



Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review by contacting the staff planner. Copies of all documents are available at the rate of \$0.35/per page. For further information, contact staff planner, Lisa Estrin, Staff Planner at 503-988-0167 or at lisa.m.estrin@multco.us

Applicable Approval Criteria:

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

Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.6850 Dark Sky Lighting Standards;

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3090 Lot of Record – RR;

Rural Residential: MCC 39.4360 Allowed Uses, MCC 39.4375 Dimensional Requirements and Standards;

Significant Environmental Concern: MCC 39.5510 Uses; SEC Permit Required, MCC 39.5515 Exceptions, MCC 39.5520 Application for SEC Permit, MCC 39.5850 SEC-h Clear and Objective Standards;

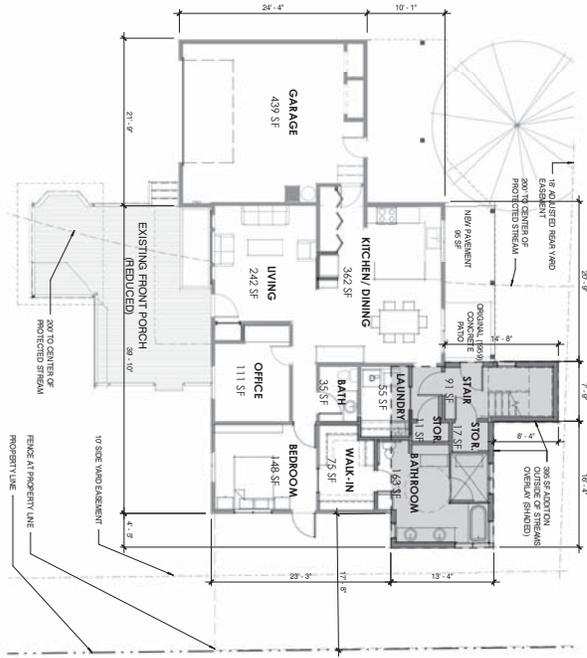
Adjustment: MCC 39.8205 Scope, MCC 39.8210 Adjustment Approval Criteria; and

Nonconforming Use: MCC 39.8300 Nonconforming Uses, MCC 39.8305 Verification of Nonconforming Use Status

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:

Chapter 39 - Zoning Code.

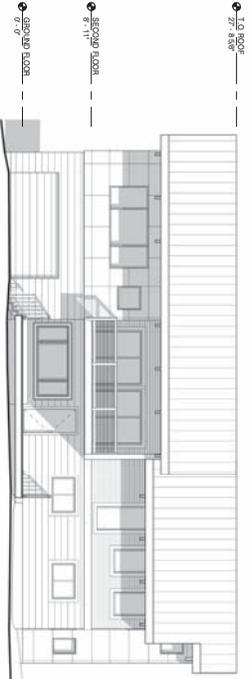
4 FIRST FLOOR PLAN
A1.0 SCALE: 1/8" = 1'-0"



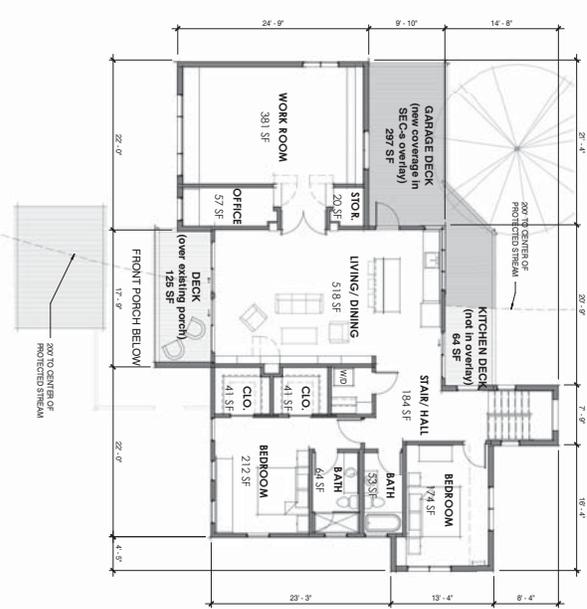
5 NORTH ELEVATION
A1.0 SCALE: 1/8" = 1'-0"



