

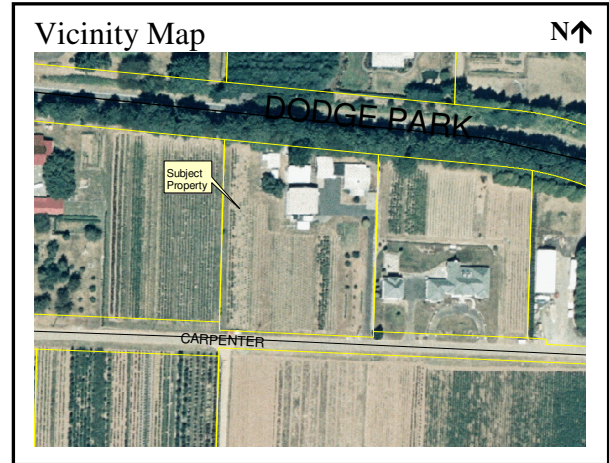


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

Case File: T2-2010-1052
Permit: Adjustment (to minimum rear yard setback)
Location: 35227 SE Carpenter Lane
Tax Lot 300, Section 22DB,
Township 1 South, Range 4 East, W.M.
Tax Acct: R994220850
**Applicant/
Owner:** Ken McKinster



Summary: The request is for an Adjustment to the required 30 foot rear yard setback to reduce it to 18 feet to legalize the location of the existing dwelling and to allow an addition to the existing dwelling and for an addition to the existing detached garage in the Multiple Use Agricultural – 20 (MUA-20) zone district.

Decision: Approved

Unless appealed, this decision is effective December 8, 2010, at 4:30 PM.

Issued by:

By: _____
Kevin Cook, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, November 24, 2010

Instrument Number for Recording Purposes: 2007-217123

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Kevin Cook, Staff Planner at 503-988-3043, ext. 26782.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is December 8, 2010 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37, MCC 36.2800 et. seq.: Multiple Use Agriculture, MCC 36.7601 et. seq.

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.co.multnomah.or.us/landuse>.

Scope of Approval

1. 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.
2. **This land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 or 37.0700, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

Conditions of Approval

1. The property owners shall obtain a building permit for the proposed dwelling addition and garage addition. All structures shall be located no closer than 18 feet from the rear property line (inclusive of roof overhangs) and shall meet all other setbacks in the MUA-20 zone.
2. At the time of building plan sign-off, evidence shall be submitted verifying that no existing structures are located closer than 18 feet from the rear property line or the building plans shall clearly indicate that all encroachments that are currently closer than 18 feet to the rear property line will be modified to meet an 18 foot rear setback through the building permit.

3. The property owner shall submit a stormwater certificate completed by an Oregon registered engineer detailing a stormwater system that meets the MCC 29.333(C) or 29.345(A)(1)(d) requirements prior to zoning signoff on the building permit.
4. The property owner shall obtain a Grading and Erosion Control permit for a ground disturbing activities or submit evidence that the project will qualify as a minimal impact project.
5. Prior to building permit sign-off, the property owner shall obtain an access permit for access onto SE Carpenter Lane. All required access improvements shall be installed prior to building permits.
6. If the garage addition will contain some elements that are typically found in a single family dwelling, the property owner shall sign a covenant acknowledging that the garage is an accessory structure and is not to be used as an independent dwelling.
7. After the decision is final and prior to building permit sign-off, the property owner shall record the Notice of Decision cover sheet through the conditions of approval 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 a copy filed with Land Use Planning. Recording shall be at the applicant's expense.

Note: Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, Kevin Cook, at (503) 988-3043 ext. 26782, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 may be required.

<p>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.</p>

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. PROJECT DESCRIPTION

Staff: The request is for an Adjustment to the required 30 foot yard setback to reduce it to 18 feet to legalize the existing dwelling in it’s current location, allow an addition to the existing dwelling, and to allow an addition to the existing detached garage (Exhibit A.3).

2. PROPERTY DESCRIPTION

Staff: The two acre subject property is located on the north side of SE Carpenter Lane approximately 1500 feet east of SE Cottrell Road. The property gains access via a driveway access from the north side of SE Carpenter Lane. The rear property line abuts the right of way for SE Dodge Park Blvd.

3. BASE ZONE CRITERIA:

3.1. Allowed Uses

MCC 36.2820(A) A single-family detached dwelling on a Lot of Record, including a home built on or off- site...

