plan	05.27.2020

'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1300 NW 53 rd Drive	02.12.2020
B.2	19	Copy of the decision for land use case #T2-2018-10544	02.12.2020
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete letter	03.06.2020
C.2	1	Applicant's acceptance of 180 day clock	03.11.2020
C.3	1	Complete letter (Day 1)	06.10.2020
C.4	5	Opportunity to Comment	07.02.2020
C.5	21	Administrative Decision	07.22.2020

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Socket	SHOWN
Job	110402
Sheet	A2
	of 10

Tony & Susan DiBenedetto
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SANITARY LINE PLAN VIEW
Permit 20-129821-000-00-SE