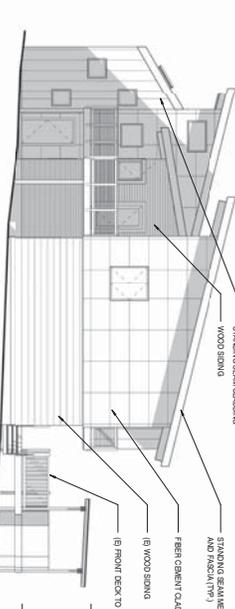
6 SOUTH ELEVATION
A1.0 SCALE: 1/8" = 1'-0"



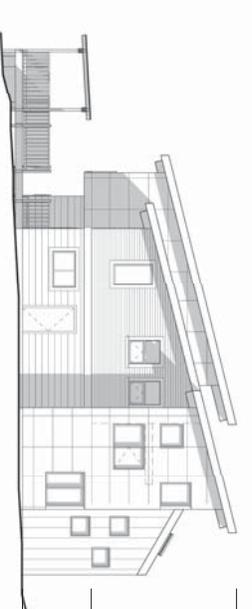
1 SECOND FLOOR PLAN
A1.0 SCALE: 1/8" = 1'-0"



2 WEST ELEVATION
A1.0 SCALE: 1/8" = 1'-0"



3 EAST ELEVATION
A1.0 SCALE: 1/8" = 1'-0"



SHEET NOTES

1. SPACING AND BUILDING COLORS SHALL VARY AROUND CORNERS INTO RECESSED AREAS UNLESS OTHERWISE NOTED.



Exhibit A.10

<p>Copyright 2020 © HARKA - LOW CARBON ARCHITECTURE & LIFE 18025 SW UNIVERSITY BLVD. SUITE 200 PORTLAND, OR 97219 - HARKA.CO</p>	<p>HARKA HARKA - LOW CARBON ARCHITECTURE & LIFE</p>	<p>Schematic Design</p>
		<p>Martinez Addition 14445 NW Old Germantown Rd, Portland, OR, 97241</p>
<p>2020.03.19 DWG JLP Drawn By</p>	<p># Date Description</p>	<p>Floor Plans and Elevations</p>
<p>A1.0</p>	<p>1/8" = 1'-0"</p>	<p>1/8" = 1'-0"</p>

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

1. Permit Expiration – 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. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.
 - ii. For purposes of Condition 1.a, notification of commencement of construction will be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. Notice shall be sent to land.use.planning@multco.us and reference the case number.
 - 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 Condition 1.b.i, 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 land.use.planning@multco.us and shall reference the case number. [MCC 39.1185]
2. Prior to land use sign-off for building plan check, the property owners or their representative shall:
 - a. Acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement has been provided to assist you. The signed document shall be sent to Lisa Estrin at lisa.m.estrin@multco.us. [MCC 39.1170(A) & (B)]
 - b. Have a private Oregon licensed engineer review the conditions of the subject property for stormwater disposal and design a system in compliance with MCC 39.6235. The engineer shall also complete the County's Stormwater Drainage Control Certificate. [MCC 39.4375 & MCC 39.5850(B)]

- c. Record a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936. A copy of the recorded document shall be provided to Land Use Planning by sending it to the case planner, Lisa Estrin at lisa.m.estrin@multco.us and referencing the case number in the email subject line. [MCC 39.4375(G)(1)]
- d. Provide a Lighting Plan with the location of all exterior lighting. The plan shall mark the location of all existing and proposed exterior lighting on the site plan and building elevations. All existing and proposed lighting shall comply with the applicable lighting standards in MCC 39.6850.
3. The following nuisance plants shall not be used as landscape plantings within the SEC-h Overlay Zone and shall be kept removed from the subject property. [MCC 39.5580, MCC 39.5850(C), MCC 39.5860(B)(7)]