*** * ***

MCC 36.2820(F): Accessory Structures:

(1) Structures or uses listed below when customarily accessory or incidental to any use permitted or approved in this district:

*** * ***

(a) Garages or carports

*** * ***

(2) If the accessory structure is a building, then to be an “allowed use” the foot print of the building in combination with the foot-print of all other accessory buildings on the property shall not exceed 2500 square feet.

Staff: The proposal is to legalize the location of the existing dwelling and to allow additions to the dwelling and to the detached garage. The cumulative area of accessory structures is proposed not to exceed 2500 square feet of ground coverage. The applicant’s site plan indicates that all structures will be a minimum of 18 feet from the rear property line and will met the front and side yard setbacks for the MUA-20 zone.

3.2. Dimensional Standards and Development Requirements.

MCC 36.2855: All development proposed in this district shall comply with the applicable provisions of this section.

*** * ***

(C) Minimum Yard Dimensions -

Front: 30 Feet
Side: 10 Feet
Street Side: 30 Feet
Rear: 30 Feet

(D) The minimum yard requirement shall be increased where the yard 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 yard requirements in consultation with the Road Official.

MCC 36.005: Definitions –

Lot Line (Front) – In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot. A minimum front lot line length is a dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards.

Lot Line (Rear) - The line dividing one lot from another and on the opposite side of the lot from the front lot line; and in the case of an irregular or triangular shaped lot, a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.

Lot Line (Side) - Any lot line not a front or rear lot line.

Yard – An open space, on a lot with a building and bounded on one or more sides by such building, such space being unoccupied and un-obstructed from 30 inches above the ground upward, except as otherwise specified in the district. A yard satisfying the yard requirement for one building shall not satisfy the yard requirement for another building. The purpose of yards between buildings and property lines is to provide space, light, air circulation, and safety from fire hazards.

Yard (Front) - A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lot.

Yard (Side) - A yard between any building and the side lot line, extending from the front yard to the rear yard, or front lot line to rear lot line where no front yard or rear yard is required. The width of the required side yard shall be measured horizontally from the nearest point of the side lot line to the nearest part of the building.

Staff: The existing dwelling is located approximately 20 feet from the rear property line. The proposal is for an addition onto the dwelling and a garage addition to be located up to 18 feet from the rear property line. The rear property line abuts the Dodge Park Blvd. right of way, which is 100 feet wide along this particular stretch of road. According to Joanna Valencia, Multnomah County Transportation Planner, the Dodge Park right of way is classified as a Rural Collector, which requires a 70-foot wide right of way. No additional right of way is required for this stretch of SE Dodge Park Blvd. The additions are proposed to be less than 35 feet in height.

4. COMPLIANCE:

4.1. MCC 37.0560 Code Compliance and Applications.

Except as provided in subsection (A), the County shall not make a land use decision or issue a building permit approving development, including land divisions and property line adjustments, 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: There is a shed building and a roof overhang extending out from the existing dwelling that may be closer than 18 feet to the rear property line. The property owner has indicated that they will remove and/or modify any structures so that they will not be closer than the 18 feet proposed under this permit. Condition 2 requires verification that all structures have been modified or will be modified through the permitting process so that no structures are located closer than 18 feet to the north property line.

According to Alan Young, Multnomah County Right of Way Specialist, there is no access permit on file for the driveway accessing SE Carpenter Lane. Condition 5 requires the property owner to obtain an access permit from Multnomah County and to make any required improvements to the access prior to building plan sign-off.

5. LOT OF RECORD:

5.1. Lot of Record

MCC 36.2870 and 36.0005(L)(13) state, a Lot of Record, For the purposes of this district is a parcel, lot, or group thereof which when created and when reconfigured satisfied all applicable zoning and land division laws.

Staff: The property was created in it's current configuration on May 1, 1972. The property was zoned Suburban Residential (SR) in 1972 and the property met the lot size and dimension requirements in effect at the time. *The property is a Lot of Record.*

6. ADJUSTMENT TO THE MINIMUM STREET SIDE YARD

- 6.1. MCC 36.7601 (B) To address those situations, modification of the dimensional standards given in MCC 36.7606 may be permitted if the approval authority finds that the applicant has satisfactorily addressed and met the respective approval criteria in MCC 36.7611, Adjustments, or 36.7616, Variances. If an Adjustment or Variance request is approved, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.**

Staff: The application is for a reduction to the required 30 foot minimum street side yard to reduce it to 18 feet. In the following section are the findings for the Adjustment addressing the modification of the dimensional standards given in MCC 36.7606 and findings addressing approval criteria in MCC 36.7611. *The proposed adjustment meets the criteria as stated below for the reduction to 23.8 feet for the street side yard.*

