

# STAFF REPORT



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## Application for a Variance and a Lot of Record Verification

**Case File:** T3-2024-0004

**Applicant:** Jeff Waldien

**Proposal:** Request for a Variance to the 30-foot front yard adjacent to SE Dodge Park Blvd right-of-way and 30-foot rear yard adjacent to 1S4E20AC-01400 (see Exhibit B.2) for a remodel and addition to an existing single-family dwelling that will be located 4.33 feet from the right-of-way at its nearest point, and 5.71 feet from the rear property line at its nearest point. In addition, the applicant requests a Lot of Record Verification.

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**Location:** 31522 SE Dodge Park Blvd

**Property ID #** R342371

**Map, Tax lot:** 1S4E20AC -01100

**Alt. Acct. #** R994201110

**Base Zone:** Pleasant Home Rural Center (PH-RC)

**Overlays:** None

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Scheduled before one of the County's Hearing's Officers on **December 13, 2024 at 10:30 am** or soon thereafter via virtual hearing.

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### Applicable Approval Criteria:

**Multnomah County Code (MCC):** General Provisions: MCC 39.1250 Code Compliance and Applications, MCC 39.2000 Definitions

Lot of Record: General Provisions: MCC 39.3005 Lot of Record – Generally, MCC 39.3120 Lot of Record – Pleasant Home Rural Center (PH-RC)

Pleasant Home Rural Center (PH-RC): MCC 39.4510(C) Residential use consisting of a single-family dwelling, MCC 39.4525(B), (C), (E), (F), and (G) Dimensional Requirements and Development Standards

Variance Criteria: 39.8200 Adjustments and Variances; Generally, MCC 39.8205(B), (C) Scope, Variances, MCC 39.8215 Variance Approval Criteria

Copies of the referenced Multnomah County Code sections are available by visiting <https://www.multco.us/landuse/zoning-codes> under the link **Chapter 39: Multnomah County Zoning Code** and at <https://multco.us/landuse/comprehensive-plan> under the link **Multnomah County Comprehensive Plan**.



### **Recommended Hearing Officer Decision**

Staff recommends that the Hearings Officer approve, subject to conditions of approval, the Variance Request.

**If the Hearings Officer finds the proposed application is approvable, staff recommends the following Conditions of Approval:**

1. Permit Expiration – This land use permit shall expire as follows:
  - a. Within two (2) years of the date of the final decision when construction has not commenced. [MCC 39.1185(B)]
    - 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 1.a, notification of commencement of construction shall be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to the date of commencement. Notification shall be sent via email to [LUP-submittals@multco.us](mailto:LUP-submittals@multco.us) with the case no. T3-2024-0004 referenced in the subject line.
  - b. Within four (4) years of the date of commencement of construction when the structure has not been completed. [MCC 39.1185(B)]
    - i. For the purposes of 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.
    - ii. For purposes of 1.b, the property owner shall provide building permit status in support of completion of exterior surfaces of the structure and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to [LUP-submittals@multco.us](mailto:LUP-submittals@multco.us) with the case no. T3-2024-0004 referenced in the subject line. [MCC 39.1185]