Common Name	Scientific Name	Common Name	Scientific Name
Lesser celandine	<i>Chelidonium majus</i>	Fall Dandelion	<i>Leontodon autumnalis</i>
Canada Thistle	<i>Cirsium arvense</i>	Purple Loosestrife	<i>Lythrum salicaria</i>
Common Thistle	<i>Cirsium vulgare</i>	Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Western Clematis	<i>Clematis ligusticifolia</i>	Reed Canary grass	<i>Phalaris arundinacea</i>
Traveler' s Joy	<i>Clematis vitalba</i>	Annual Bluegrass	<i>Poa annua</i>
Poison hemlock	<i>Conium maculatum</i>	Swamp Smartweed	<i>Polygonum coccineum</i>
Field Morningglory	<i>Convolvulus arvensis</i>	Climbing Bindweed, Wild buckwheat	<i>Polygonum convolvulus</i>
Night-blooming Morningglory	<i>Convolvulus nyctagineus</i>	Giant Knotweed	<i>Polygonum sachalinense</i>
Lady's nightcap	<i>Convolvulus sepium</i>	English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Pampas grass	<i>Cortaderia selloana</i>	Poison Oak	<i>Rhus diversiloba</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>	Himalayan Blackberry	<i>Rubus discolor</i>
Scotch broom	<i>Cytisus scoparius</i>	Evergreen Blackberry	<i>Rubus laciniatus</i>
Queen Anne's Lace	<i>Daucus carota</i>	Tansy Ragwort	<i>Senecio jacobaea</i>
South American Waterweed	<i>Elodea densa</i>	Blue Bindweed	<i>Solanum dulcamara</i>
Common Horsetail	<i>Equisetum arvense</i>	Garden Nightshade	<i>Solanum nigrum</i>

Common Name	Scientific Name	Common Name	Scientific Name
Giant Horsetail	<i>Equisetum telmateia</i>	Hairy Nightshade	<i>Solanum sarrachoides</i>
Cranesbill	<i>Erodium cicutarium</i>	Common Dandelion	<i>Taraxacum officinale</i>
Roberts Geranium, Herb Robert	<i>Geranium robertianum</i>	Common Bladderwort	<i>Utricularia vulgaris</i>
English Ivy	<i>Hedera helix</i>	Stinging Nettle	<i>Urtica dioica</i>
St. John's Wort	<i>Hypericum perforatum</i>	Periwinkle (large leaf)	<i>Vinca major</i>
English Holly	<i>Ilex aquafolium</i>	Periwinkle (small leaf)	<i>Vinca minor</i>
Golden Chain Tree	<i>Laburnum watereri</i>	Spiny Cocklebur	<i>Xanthium spinosum</i>
Duckweed, Water Lentil	<i>Lemna minor</i>	Bamboo sp.	<i>various genera</i>

4. At the time of land use sign-off for building plan check, the property owner or their representative shall:
 - a. Include the lighting fixture details and lighting locations on the building plan set.
 - b. Obtain a Minimal Impact Project permit that complies with MCC 39.6220. This permit requires the use of erosion and sediment control measures to protect ground areas being disturbed. These erosion control measures shall be installed prior to commencement of any ground disturbing activities and be maintained in working order until such time as the ground is revegetated or permanently protected from erosion. [MCC 39.6220]
5. The regular maintenance and repair of the Carriage House (accessory building) located near the northwest corner of the property is permitted pursuant to MCC 39.8300(C), except the replacement, alteration or expansion shall first obtain an Alteration of a Nonconforming Use permit or the replaced, altered or expanded building demonstrate compliance with the Yard and Accessory Use requirements of the Rural Residential zone. [MCC 39.8300 and MCC 39.4355]

