

**To:** Multnomah County Hearings Officer      **Date:** July 11, 2025  
**From:** Ty Wyman *tw*      **Our File No:** MUL041.1  
**Subject:** County File No. T3-2024-0007 - Springdale Fire Station

---

The Applicant<sup>1</sup> submitted on March 25 revised site plans.<sup>2</sup> As described herein, the Application warrants approval pursuant to those plans (rather than previously-submitted plans, to which the staff-proposed conditions refer).

Under ORS 215.130(5):<sup>3</sup>

- “lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued;” and
- a county “shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements.”

As described below:

- the term “alteration” in ORS 215.130(5):
  - includes expansion of the nonconforming use; and
  - infers no greater impact to the neighborhood;

---

<sup>1</sup> Multnomah County Fire District No. 14 (“Corbett Fire”).

<sup>2</sup> Marked as Exhibit G.2 at <https://multco.us/info/31727-e-hist-columbia-river-hwy>, I refer to these plans as “the Project.”

<sup>3</sup> “The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215 (Reestablishment of nonfarm use), a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.”

MCC 39.8315(B) implements ORS 215.130(5), authorizing the alteration of a nonconforming use when it is demonstrated that:

“(1) The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements; or  
(2) The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity.”



- the term “necessary to comply with state or local health or safety requirements” applies to a broad range of public service uses;
- Corbett Fire’s use of the Site<sup>4</sup> was lawfully established and has since continued uninterrupted (thus constitutes a legal nonconforming use pursuant to ORS 215.130(5));
- the Project:
  - is necessary to comply with state and local health/safety mandates; and
  - has no greater impact on the neighborhood.

As such, the County may not condition approval of this application on the plans referenced in the staff report, *i.e.*, Exhibit A.7. We ask the Hearings Officer to instead condition approval of the application on the stormwater plans are marked as Exhibit G.2.

I. The term “alteration” in ORS 215.130(5) includes expansion of the nonconforming use.

In *Campbell v. Columbia County*, LUBA No. 2012-060 (Jan. 28, 2013) (slip op 11-12), the county allowed, at a lawful nonconforming mobile home park, extension of a septic system drainfield onto an adjacent parcel. *Id.* The county found, and LUBA affirmed, that such improvements constituted an “alteration” of the nonconforming use under ORS 215.130(5) and (9), and were permissible because the improvements were necessary to comply with health and safety requirements and did not result in greater adverse impacts to the neighborhood. *Id.*

II. The term “alteration” in ORS 215.130(5) infers no greater impact to the neighborhood.

ORS 215.130(9) reads as follows:

As used in this section, “alteration” of a nonconforming use includes:

- (a) A change in the use of no greater adverse impact to the neighborhood; and

---

<sup>4</sup> 31727 E Hist Columbia River Hwy, Troutdale.



(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

Corbett Fire proposes no change in the underlying use, so subsection (9)(a) does not apply. Where the proposed alteration involves only structural modifications or improvements, subsection (9)(b) governs. Therefore, approval under ORS 215.130(5) requires a demonstration that the proposed improvements will not result in a greater adverse impact on the surrounding neighborhood (addressed in Section VI below).

III. The term “necessary to comply with state or local health or safety requirements” applies to a broad range of public service uses.

As described above, LUBA upheld approval, as a nonconforming use alteration, expansion of a septic system. Material to its decision were that DEQ regulations (a) mandated the improvements and (b) constituted “health and safety requirements” for purposes of ORS 215.130(5). *Campbell v. Columbia County*, LUBA No. 2012-060 (Jan. 28, 2013) (slip op 16-22). We further note that, in Case No. T2-2024-0083 (Apr. 11, 2025) (Attachment A hereto), the County approved replacement of nonconforming lattice utility structures with monopoles, citing in material part the need to comply with the National Electrical Safety Code. *Id.*, at 9-10. The County specifically deemed the upgrade necessary to meet safety standards, thus allowed under local provisions implementing ORS 215.130(5).

These decisions reflect that “health or safety requirements,” as used in ORS 215.130(5), apply relatively broadly and include regulatory compliance measures not compelled by a formal code enforcement action. We explain in Section V below how the Project is necessary to comply with such health/safety mandates.

IV. Existing improvements on the Site constitute lawful nonconforming use.

As described in the memo of today from land use planning expert (and former longtime Planning Commissioner) Peter Finley Fry (Attachment B hereto), Corbett Fire has used the existing structures at the Site continuously as a fire station since 1976, which predates the County’s current stormwater management standards (*i.e.*, without onsite treatment or detention). Such use renders the facility lawfully nonconforming to such standards under ORS 215.130(5).



V. The Project is necessary to comply with State/County health/safety mandates.

Per Table 1604-5 of the Oregon Structural Specialty Code, Springdale Fire Station constitutes an “Essential Facility.” The Project, thus, must meet the seismic resilience mandates of OSSC 1604-13. As detailed in the declaration of Chief Rick Wunsch (Attachment C hereto), the Project will do so. *See also* Attachment D hereto, Multnomah County Fire District No. 14 General Obligation Bond Authorization, noting “seismic upgrades” as a basis for the financing.

We consider it manifest that such seismic mandates constitute “state or local health or safety requirements” under ORS 215.130(5) and MCC 39.8315(B)(1).<sup>5</sup> Certainly, the case precedents - *Campbell v. Columbia County*, LUBA No. 2012-060 and Multnomah County Case No. T2-2024-0083 (Apr. 11, 2025), at 9-10 – suggest no narrower construction of those laws.

VI. The Project has no greater impact on the neighborhood.

Peter Finley Fry memo explains how the Project will have a net positive impact on the neighborhood by reducing environmental impacts and bringing the Site closer to conformance with current development standards, consistent with MCC 39.8315(B)(2), which authorizes alterations necessary to maintain a nonconforming structure in good repair. Indeed, the Staff Report notes (pp. 13, 23, 30, and 32) that impacts to neighboring properties are mitigated. Any change in the character or intensity of the use is minimal, and the improvements are designed to reduce off-site impacts. *Id.* The Project includes design and landscape improvements that

---

<sup>5</sup> As described in Chief Wunsch’s declaration, other health and safety standards necessitate the Project, *e.g.*:

- MCC 39.8040(A)(5), implementing federal and State mandates for disabled access throughout the site, including restrooms and parking.
- MCC 39.4575(F), mandating an on-site septic system that meets current sanitary code requirements.

The Project will bring the Site into conformance with these standards.

Indeed, given the very nature of Corbett Fire’s use of the Site (*i.e.*, for fire, rescue and emergency services), we believe that the Hearings Officer could deem the entirety of the Project as necessary to meet health and safety standards.



reduce impervious surface area and provide for on-site detention and treatment of stormwater improvements that mitigate the existing nonconformity.

VII. Conclusion.

Springdale Fire Station constitutes a legal nonconforming use under ORS 215.130(5) and the Project is necessary to bring the facility into compliance with health and safety standards. The project thus satisfies the criteria set forth at ORS 215.130(5) (as well as MCC 39.8315(B)(1) and (2)) for alteration of a nonconforming use as to which the County may not place conditions. For the reasons detailed above, the Hearings Officer should approve the application pursuant to the revised stormwater plans are marked as Exhibit G.2 rather than the original submitted plans (marked as A.7).