**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. 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. [MCC 39.1170(B)]
3. **Prior to submitting Building Plans for Zoning Review**, the property owner(s) or their representatives shall:
  - a. Record and the conditions of approval of the Hearings Officer's Decision and Exhibit A.2 with the County Recorder. The Hearings Officer's Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and a copy of the recorded document shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]
  - b. The property owners shall acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement will be provided to assist you. The signed document shall be sent to Anna Shank-Root at [anna.shank-root5@multco.us](mailto:anna.shank-root5@multco.us). [MCC 39.1170(A) & (B)]
4. **When submitting Building Plans for Zoning Review**, the property owner(s) or their representatives shall:
  - a. Provide a copy of a notarized and recorded easement that has been approved by City of Portland Septic Sanitation staff providing for permanent ongoing use of the necessary area on tax lot 1S4E20AC-01400 (the property to the south) for septic lines, drainfield, and replacement drainfield areas.
  - b. Provide a lighting plan indicating the location of all existing and proposed exterior lights on the property and fixture specifications for each light identified on the lighting plan.
  - c. Obtain a driveway permit a driveway permit from Multnomah County Transportation Planning for the access that has not been previously approved.
5. **Prior to Certificate of Occupancy**, the property owners or their representative shall have the distance from the edge of the eaves to the front and rear property lines measured by an Oregon Licensed Surveyor to demonstrate that the building meets the reduced Yards granted by the Hearing Officer. The document provided by the surveyor shall contain their stamp and signature and a copy of the document provided to Land Use Planning. [MCC 39.1170(A) & (B)]
6. **As an on-going condition**, the property owner(s) shall:
  - a. Maintain the existing row of arborvitae or a similar buffer along the southern border of the property in perpetuity. If the existing row of arborvitae is to be replaced with a similar buffer, approval of that replacement buffer by Land Use Planning staff shall be required. The minimum size of the vegetation used for a replacement buffer shall be at least 5 gallon in size or larger depending on the type of proposed vegetation and its growth rate.
    - i. If an arborvitae becomes diseased or dies, it shall be replaced within the next planting season with a 5-gallon arborvitae unless the entire hedge is to be replaced. Replacement of hedge shall occur by the end of the next planting season.
  - b. The removal of over 75% of the standing walls and roof structure of the existing dwelling, building or structure qualifies as a replacement dwelling. The replacement of the dwelling shall mean that the septic system (tank, lines, drainfield) shall be placed on the Lot of

Record and not within an easement area as required by MCC 39.4525(E). [MCC 39.2000 Definitions, Replacement]

- c. The single-family dwelling shall be placed so that there is at least a minimum of X ft from the edge of eaves to the front property line, a minimum of Y ft from edge of eaves to the rear property line and 10-ft from edge of eaves to the side property lines. [MCC 39.4525(B), MCC 39.1170(A) & (B)]

**Note:** Land Use Planning must sign off on the building plans before you can go to the Building Department. When ready to submit Building Plans for Zoning Review, complete the following steps:

7. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, “Prior to submitting Building Plans for Zoning Review...” Be ready to demonstrate compliance with the conditions.
8. Visit <https://www.multco.us/landuse/submitted-building-plan> for instructions regarding the submission of your building plans for zoning review and review of conditions of approval. Please ensure that any items required under, “When submitting Building Plans for Zoning Review...” are ready for review. Land Use Planning collects additional fees at the time of zoning review.

Once you have obtained an approved zoning review, application for building permits may be made with the City of Gresham.

**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 Description:

**Staff:** The applicant is requesting a Variance to the Minimum Yard Requirements of MCC 39.4525(B). The project proposes a remodel and addition to an existing single-family dwelling. The proposed remodel and addition will result in the need for a reduction to the 30-foot front yard requirement along the right-of-way of SE Dodge Park Blvd. The existing single-family dwelling is located approximately 13 feet 8 ¾ inches from the edge of the right-of way. The proposed addition would result in the single-family dwelling being located 4.33 feet from the right-of-way at its nearest point. In addition, the applicant is requesting a reduction to the 30-ft rear yard requirement to 5.71 feet from edge of eaves to rear property line. The application also includes a Lot of Record Verification request to demonstrate compliance with MCC 39.4505 Uses.

### 2.0 Property Description & History:

**Staff:** The subject property is in unincorporated east Multnomah County in the area known as the West of Sandy River Rural Area. The property is zoned Pleasant Home Rural Center (PH-RC) and is located outside of Metro’s Urban Growth Boundary (UGB). According to Assessment and Taxation records, the subject property is occupied by a Single-Family Dwelling that was constructed in 1949, prior to the implementation of zoning. The only permit records on file for the subject property are two pre-application meetings addressing the Variance requirement for the replacement or remodel/addition of the existing single-family dwelling.