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off by land use planning, the applicant shall complete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, "Prior to land use sign-off for building plan check..." Be ready to demonstrate compliance with the conditions. Contact Staff Planner, Lisa Estrin at 503-988-0167 or lisa.m.estrin@multco.us to demonstrate compliance with the conditions.
2. Building Plans and related conditions of approval documents shall be sent digitally to LUP-submittals@multco.us along with the Request for Zoning Plan Review & Land Use Compatibility Statement (LUCS) form. If paper plans will be used, please contact Lisa Estrin

at 503-988-0167 or lisa.m.estrin@multco.us to set up an appointment to drop off the building plans. Please ensure that any items listed under “Prior to land use sign-off for building plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans before you can go to the Sanitation Division. Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation at 503-823-6892 or e-mail septic@portlandoregon.gov for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.

We suggest you go to the City of Portland’s Building Department website at www.portland.gov/bds to find out how to submit to building plan check.

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

Applicant is proposing a second story addition and ground floor remodel of an existing single-family dwelling. In addition, a Verification of Nonconforming Use has been requested for an existing outbuilding located within the rear yard and over the rear property line. The following actions are required for the project:

1. Verification of Nonconforming Use for Carriage House (1946) & Existing Deck (1980);
2. Significant Environmental Concern for streams exemption for house expansion;
3. Significant Environmental Concern for wildlife habitat house expansion; and
4. Adjustment to the 30-ft rear yard.

2.0 Property Description

Staff: A single-family dwelling and an outbuilding occupies the subject property. The outbuilding is located in the northwest corner of the property within the 30 ft. rear yard setback and actually goes over the rear property line on to tax lot 1N1W09C-01200. The owners of tax lot 1N1W09C-01200 have granted an easement for the building.

3.0 Public Comment

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in C.3. Staff did not receive any public comments during the 14-day comment period.

4.0 Code Compliance and Application Criteria

§ 39.1515 CODE COMPLIANCE AND APPLICATIONS.

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

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

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

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

Staff: 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.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, 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. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

Staff identified two issues on the site. One is the outbuilding located in the northwest corner of the property. The applicant has applied for a Verification of a Nonconforming Use to document that the structure was established lawfully. If the Nonconforming Use application is approved, the outbuilding issue will be removed. The second issue is for a deck in front of the dwelling (Exhibits A.11 & A.12). The applicant is proposing to remove part of the deck to bring it into compliance and then legalize the other portion by obtaining an exemption from the SEC-s requirements and potentially building permits. At the completion of the process the deck issue will also be corrected.

Code Compliance issues will be corrected through this permit.

5.0 Lot of Record Criteria

§ 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.

* * *

§ 39.3090 LOT OF RECORD – RURAL RESIDENTIAL (RR).

(A) In addition to the standards in MCC 39.3005, for the purposes of the RR district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

Staff: Tax lot 1N1W09C-01300 was found to be a Lot of Record through land use determination T2-2019-12802. *Criteria met.*

6.0 Rural Residential Criteria

6.1 § 39.4360 ALLOWED USES.

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

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

Staff: The applicant is proposing a two-story addition to the existing single family dwelling with a front entry deck to allow for access purposes and a deck attached at the rear of the dwelling (Exhibit A.9 & A.10). *Criterion met.*

6.2 § 39.4375 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.

* * *

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 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.

Staff: The applicant is proposing to construct an addition to an existing single-family dwelling and authorize an attached front deck (Exhibit A.9). The subject property is adjacent to NW Old Germantown Road. County Transportation has indicated that no additional right-of-way is needed for this roadway at this time (Exhibit A.14). The Yard requirements of (C) are the applicable yard requirements. The dwelling with its front deck will be located a minimum of 70 feet from the front (south) property line, 17 feet from the west side property line, 11 feet from the east side property line and 18 feet from the rear (north) property line (Exhibit A.9). An Adjustment must be approved to allow the encroachment into the 30 ft. rear yard. See Section 8.0 for the Adjustment findings.

