
NOTICE OF DECISION

Case File: T2-2020-12980

Permit: Time Extension

Applicants: Andrew Tull, 3J Consulting, Inc.

Owners: Reed Kaplan

Location: Property 1: No Situs address, located north of NW 5th Ave. and east of Valley St.
Tax Lot 800, Section 30B, Township 2N, Range 1W, W.M.
Alternate Account #R289605470 Property ID #R164695

-and-

Property 2: No Situs address, located north of NW 5th Ave.
Tax Lot 900, Section 30B, Township 2N, Range 1W, W.M.
Alternate Account #R289605270 Property ID #R164693

Base Zone: Rural Residential (RR)

Overlays: Significant Environmental Concern -Wildlife Habitat (SEC-h)
Geological Hazard (GH)

Proposal Summary: Request for a time extension associated with Land Use Case #T2-2016-6543

Decision: **Approved with Conditions.** A twelve (12) month (one (1) year), time extension is approved by the Planning Director, extending the expiration date of T2-2016-6543 to May 9, 2021.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is September 4 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 Aldo Rodriguez, Staff Planner at 503-988-4159 or aldo.rodriguez@multco.us.

Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by:



By: Aldo Rodriguez, Assistant Planner

For: Carol Johnson, AICP
Planning Director

Date: August 21, 2020

Vicinity Map



Applicable Approval Criteria:

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

Multnomah County Code (MCC): Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

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

Lot of Record Requirements Specific to Each Zone: MCC 39.3090

Extension of Type II or Type III Decision: MCC 39.1195

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:

- a. This approved time extension (T2-2020-12980) extends the length of time to commence construction for 12 months (one (1) year) for the Significant Environmental Concern - Wildlife Habitat permit and Hillside Development and Erosion Control (HD) permit that allow the establishment of the two new single-family dwellings on each individual lot. In addition, it extends the length of time to complete the replat for 12 months (one

- (1) year). T2-2020-12980 will expire on May 9, 2021 unless construction has commenced by that date. [MCC 39.1195(A)]
- b. For the purposes of Condition of Approval #1.a., commencement of construction for each structure shall mean actual construction of the foundation or frame of the approved structure. Provided the property owner commences construction of each structure before May 9, 2021, T2-2016-6543 will expire on May 9, 2023 unless the structures have been completed. [MCC 39.1195(A)]
- i. For the purposes of Conditional of Approval #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. All conditions of approval from land use case #T2-2016-6543 shall remain in effect and shall be incorporated in this decision by reference as exhibited in (Exhibit B.3)

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as '**Staff:**' and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.0 Project Description:

1.1

Staff: The applicant is requesting a time extension associated with Land Use Case #T2-2016-6543, which authorized the construction of two new single-family dwellings within the Significant Environmental Concern - Wildlife Habitat (SEC-h) overlay and Geological Hazards overlay (formally known as Hillside Development).

2.0 Property Description & History:

2.1

Staff: The proposed single-family dwellings will be located on NW 5th Avenue within the Rural Residential (RR) zoning district in the West Hills Rural Area. There are multiple overlays on the properties including Significant Environmental Concern - Wildlife Habitat (SEC-h) and Geological Hazards. The properties are both heavily forested and vacant.

The subject properties are part of the Folkenberg subdivision that was originally platted in 1911. At the time of the application, Jarrod Brockman and Bruce Green owned the subject properties. Subsequently, the properties were bought by the current owner, Reed Kaplan, who took over the application.

The applicant has been unable to begin construction of the single-family dwellings. As allowed in MCC 39.1195, the applicant has two years to commence construction of the single-family dwellings. If commencement of construction did not occur by Wednesday, May 9, 2020, land use case T2-2016-6543 would expire. The applicant is now requesting a time extension to delay the expiration of T2-2016-6543.

3.0 General Provision:

3.1 MCC 39.1515 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or
- (2) It is necessary to protect public safety; or
- (3) It is for work related to and within a valid easement over, on or under an affected property.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: There are no active code compliance issues associated with the properties; therefore, the County has the authority to issue this land use decision. *This criterion is met.*

3.2 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:

Staff: Land use case #T2-2016-6543 found that the subject properties are Lots of Record. *This criterion is met.*

3.3 MCC 39.3090 Lot of Record – (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: Land use case #T2-2016-6543 found that the subject properties are Lots of Record. *This criterion is met.*

4.0 Procedures Criteria

4.1 MCC 39.1195 EXTENSION OF A TYPE II OR TYPE III DECISION.

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

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

Staff: The applicant, Andrew Tull, submitted a request for a 24-month time extension to commence construction of the single-family dwellings. The request for the time extension was in writing. Based on MCC 39.1185 the proposal would not qualify for a 24-month extension as is the property is not located in Exclusive Farm Use or Commercial Forest Use. It would be eligible for a 12-month extension. (Exhibit A.2). *This criterion is met.*

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

Staff: The request was submitted to the county prior to the expiration of the approval period. The extension was submitted on February 10, 2020, which is 89 days before the expiration of T2-2016-6543's approval period on May 9, 2020. (Exhibit A.1). *This criterion is met.*

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

Staff: As part of the narrative, the applicant discusses the reasons that prevented the commencement of construction within the approval period. The applicant states:

“Due to various overlays, environmental concerns, and difficulty in constructing roads and building the houses in this sensitive location, it has taken longer to secure the companies necessary to tackle the job. There is a strategic order in which construction must be undertaken and seasonal weather concern that must accounted for in order to not impact the sensitive job site location, minimize any inconvenience to the adjacent property and not disturb the surround neighborhood.” (Exhibit A.1).

Based on this information from the applicant, it appears that recruitment of various companies to proceed with construction has taken longer than expected due to the complexity of the project. In addition, due to limited time associated with weather concerns it has disrupted the commencement of construction. *This criterion is met.*

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

Staff: Based on the applicant's narrative, the applicant was unable to commence construction for reasons for which the applicant was not responsible. As discussed previously, due to the project complexity and limited time for construction the project has not been able to proceed. Based on this information, it does not appear that the applicant was responsible for the delay. *This criterion is met.*

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

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

7.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for approval of the time extension of a period of 12 months to establish two single family

dwellings on each individual lot in the Rural Residential Zone as authorized in #T2-2016-6543. 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 T2-2020-12980 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	2.10.2020
A.2	1	Applicant Email requesting 24 month extension	3.11.2020
‘B’	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for <R164695> (Alt Acct# R289605470)	2.10.2020
B.2	2	Department of Assessment, Records and Taxation (DART): Map with <R164693> (Alt Acct#R289605270)	2.10.2020
B.3	43	Copy of T2-2016-6543 Decision	2.10.2020
‘C’	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	3.11.2020
C.2	2	Opportunity to Comment	4.23.2020
C.3		Administrative decision	