### 4.0 Code Compliance and Applications Criteria:

#### 4.1 § 39.1250 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 or zoning review approval of development or any other approvals authorized by this code 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:** This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

A finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future

enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance.

For purposes of the current application, there are no known open compliance cases associated with the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *This criterion is met.*

## **5.0 Lot of Record Criteria:**

### **5.1 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.**

**(1) “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.**

**(2) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:**

**(a) By a subdivision plat under the applicable subdivision requirements in effect at the time; or**

**(b) 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**

**(c) 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**

**Staff:** To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the PH-RC zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The applicant provided 13 deed(s) to support the Lot of Record request (Exhibits A.10, A.13 and A.14). The earliest deed provided was recorded/in recordable form in 1948 and contains a legal description matching the current configuration of the subject property (Exhibit A.13). The year 1948 predates the County implementing zoning in 1953, and no zoning regulations would have applied for new parcels to be created by deed.

*The subject property complied with all applicable zoning laws at the time of its creation or reconfiguration.*

In 1948, the process to create or divide a parcel required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the 1948 deed, the applicable land division laws were satisfied (Exhibit A.13 and A.14).

Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1948.

**5.2 MCC 39.3120 LOT OF RECORD – PLEASANT HOME RURAL CENTER (PHRC) AND ORIENT RURAL CENTER RESIDENTIAL (OR) AND ORIENT COMMERCIAL-INDUSTRIAL (OCI).**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the PH-RC, OR, and OCI districts the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**

\* \* \*

**Staff:** Section (A) is for information purposes.

**(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 39.4545, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**Staff:** The subject property has less than the minimum lot size for new parcels or lots in the PH-RC zone and is subject to (B) above. *Criteria met.*

**(C) Except as otherwise provided by MCC 39.4530, 39.4535, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot of less than the area or width requirements of this district.**

**Staff:** Subsection (C) is for informational purposes. The property owner is not proposing to convey any portion of the lot at this time. *Criterion met.*

**(D) The following shall not be deemed to be a lot of record:**

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**
- (3) An area of land created by court decree.**

**Staff:** As discussed above under section 5.1, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject property is not an area of land created by the foreclosure of a security interest or created by court decree. *Criteria met.*

*Based on the findings in 5.1 & 5.2 above, the subject property is a single Lot of Record.*

**6.0 Pleasant Home Rural Center (PH-RC) Criteria:**

**6.1 MCC 39.4510 Allowed Uses**

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

**(C) Residential use consisting of a single-family dwelling on a Lot of Record.**

**Staff:** The applicant is proposing a remodel and addition to an existing 1949 single-family dwelling. Analysis in section 5.0 above demonstrates that the property is a Lot of Record. The proposed development is permitted as an allowed use per (C) above in the PH-RC Zoning District. *Criterion met.*

## 6.2 MCC 39.4525 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS

### (B) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height - 35 feet**

**Minimum Front Lot Line Length - 50 feet.**

\* \* \*

### (3) A Variance is required for any Accessory Structure that encroaches more than 40 percent into any required Yard.

**Staff:** According to the applicant’s site plan (Exhibit A.2.a), the proposed remodel and addition to the existing single family dwelling will result in the dwelling being located approximately 4.33 feet from the north property line adjacent to SE Dodge Park Blvd, approximately 11 feet 4 inches from the west (side) property line, approximately 5.71 feet from the south (rear) property line, and 15 feet 3.75 inches from the east (side) property line. According to exterior elevation drawings (Exhibit A.2.b), the structure will be 15 feet 3.875 inches at its maximum height.