The existing Carriage House (Outbuilding) is located behind the dwelling within the rear yard. The outbuilding crosses over the rear property line by a foot or two and the neighbor's have entered into an agreement regarding its location (Exhibit A.2). The outbuilding is 10 feet from the west side property line and approximately 65 feet from the east property line. The Applicant has requested the County to verify the outbuilding is a Nonconforming Use constructed before zoning. See Section 9.0 for the Nonconforming Use findings.

The two-story house will be approximately 29 – 30 feet tall depending on finished grade and meets the maximum height requirement for the zone. The outbuilding is a one-story structure no taller than 15 feet (Exhibit A.5).

Criteria met.

6.3 (F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, 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: The Sanitarian has reviewed the propose project and finds that the on-site sewage disposal system is adequate for the addition (Exhibit A.13). The existing unauthorized front deck must be modified to have a 10-ft setback between it and the drainfield. The deck remodel will meet their requirements (Exhibit A.11 & A.12). *Criterion (F)(1) met.*

The applicant is proposing a 395 sq. ft. addition to the rear of the dwelling and authorization of a 315 sq. ft. expansion of the front deck. In addition, there is a 297 sq. ft. deck addition at the rear of the dwelling. As such, the stormwater will need to be handled as required by (F)(2) above and MCC 39.6235 code. A condition of approval has been included requiring the completion of a Stormwater Drainage Control Certificate by a licensed engineer. *As condition, (F)(2) will be met.*

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

39.4375 (G)(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 base zone; or

(2) Where the farm use does not occur on land in the EFU base 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 times, occur on adjacent property and in the general area.

Staff: Property to the northwest is currently being used for farm use and it is zoned EFU. A condition of approval has been included requiring a covenant be recorded. *As conditioned, criterion met.*

6.5 (H) All exterior lighting shall comply with MCC 39.6850.

Staff: A condition of approval has been included requiring the exterior lights to comply with MCC 39.6850. *As condition, criterion will be met.*

7.0 Significant Environmental Concern Criteria

7.1 § 39.5510 USES; SEC PERMIT REQUIRED.

(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.

Staff: The applicant has requested a Type I SEC-h permit to authorize the additional ground coverage to the dwelling and its attached decks. The applicant has requested to use the 400 sq. ft. exception for the SEC-s overlay.

7.2 § 39.5515 EXCEPTIONS.

(A) Except as provided in subsection (B) of this Section, an SEC permit shall not be required for the following:

(8) Change, alteration, or expansion of a use or structure lawfully established on or before (November 17, 1994 , or lawfully established within the Sauvie Island Multnomah Channel Planning Area on or before January 7, 2010 provided that:

(a) Within the SEC, SEC-w, and SEC-v, there is no change to, or alteration, or expansion of, the exterior of the structure;

(b) Within the SEC-h and SEC-s, there is no change to, or alteration or expansion of, the structure's ground coverage in excess of 400 square feet. With respect to expansion, this exception does not apply on a project-by-project basis, but rather applies on a cumulative basis to all expansions occurring after the date above; and

(c) Within the SEC-h, there is no change to, or alteration or expansion of, a driveway in excess of 400 square feet.

Staff: The SEC-s stream buffer zone covers the western portion of the subject property. The applicant is proposing 297 sq. ft. of new deck at the rear of the dwelling (garage deck) and to authorize 75 sq. ft. of unpermitted front deck. Both of the decks are attached to the dwelling and qualify as an expansion to the existing dwelling. Total new ground coverage within the SEC-s overlay zone is 392 sq. ft. All other improvements are located outside of the SEC-s zone boundary. No other exception to obtaining an SEC-s permit has been granted in the past. The proposed decks are exempt from obtaining a SEC-s permit for their construction.

7.3 § 39.5520 APPLICATION FOR SEC PERMIT.

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 39.5540 through 39.5860.

(A) An application for an SEC permit shall include the following:

(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 39.5540 through 39.5860.