- 6.2. MCC 36.7601 (C) The Adjustment review process provides a mechanism by which certain dimensional standards may be modified no more than 40 percent if the proposed development continues to meet the intended purpose of the regulations. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the regulation.**

Staff: The request is for a reduction of the 30 foot minimum rear yard to 18 feet or a 40 percent reduction to the minimum standard. *The request meets the modified no more than 40 percent standard, qualifying for an Adjustment review.*

6.3. Scope

MCC36.7606 (A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

- (1) Reduction of yards/setback/buffer requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts and the Commercial Forest Use fire safety zone are not allowed under the Adjustment process; and**
- (2) Reduction of yards/setback/buffer requirements within the Hillside Development, Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be re-viewed as Variances; and**
- (3) Minor modification of yards/setbacks/buffers in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.**

Staff: The proposed Adjustment is a request to reduce the dimensional standard for the required rear yard setback. The property is not in any overlay zone districts listed in this Code section. *The proposed reduction qualifies for an Adjustment review.*

6.4. Adjustment Approval Criteria

MCC 36.7611: The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 36.7606 upon finding that all the following standards in (A) through (E) are met:

Staff: Findings below address (A) through (C). Standard (D) applies properties zoned farm (EFU) or forest (CFU), and Standard (E) applies to properties in the Rural Residential (RR) or Rural Center (RC) zones. The subject property is in the MUA-20 Zone District thus (D) and (E) are not applicable for this review. *We find that the Adjustment can be granted because the request meets the applicable approval criteria as demonstrated in the findings below.*

6.4.1. MCC 36.7611 (A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

MCC 36.0005: Definitions - Yard – An open space, on a lot with a building and bounded on one or more sides by such building, such space being unoccupied and un-obstructed from 30 inches above the ground upward, except as otherwise specified in the district. A yard satisfying the yard requirement for one building shall not satisfy the yard requirement for another building. The purpose of yards between buildings and property lines is to provide space, light, air circulation, and safety from fire hazards.

Staff: The purpose of minimum rear yard between buildings and property lines is to provide space, light, air circulation, and safety from fire hazards. The affected property line abuts the SE Dodge Park Blvd. right of way to the north. The existing 100 foot right of way is sufficient for any future expansion of SE Dodge Park Blvd. No other properties are affected by the proposed 18 foot rear yard setback. Condition 3 requires a storm-water certificate certifying that new construction will not result in increased runoff at the property lines.

The proposed reduction would better meet the purpose of the minimum yard requirement; this standard is met.

6.4.2. MCC 36.7611 (B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

Staff: The affected property line abuts the SE Dodge Park Blvd. right of way to the north. The existing 100 foot right of way is sufficient for any future expansion of SE Dodge Park Blvd. No other properties are affected by the proposed 18 foot rear yard setback.

This standard is met.

6.4.3. MCC 36.7611 (C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zoning district; and

Staff: No other adjustment is proposed.

7. ACCESS

7.1. Access to County Roads

MCC 36.2885: All lots and parcels in this district shall abut a street, or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles, except as provided for Lots of Record at MCC 36.2870(B).

Staff: The subject property has an existing access onto SE Carpenter Lane. However, there is no access permit for this driveway. Condition 5 requires an access permit and any necessary access improvements prior to building plan sign-off.

8. CONCLUSION

Staff: Based on the findings and other information provided above, the applicant has carried the burden necessary for the Adjustment to allow the dwelling and garage additions at up to 18 feet from the rear (north) property line. This approval is subject to the conditions of approval established in this report.

9. EXHIBITS

Exhibit #	# of Pages	Description of Exhibit
Received from Applicant		
A.1	1	Application form
A.2	1	Narrative
A.3	1	Applicant's site plan
A.4	1	Proposed dwelling addition elevations and floor plans
A.5	2	Proposed garage addition elevations and floor plans
A.6	6	Certificate of Onsite Sewage Disposal
A.7	2	Certification of Water Service
A.8	4	Fire District Access Review
A.9	4	Fire District Fire Flow Review
A.10	1	Deed of Creation (Book 857, Page 88)
A.11	3	Current Deed (Instrument Number 2007-217123)
Staff Exhibits		
B.1	2	Assessment Records for the property
B.2	1	2004 Aerial Photo
B.3	1	Zoning Map
B.4	2	Email from Joanna Valencia, Multnomah County Transportation Planner
B.5	1	Email from Alan Young, Multnomah County Right of Way Specialist
B.6	1	Historical Zoning Map (1962)
Procedural Exhibits		
C.1	3	14-Day Opportunity to Comment Notice
C.2	1	Letter deeming application complete