According to the current property deed (Exhibit A.10) and the tax map (Exhibit B.2), the subject property has a front lot line length of approximately 100 feet, exceeding the minimum requirement listed above. The application is only for a single-family dwelling and no accessory structures are proposed. Staff findings for the Variance Permit Criteria are below in section 7.0. *If the variance is approved, these criteria are met.*

### (C) 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.

**Staff:** According to Multnomah County GIS resources, SE Dodge Park Blvd is a Rural Collector class road, which per Multnomah County Road Design Standards (Exhibit B.7) requires a minimum right-of-way width of 15.3 meters, or approximately 50 feet. The width of the right-of-way of SE Dodge Park Blvd adjacent to the subject property is approximately 100 feet. There is no increased yard requirement for the subject property. *Criterion met.*

### (E) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.



**(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.**

**Staff: MCC 39.2000 Definitions** defines “**Replacement**” as “**The construction of a new dwelling, building or structure to replace or substitute for the lawfully established dwelling, building or structure. The removal of over 75% of the standing walls and roof structure of an existing dwelling, building or structure qualifies the rebuilding as a replacement dwelling, building or structure.**” If over 75% of the dwelling is removed, the project would convert from a remodel and addition to a replacement dwelling. MCC 39.4525(E)(1) allows the use of an off-site easement area on an adjacent property for the existing dwelling. If the house is replaced, the septic system would not be able to utilize an easement area and would need to provide for the system on the subject property. To ensure that the project remains a remodel and not a replacement, a condition of approval has been recommended.

The applicant has provided a Septic Review Certification (Exhibit A.6) signed by County Sanitarian indicating that the proposed addition and remodel will be adequately served by the proposed septic system. The septic tank and treatment tank for the subject property is proposed to be located on the subject property (Exhibit A.2.a) east of the proposed addition. The drainfield and replacement drainfield are proposed to be located on the adjacent property (tax lot 1S4E20AC-01400) to the south of the subject property. While the applicant has not yet provided a notarized and recorded easement for the off-site septic location, obtaining an easement is deemed feasible for the purposes of this decision as the adjacent property to the south is in the same ownership as the subject property. Providing a copy of the notarized and recorded easement that has been approved by City of Portland Septic Sanitation staff is a condition of approval.

The applicant has provided a Stormwater Drainage Control Certificate (Exhibit A.4), which has been prepared and stamped by an Oregon Registered Professional Engineer and reviewed by Multnomah County Transportation Planning staff. The Certificate (Exhibit A.4) verifies that the proposed stormwater drainage planter which will be located to the west of the single-family dwelling will provide adequate drainage such that the rate of runoff in the event of a 10-year 24-hour storm would not increase as a result of the additional proposed impervious surfaces.

*As conditioned, these criteria are met.*

**(F) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:**

**(1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or**

**(2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that states they recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities during irregular hours occur on adjacent property and in the general area.**

**Staff:** Per Assessment Taxation records of Farm Deferral status, there do not appear to be existing farm uses on adjacent lands, either contiguous or across the street. No covenant is required to be recorded. *Criterion met.*

**(G) All exterior lighting shall comply with MCC 39.6850.**

**Staff:** Providing a lighting plan indicating the location of all existing and proposed exterior lights, as well as fixture specification is a condition of approval. *As conditioned, this criterion is met.*

### 6.3 39.4545 ACCESS.

All lots and parcels in this base zone shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 39.3120(B).

**Staff:** The subject property's front lot line is adjacent to SE Dodge Park Blvd, a public right-of-way. *Criterion met.*