(2) A map of the property showing:

* * *

Staff: The required information has been provided for the SEC-h permit (Exhibits A.8, A.9, A.10, A.11 & A.12). *Criteria met.*

7.4 § 39.5850- SEC-H CLEAR AND OBJECTIVE STANDARDS.

(A) At the time of submittal, the applicant shall provide the application materials listed in MCC 39.5520(A) and 39.5860(A). The application shall be reviewed through the Type I procedure and may not be authorized unless the standards in MCC 39.5860(B)(1) through (4)(a)-(c) and (B)(5) through (7) are met. For development that fails to meet all of the criteria listed above, a separate land use application pursuant to MCC 39.5860 may be submitted.

Staff: The required information has been provided for the SEC-h permit (Exhibits A.8, A.9, A.10, A.11 & A.12). The applicant has applied for a SEC-h Type I permit. The proposed development has complied with the applicable development criteria is MCC 39.5860. A SEC-h Type II application is not required. *Criteria met.*

7.5 (B) The proposed development shall meet the applicable stormwater and ground disturbing activity requirements of MCC 39.6200 through 39.6235. Ground disturbing activity within 100 feet of a water body as defined by MCC 39.2000 shall be limited to the period between May 1st and September 15th. Revegetation and soil stabilization must be accomplished no later than October 15th.

Staff: The proposed 392 sq. ft. of improvements within the SEC-s overlay zone are approximately 165 feet from the protected stream. The ground disturbance is minimal and will mostly take place on the rear side of the dwelling for the building addition (Exhibit A.19). All ground disturbance is at least 150 feet from the nearest stream. A condition of approval has been included that the applicant obtain a Stormwater Drainage Control Certificate with an approved system prior to building permits. *As conditioned, criteria met.*

7.6 (C) The nuisance plants listed in MCC 39.5580 Table 1 shall not be used as landscape plantings within the SEC-h Overlay Zone.

Staff: The applicant is not proposing any landscaping as part of the development project. A condition of approval (Condition 3) has been included requiring that no nuisance plants be used in the future. *As conditioned, criterion met.*

7.7 (D) For development that fails to meet all of the standards listed in this section, a separate land use application pursuant to MCC 39.5860 may be submitted.

Staff: The applicant has demonstrated compliance with the applicable criteria under MCC 39.5860(B). For the few outstanding, conditions of approval have been included to ensure the applicant complies with them. *Through conditions of approval, all criteria will be met.*

7.8 § 39.5860 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT.

(A) In addition to the information required by MCC 39.5520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed

development, with the following information, when such information can be gathered without trespass:

(1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;

For the purposes of this section, a forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.

(2) Location of existing and proposed structures;

(3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;

(4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

Staff: A 2021 aerial has been provided by staff to determine improvements on adjacent properties (Exhibit B.3). *Criteria met.*

7.9 (B) Development standards:

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Staff: The subject property is a 0.37 of an acre in size. While there are trees on the property, it is not forested. The proposed improvements to the existing dwelling will not affect any of the existing trees. *Criterion met.*

7.10 (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Staff: The subject property has a depth of 160 feet (Exhibit B.4). The entirety of the developed site is within 200 feet of the road. *Criterion met.*

7.11 (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

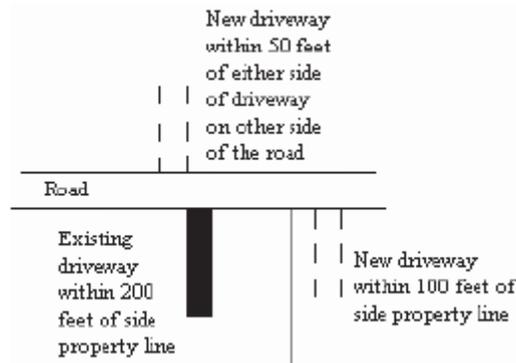
Staff: The length of the existing driveway is approximately 98.5 feet from the front property line to the dwelling (Exhibit A.9). *Criterion met.*

7.12 (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

(a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or

(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

(c) Diagram showing the standards in (a) and (b) above.



