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NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T1-2018-11141

Permit: Lot Legalization

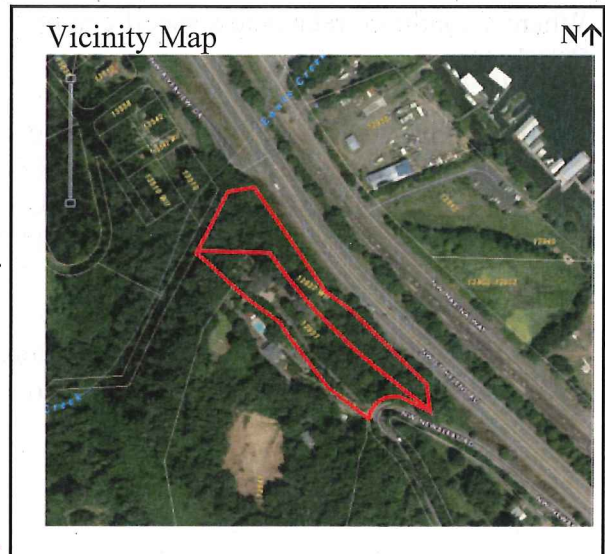
Location: 12937 NW Newberry Road
Tax Lots 300 and 302, Section 33A
Township 2 North, Range 1 West, W.M.
Tax Account #R325461 and R325448

Applicant: Carrie Richter, Bateman Seidel

Owners: David and Shawn Looney

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

Overlays: Significant Environmental Concern for scenic views (SEC-v) and wildlife habitat (SEC-h) / Hillside Development (HD)



Summary: Request to approve a Lot Legalization to create one parcel from Tax Lots 300 and 302 of Multnomah County Assessor's Map T2N, R1W, Section 33A.

Decision: Approved with Conditions

This decision is effective January 7, 2019 at 4:00 PM.

Issued by:

By:



Michael Cerbone, AICP
Planning Director

Date: January 7, 2019

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 33.7785, MCC 37.0560, 37.0595.

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.multco.us/landuse>

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 [brackets].

1. Within 90 days of the date of this decision the applicant shall record a one parcel partition plat in accordance with Oregon Revised Statute Chapter 92. The property owner(s), or representatives thereof, shall complete the “Finishing a Land Division” instructions as described in Exhibit A.10. [MCC 33.7785(D)]
2. This land use permit expires 90 days from the date the decision is final pursuant to MCC 33.7785(D). **There can be no request for a permit extension, failure to record the final plat within 90 days of the date of this decision shall result in this application being void.**

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*.

1.00 APPLICATION REQUEST

Staff: The applicant’s stated request is to create a one lot parcel that encompasses only Tax Lot 300 and 302 of Township 2 North, Range 1 W, Section 33A otherwise known as 12937 Newberry Road, Portland Oregon as described within Exhibit A.9 and depicted by the shaded area within Exhibit B.2.

2.00 LAND USE HISTORY

Staff: The following provides a summary of the history of the property.

Failed Land Division

On November 5, 1985, Fred Bernet, the then-owner of Tax Lot 15, purported to sell 2.5 acres of that property to the Looneys (creating Tax Lot 33), along with the sale of a 1.31 acre parcel (Tax Lots 17 and 62). On March 30, 1989, Fred Bernet purported to sell Brian and Christine Lightcap the 31.57 remainder of Tax Lot 15. Bernet made the sales purporting to divide Tax Lot 15 without County approval of a land division. The zoning at the time was MUF-19 but since the Looney’s unit of land did not meet the zoning requirements, Multnomah County Planning determined that the Lightcap parcel had issues, too because it was created from an unlawful land division. Additional information can be found in the Decision on land use cases LE 14-92 and LD 49-92.

In 1989, for the purpose of legalizing the sales to the Looneys and the Lightcaps, Mr. Bernet submitted an application request for a “Land Division and Lot of Exception approval to create a 3.82 acre parcel and a 31.57 acre parcel out of this 35.39 [sic] acre Lot of Record.” That application was approved, but, due to a failure to submit a final partition map, that approval expired and the Land Division and Lot of Exception were not perfected.

1992 Application

In 1992, Mr. Looney submitted an application request for a Lot of Exception (Case LE 14-92) and a Land Division (Case LD 49-92) for the purpose of legalizing the sales from Mr. Bernet to the Looneys and the Lightcaps and to add to the proposed Looney parcel, with 0.05 acres from the Lightcaps and 0.05 acres from the Wagners.

As the Hearings Officer explained, the 1992 application was necessary because “there was no prior approval of a land division, so whatever Bernet sold to the Looneys (and Lightcaps) it was not the ownership of separate parcels.” (Exhibit B.11, page 8). The Hearings Officer went on to suggest that “the Looneys and Lightcaps may own an unequal, but undivided, interest in the original, 34.07 acre parcel, former Tax Lot 15.”