## 7.0 Variance Land Use Permit Criteria:

### 7.1 39.8200 ADJUSTMENTS AND VARIANCES; GENERALLY.

- (A) MCC 39.8200 through MCC 39.8215 (Adjustments and Variances) are designed to implement the Policies of the Comprehensive Plan. However, it is also recognized that because of the diversity of lands and properties found in the county there should be a zoning provision that permits justifiable departures from certain Zoning Code dimensional standards where literal application of the regulation would result in excessive difficulties or unnecessary hardship on the property owner.
- (B) To address those situations, modification of the dimensional standards given in MCC 39.8205 may be permitted if the approval authority finds that the applicant has satisfactorily addressed and met the respective approval criteria in MCC 39.8210, Adjustments, or 39.8215, 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.
- (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.
- (D) The Variance review process differs from the Adjustment review by providing a mechanism by which a greater variation from the standard than 40 percent may be approved for certain zoning dimensional requirements. The Variance approval criteria are based upon the traditional variance concepts that are directed towards consideration of circumstances or conditions on a subject property that do not apply generally to other properties in the same vicinity.
- (E) All proposed modification of the dimensional standards given in MCC 39.8205(A)(2) shall be reviewed under the Variance review process regardless of the proposed percentage modification.

**Staff:** As indicated in the criteria descriptions of the adjustment and variance processes above, this application for an 85.6% reduction of the front yard, and an 80% reduction of the rear yard must be reviewed through a variance process. The findings in section 7.3 indicate that staff believe that the applicant has sufficiently indicated that the circumstances or conditions on the subject

property do not generally apply to other properties in the same vicinity, and that the policies of the comprehensive plan are upheld by this decision. *These standards are met.*

## 7.2 MCC 39.8205 Scope

- (B) **Dimensional standards that may be modified under a Variance review are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, building height, sign height, 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 resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) Overlays; and**
  - (2) **Modification of fire safety zone standards given in Commercial Forest Use base zones; and**
  - (3) **Increase to any billboard height or any other dimensional sign standard.**
- (C) **The dimensional standards listed in (A) and (B) above are the only standards eligible for Adjustment or Variance under these provisions. Adjustments and Variances are not allowed for any other standard including, but not limited to, minimum lot area, modification of a threshold of review (e.g. cubic yards for a Large Fill), modification of a definition (e.g. 30 inches of unobstructed open space in the definition of yard), modification of an allowed density in a Planned Development or houseboat moorage, or to allow a land use that is not allowed by the Base zone.**

**Staff:** In this application, the applicant requests an 85.6% reduction of the front yard, and an 80% reduction of the rear yard from the north and south property lines respectively, which are both dimensional standards that can be subject to this application process. *Criteria met.*

## 7.3 39.8215 Variance Approval Criteria

**The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (G) are met:**

- (A) **A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or base zone. The circumstance or condition may relate to:**
- (1) **The size, shape, natural features and topography of the property, or**
  - (2) **The location or size of existing physical improvements on the site, or**
  - (3) **The nature of the use compared to surrounding uses, or**
  - (4) **The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or base zone, or**
  - (5) **A circumstance or condition that was not anticipated at the time the Code requirement was adopted.**
  - (6) **The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.**

**Staff:** The subject property is unable to meet the front and rear yard requirements due to the size and shape of the subject property, or (A)(1) above. According to their site plans (Exhibit A.2), the

applicant proposes an approximately 1,700 square foot house and approximately 232 square foot attached garage. In order to accommodate development of this square footage, and to maintain 30-foot front and rear yards and 10-foot side yard requirements, the subject property would need to be a minimum of 8,280 square feet or .19 acres. The applicant proposes that the structure have a depth of between 26 and 30 feet, which would result in the need for a minimum lot depth of 90 feet. Including the subject property, there are 11 properties zoned PH-RC in the vicinity, whose acreage and average lot depth is summarized in a table below:

Alternate Account Number	Acreage	Approximate Average Lot Depth (ft.)
R994201110	0.09	43.68
R994201100	0.26	55.16
R994201080	0.08	27.92
R994201230	0.34	118.5
R994200470	0.49	212.20
R677800400	0.35	99.36
R677800660	0.22	99.42
R994200520	1.49	634.21
R677800930	0.37	99.67
R677801160	0.23	99.36
R677801170	0.13	99.72
Average	0.37	144.47