For illustrative purposes only.

(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County “Design and Construction Manual,” adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).

1. The modification shall be the minimum necessary to allow safe access onto the public road.
2. The County Road Official shall provide written findings supporting the modification.

Staff: The driveway on the subject property is 19 feet from the west property line and 32.75 feet from the eastern property line. *Criteria met.*

- 7.13 (5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

Staff: The dwelling addition will be 12 feet from the eastern property line. The existing dwelling is 18 feet from the western property line. *Criterion met.*

- 7.14 (6) Fencing within a required setback from a public road shall meet the following criteria:

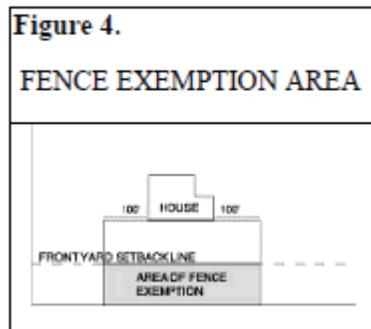
(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.

(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.

(c) Cyclone, woven wire, and chain link fences are prohibited.

(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.

(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development. (See Figure 4 below.)



(f) Fencing standards do not apply where needed for security of utility facilities.

Staff: There is no existing fence within the front yard adjacent to Old Germantown Road. If the applicant wanted to construct a fence within this area, it would be exempt from the fencing requirement as shown in Figure 4. *Criteria met.*

7.15 (7) The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.

Staff: The applicant is not proposing any landscaping as part of the project. A condition of approval (Condition 3) has been included to ensure future plantings do not include nuisance species. *As conditioned, criterion met.*

8.0 Adjustment Criteria

8.1 § 39.8205 SCOPE.

(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 resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) Overlays are prohibited. Additionally, reductions to the fire safety zones in the Commercial Forest Use base zones are not allowed under the Adjustment process; and

(2) Reduction of yards and setback requirements within the Geologic Hazards Overlay (GH) shall only be reviewed as a Variance; and

(3) Reduction of yards/setback/buffer/re-source protection setback requirements within the Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and

(4) Minor modification of yards and setbacks in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.

Staff: The applicant has requested an Adjustment to the 30-ft rear yard in order to add an 395 sq. ft. addition to the rear of the dwelling. At its closest point, the addition will be located no less than 18 feet from the rear property line. The request to reduce the rear yard by 12 feet is a 40 percent reduction and is allowed through the Adjustment process.

Criterion met.

8.2 § 39.8210 ADJUSTMENT APPROVAL CRITERIA.

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (F) are met:

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

Staff: MCC 39.2000 Definitions states “*The purpose of yards between buildings and property lines is to provide space, light, air circulation, and safety from fire hazard.*” The subject property is a 16,117 sq. ft. unit of land. The subject property is a portion of Lot 16 of the Andrews Acres subdivision (Exhibit B.4). The development on the property to the east does not utilize the area immediately behind the subject property and the area is currently in trees. The actual development on the adjacent property is at a similar distance from NW Old Germantown Road and is screened from the subject property by existing vegetation on their property (Exhibit B.3). The reduction in the rear yard distance from the rear property line will not affect the light, air circulation, or create a fire hazard for the property to the east. The neighbor was given an opportunity to comment on the subject application and did not choose to voice any concerns. *Criterion met.*

8.3 (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: An opportunity to comment (Exhibit C.3) was sent to the surrounding property owners within 750 feet no comments were received that identified any impacts to the proposed rear yard reduction. Based on the layout of the subject property and the property to the east, staff was not able to identify any impacts that could be created in order to mitigate them. *Criterion met.*

8.4 (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 base zone; and

Staff: The proposed development only requires one adjustment. The dwelling and its addition meets all other yard requirements. *Criterion met.*

- 8.5 (D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and**

Staff: The subject property is zoned Rural Residential. *Criterion not applicable.*