As a result, the 1992 applications sought first to transfer the additional 0.05 acres from the Wagner Lot of Record to the Lightcap/Looney Lot of Record (processed as a Lot of Exception, as explained below) before creating the Looney Lot of Exception, the creation of which also required a land division:

“Applicants request approval of a 9.92-acre Lot of Exception through a property line adjustment to transfer .05 acre from a 9.97-acre Lot of Record [Wagner] to an adjoining 35.39-acre Lot of Record [Lightcap/Looney]. From the resulting 35.44-acre tract [Lightcap/Looney], applicants request approval of a 3.92-acre Lot of Exception [Looney]. Due to the request for the 3.92-acre Lot of Exception, applicants also seeks approval of a Type I land division.”

The Decision (June 21, 1993)

Through the Decision, the Hearings Officer approved a Lot of Exception to allow the transfer of 0.05 acres of land from the 9.97 acre Wagner Lot of Record to the Lightcap/Looney Lot of Record. The Lot of Exception process was the County’s methodology for approving a “property line adjustment” because the zoning code did not include a provision for property line adjustments at that time and the adjustment of the Wagner parcel, which was below the minimum lot size of 19 acres, required an exception.

The Hearings Officer also approved the proposed Looney Lot of Exception to create a new Looney parcel, concluding that it met the requirements of both the Lot of Exception and Land Division provisions. The Looney Lot of Exception included Tax Lots 62, 17, and 33, as well as the additional 0.05 acres from the Lightcaps.

The Looney Lot of Exception approval, LE 14-92, contained the following condition (“Consolidation Condition”):

“[T]he lot of exception is approved subject to the condition that the Looney’s apply for and receive approval for a lot line adjustment under MCC 11.15.2061 to consolidate Tax Lots 62 (in Section 28) 17, 33 (and the 0.05 acre parcel split off from the Wagner parcel) no later than the end of this calendar year [December 31, 1993] or the date at which they receive approval for a replacement dwelling, whichever comes first. Failure to consolidate the parcels by the deadline will render this approval void.”

On November 5, 1993, three property line adjustment legal descriptions – for the Looneys, Lightcaps, and Wagners – were approved by the County.

Replacement Dwelling

A replacement dwelling was authorized for the Looney property by the approval of SEC 26-96/PRE 16-96 (a Significant Environmental Concern and Use Under Prescribed Conditions consolidated application) on January 13, 1997.

Director’s Interpretation

A Director’s Interpretation was requested on March 13, 2018 requesting the Planning Director find that LE 14-92 and LD 49-92 be found to be void. Multnomah County issued a Director’s

Interpretation finding that LE and LD were not void. On October 22, 2018 the Multnomah County Hearing's Officer issued a decision finding the LE and LD are void because the Looneys failed to consolidate tax lots 33, 17, and 62 prior to December 31, 1993.

3.00 MCC 33.7785 Creation of Lots and Parcels that were unlawfully divided

§ 33.7785 CREATION OF LOTS AND PARCELS THAT WERE UNLAWFULLY DIVIDED

This Code section provides the mechanism to review and, based upon findings of compliance with specific approval criteria, to approve certain unlawfully divided lots or parcels. The review mechanism to correct an unlawfully divided unit of land differs according to the date the unlawful lot or parcel was divided as provided in (A) and (B) below, or under (C) if a land use permit was issued for a primary use. For the purposes of this section, an "unlawfully divided" lot or parcel means a lot or parcel that, when divided, did not satisfy all applicable zoning and land division laws.

(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**

Staff: The subject property was purchased by Shawn and David Looney on November 5, 1985. The properties transferred to the Looneys via deed on November 5, 1985 constituted an illegal land division. The Looneys received approval for a replacement dwelling on January 13, 1997 (Exhibits A.3, A.6, and A.7). The replacement dwelling was approved after the sale of the unlawfully established unit of land was transferred. *The criterion is met.*

- (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**

Staff: Exhibit A.3 is the Notice of Decision for a Significant Environmental Concern (SEC 26-96) and Replacement Dwelling (PRE 16-96) issued to David and Shawn Looney on January 13, 1997. On the decision is the property address (12937 NW Newberry Road, Portland Oregon 97212) as well as the description of the Lot of Record for the subject application which is described as "Tax Lots 33 and 17 of Sec. 33, T. 2 N., R. 1 W., and Tax Lot 62, Sec. 28, T. 2 N., R. 1 W., a total of 4 acres". Page 5 of Exhibit A.3 includes a map that shows the TL 17, 33 and 62. The property description for the subject property within Exhibit A.3 is clear, it includes a reference to tax lots and a corresponding site plan. The area for the property description described in Exhibit A.3 matches the proposed parcel that is the subject of this review. *The criterion is met.*

- (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**

Staff: MCC 33.0005 defines *principal use* as:

Principal Use – The main use to which the premises is devoted and the primary purpose for which the premises exists.