As indicated by the table and tax maps for surrounding properties (Exhibit B.2), the average lot acreage for properties in the PH-RC in the vicinity of the subject property is .37 acres, and the average lot depth for the same properties is 144.47 feet. Both of these average values would accommodate the proposed development and satisfy the required dimensional standards. Additionally, in each category, only two properties in addition to the subject property out of 11 comparable properties would fail to meet either the minimum required acreage or the minimum required lot depth to accommodate the proposed development. Based on this information, which was gathered using assessment and taxation acreage and lot depth data, the shape and size of the subject property is not a condition that applies generally to other lots in the vicinity or same base zone as the subject property (Exhibit B.2). *This criterion is met.*

- (B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant’s or present property owner’s making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.**

**Staff:** The circumstances and conditions identified in the finding addressing (A) above relate to the size of the property which was created in 1948, and is not the personal circumstance of the current owners, who according to Assessment and Taxation Records took ownership of the subject property in 2017 (Exhibit B.1). *This criterion is met.*

- (C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.**

**Staff:** The subject property has an average depth of 43.68 feet (Exhibits A.2 and B.2), which cannot mathematically accommodate both the 30-foot front and rear yard requirements in addition to the dimensions of any proposed development. Without a variance, the property would not be able to be developed because even an adjustment would only allow for development of up to 7.68 feet in depth, which would not accommodate a single-family dwelling. The inability to develop

property for its allowed uses due to the dimensional standards is an unnecessary hardship to the property owners. *This criterion is met.*

**(D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or base zone in which the property is located, or adversely affects the appropriate development of adjoining properties.**

**Staff:** The applicant's site plan (Exhibit A.2) indicates that the development has been designed to minimize impact on adjacent property owners when by meeting the 10-foot side yards. The reduced front yard will result in the proposed dwelling addition being located 4.33 ft from the edge of the right-of-way of SE Dodge Park Boulevard. While in many situations, reducing the front yard by 85% would present traffic safety concerns, the right-of-way for SE Dodge Park Blvd exceeds the recommended ROW width for a Rural Collector road by 40 feet based on Multnomah County Design Standard, providing a buffer of approximately 40 feet between the edge of the developed road and the front property line (Exhibit B.7). Additionally, the existing pavement width of the SE Dodge Park Blvd appears on aerial images to be approximately 23.5 feet, which is the maximum allowed pavement width for a rural road as designated by Multnomah County Design Standards, indicating that the road is unlikely to be expanded considering that doing so would conflict with county design standards (Exhibit B.7). Finally, Multnomah County Transportation Planning has provided a Review Form (Exhibit B.4) indicating that there are no right-of-way concerns with issuing Land Use Approval of the proposed remodel and addition, as long as a driveway permit is obtained prior to Zoning Plan Review authorization. A condition of approval is included requiring the applicant to obtain a driveway permit.

The applicant's site plans (Exhibit A.2) indicate that the existing dwelling currently have a furnace room and shed that are located 12 inches from the rear property line. During the addition and remodel, those spaces/structures will be removed, resulting in the remaining structure and proposed addition being located approximately 5.71ft from the rear property line at its closest point (Exhibit A.2). There are no anticipated public welfare or injuries to adjacent property owners as a result of the rear yard variance request. The property that adjoins the subject property to the rear is already developed with a single-family dwelling, attached garage, and outbuilding. No adverse impacts to any additional future development are anticipated as a result of this variance. *As conditioned, this criterion is met.*

**(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.**

**Staff:** The applicant proposes an addition and remodel of the existing single-family dwelling, that would result in the finished structure being an approximately 1,935 square foot single-family dwelling and attached garage. This footprint resulting from the proposed remodel and addition will be typically of residential development in the vicinity of the subject property on lots with the same base zoning. For example, the nearest residential development of single-family dwellings with attached garages are 1,685 square feet on R994201230, 2,048 square feet on R994201100, and 1,908 square feet on R994200520. Considering that the applicant is proposing an addition to a single-family dwelling for which the resulting footprint will be consistent with surrounding residential development, that the proposed project design meets side yards, and that the project design balances the impacts to the front and rear yard requirements, staff concludes that the requested variance is the minimum necessary variation from the dimensional standards to accommodate the proposed use and alleviate the difficulty. *This criterion is met.*

**(F) Any impacts resulting from the variance 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.**

**Staff:** No impacts are anticipated to result from the variance to the front yard requirement, as there is sufficient distance from the edge of SE Dodge Park Road to the front property line of the subject property, there is existing access to the subject property that will not be impacted by the proposed remodel and addition.

The applicant’s narrative (Exhibit A.11) indicates that any concern regarding privacy for the adjoining property to the rear of the subject property is mitigated by the presence of a dense row of arborvitae along the adjoining property line. As a condition of approval, the property owners will be required to maintain the existing row of arborvitae or a similar buffer along the southern border of the property in perpetuity.

*As conditioned, this criterion is met.*

**(G) The variance must be in support of a lawfully established use or in support of the lawful establishment of a use.**

**Staff:** The existing single-family dwelling that is proposed to be remodeled and added to is an allowed use in the PH-RC zone with the appropriate land-use and building permit approval per MCC 39.4510(C). Approval of this variance application is the first step in permitting the remodel and addition to the existing single-family dwelling. As a condition of approval, the applicant will be required to obtain Zoning Plan Review and Structural Building Permits to complete the lawful establishment of the remodel and addition. *As conditioned, this criterion is met.*

**8.0 Recommended Conclusion**

Based on the findings and other information provided above, planning staff recommends that the Hearings Officer approve subject to the conditions of approval the proposed Variance request for a remodel and addition to an existing single-family dwelling and find the subject property is a Lot of Record in the PH-RC zone.

**9.0 Exhibits**

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits

All exhibits are available for digital review by sending a request to [LUP-comments@multco.us](mailto:LUP-comments@multco.us).

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Application Form	05.13.2024
A.2	4	Existing Site Plan – Page 1 a. Proposed Site Plan – Page 2 b. Building Elevations – Page 3 c. Test Pit Diagram for Septic System – Page 4	05.13.2024
A.3	1	Initial Code Narrative	05.13.2024
A.4	10	Stormwater Drainage Control Certificate	05.13.2024
A.5	5	Fire Service District Review Form	05.13.2024
A.6	6	Septic Review Certification	05.13.2024

A.7	1	Transportation Planning Review Form	05.13.2024
A.8	1	Water Service Certification	05.13.2024
A.9	2	Revised Code Narrative	07.01.2024
A.10	24	Title Report	07.01.2024
A.11	2	Final Code Narrative	08.02.2024
A.12	1	“Replacement” Code Definition and Percentage Calculations	08.02.2024
A.13	1	1948 Warranty Deed – Book 1255 Page 449	08.02.2024
A.14	1	1947 Warranty Deed - Book 1228 Page 96	08.02.2024
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	3	Assessment and Taxation Property Information for 1S4E20AC-01100 (Property ID # R342371/ Alt. Acct. # R994201110)	05.01.2024
B.2	1	Current Tax Map for 1S4E20AC	11.20.2024
B.3	3	Parcel Record Card for R994201110	06.07.2024
B.4	1	Transportation Planning Review form with Signature	11.19.2024
B.5	1	Legible Copy of 1948 Warranty Deed – Book 1255 Page 449	11.20.2024
B.6	1	Legible Copy of 1947 Warranty Deed - Book 1228 Page 96	11.20.2024
B.7	1	Multnomah County Road Design Standards Table 2.2.5	11.20.2024
<b>‘C’</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	3	Incomplete letter	06.07.2024
C.2	1	Applicant’s acceptance of 180-day clock	06.17.2024
C.3	1	Secondary Incomplete Letter	07.31.2024
C.4	1	Complete letter (day 1)	08.30.2024
C.5	2	Hearing Notice	11.22.2024
C.6	15	Staff Report	12.03.2024