Exhibit A.3 was a notice of decision for Exhibit A.6 and A.7, for the subject property which permitted the construction of a replacement dwelling. The replacement dwelling approved through SEC 26-96 (Exhibit A.7) and PRE 16-96 (Exhibit A.6) established a new principle use on the subject property. *The criterion is met.*

- (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: Exhibits A.3, A.6, and A.7 are copies of land use permits that currently exists in the records of Multnomah County. Exhibit A.8 is a copy of the Building Permit issued by the City of Portland to allow for the construction of the replacement dwelling and demonstrated compliance with zoning and land division requirements. *The criterion is met.*

- (5) If the approved land use permit was for a dwelling, the building currently qualifies as a habitable dwelling as defined in this chapter; and**

Staff: MCC 33.0005 defines habitable dwellings as:

Habitable Dwelling – An existing dwelling that: (a) Has intact exterior walls and 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 interior lights; (d) Has a heating system; and (e) Was lawfully established.

The approved land use permit included within Exhibits A.3, A.6, and A.7 allowed for the construction of a replacement dwelling on the subject property. The applicant submitted Exhibit A.4 which are pictures of the interior and exterior of the home on the subject property. The pictures in Exhibit A.4 demonstrate that the existing structure on the property has intact exterior walls and an intact roof structure. The pictures included of the kitchen and bathroom demonstrates that there is a functioning kitchen sink, toilet and bathing facilities. Interior lights are on in the photos demonstrating the lights are functional. Exhibit A.8 includes the two Building Permit Review forms completed by County staff which allowed the applicant to submit the plans for the replacement dwelling to the City of Portland, also include within Exhibit A.8 is a Building Permit issued by the City of Portland for the replacement dwelling. The existing structure on the subject property is found to be habitable. *The criterion is met.*

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

(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: The replacement dwelling was approved by Multnomah County for building permit submittal on July 1, 1998 as detailed within Exhibit A.8. *The criterion is met.*

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

Staff: The applicant is required to record a partition plat in accordance with the requirements of Oregon Revised Statute Chapter 92 within 90 days of the approval contained within this decision, this is a condition of approval. *As conditioned this criterion is met.*

(E) If an application to legalize a unit of land is approved under (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 applicant is proposing to legalize the subject property under MCC 33.7785(C). The date of the recordation of the partition plat shall be the date of creation of the legalized parcel.

(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: Future development of the site shall be subject to the laws in effect at the time of the proposed development.

(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 (C) above, building permits during this time period shall constitute a land use permit.

Staff: Within the record for this decision are two land use approvals (Exhibits A.6 and A.7) as well as a Building Permit (Exhibit A.8). The applicant has met the burden of proof to demonstrate a land use permit was issued for the subject property after the land was unlawfully divided.

4.00 MCC 37.0560 Code Compliance and Applications

§ 37.0560 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 Land Use 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 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: The subject property was created illegally on November 5, 1985. Multnomah County had a land division ordinance in place at this time which would have required land use approval in order to be able to divide the subject property from the parent property. There is an existing accessory structure located to the east of the replacement dwelling on the subject property, this structure was placed on the property without land use review. The County has prepared and executed a Voluntary Compliance Agreement with the applicant to memorialize the need to gain land use approval within two years. Aside from the item identified within the VCA and the illegal land division that is corrected with this application there are currently no known violations on the subject property. The proposed application if approved would resolve the illegal land division of the subject property consistent with MCC 37.0560(A)(1). *The criterion is met.*

5.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for approval of a Type I permit to legalize the subject property in the Commercial Use Forestry 2 (CFU-2) zone. This approval is subject to the conditions of approval established in this report.

6.00 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 T1-2018-11141 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Cover Letter from Applicant (Carrie Richter) dated 11-7-18	11-7-18
A.2	2	Type 1 Land Use Application	11-7-18
A.3	17	Notice of Decision SEC 26-96 and PRE 16-96 dated 1-13-97	11-7-18
A.4	3	Photos of Kitchen, Bathroom, and Exterior of 12397 NW Newberry Road	11-7-18
A.5	1	E-mail agreeing to waive land use fee dated 11-1-18	11-7-18
A.6	127	PRE 16-96 Decision with findings dated 1-13-97	11-7-18

A.7	129	SEC 26-96 Decision with findings dated 1-13-97	11-7-18
A.8	2	Copy of Building Permit RES98-52243	11-7-18
A.9	2	Revised Land Use Application and E-mail clarifying request	11-13-18
A.10*		Finishing Land Division Instructions for Applicant and Surveyor	11-14-18
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	11-7-18
B.2	1	A&T Tax Map with Property Highlighted (TL 300 and 302 of T2N, R1W, Section 33A)	11-13-18
B.3	58	Title Report for the Looney Property dated June 23, 2017	11-14-18
'C'	#	Administration & Procedures	Date
C.1	2	Completeness (emailed to applicant on 11-14-18)	11-14-18
C.2	10	Administrative Decision	01-07-19