- 8.6 (E) If in the Rural Residential (RR), Rural Center (RC), Burlington Rural Center (BRC), Orient Residential (OR), Orient Commercial-Industrial, Pleasant Hill Rural Center, or Springdale Rural Center base zone, the proposal will not significantly detract from the livability or appearance of the residential area.**

Staff: The subject property is zoned Rural Residential (RR). The proposed addition will occur at the rear of the dwelling and will not be visible from the public road. Surrounding properties to the north and east do not have development near the addition. No comments were received from adjacent neighbors saying that the addition will affect their properties. The reduction of the rear yard to allow the addition will not significantly detract from the livability or appearance in the neighborhood. *Criterion met.*

- 8.7 (F) The adjustment must be in support of a lawfully established use or in support of the lawful establishment of a use.**

Staff: The proposed adjustment is to allow an addition to an existing single-family dwelling. The lawfully established dwelling was permitted and constructed by 1960. *Criterion met.*

9.0 Nonconforming Use

9.1 § 39.8305 VERIFICATION OF NONCONFORMING USE STATUS.

(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:

(I) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and

Staff: The applicant has applied for a Verification of a Nonconforming Use for an existing 525 sq. ft. outbuilding that extends over the rear property line by one to two feet onto the neighboring property, 1N1W09C-01200. The outbuilding is currently used as an accessory structure to the single-family dwelling. The building is referred to as a Carriage House. It was likely built to house either horse-drawn carriages, early automobiles or school equipment. The applicant has set the date for the construction likely in the 1930s. The adjacent property to the west has the old 1928 schoolhouse that is currently being used as a dwelling. There is a walkway leading from the old school house to the outbuilding (Exhibit A.16). Photographic evidence provided shows at a minimum the concrete slab was poured in September 1946 for the building (Exhibit A.5). In addition, the trusses used to support the roof are clearly very old and are true-sized 2x6 boards, which are typically found in older buildings. The applicant has provided a written statement from a long-term neighbor

(Exhibit A.6) that he remembers playing marbles on the dirt floor of the outbuilding and that his mother owned the property from 1940 to 1943.

The County first adopted an Interim Zoning Code in 1953. Since the outbuilding was constructed prior to zoning being applied throughout the County, it was legally established in its current location.

9.2 (2) Has not been abandoned or interrupted for a continuous two year period.

Staff: The subject property is occupied by an existing single-family dwelling. Pursuant to the house was constructed in 1960 (Exhibit B.1). There is no other outbuilding for storage of equipment on the property. The outbuilding does not appear to be derelict. Since the house has been in existence and used since 1960, there has not been an interrupted continuous two year period to discontinue the nonconforming setback.

9.3 (B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:

(1) Description of the use;

(2) The types and quantities of goods or services provided and activities conducted;

(3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

(4) The number, location and size of physical improvements associated with the use;

(5) The amount of land devoted to the use; and

(6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.

(7) A reduction of scope or intensity of any part of the use as determined under this subsection (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

Staff: The use of the 525 sq. ft. structure is for an accessory building for a single-family dwelling. The building does not have any plumbing fixtures located in it. It is a single story structure used to store the homeowner's personal belongings. The outbuilding referred by the applicant as the Carriage House (Outbuilding) is located behind the dwelling within the rear yard. The outbuilding crosses over the rear property line by a foot or two and the neighbor's have entered into an agreement regarding its location (Exhibit A.2). The outbuilding is 10 feet from the west side property line and approximately 65 feet from the east property line. It is not used for commercial purposes and exists solely for the enjoyment of the homeowners.

9.4 (C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision

disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.

Staff: Since the County started regulating properties through zoning, it has not been allowed to construct a building onto an adjacent property not under your ownership.

9.5 (D) Except for nonconforming uses considered under MCC 39.8315 (B), the Planning Director may impose conditions to any verification of nonconforming use status to ensure compliance with said verification.

Staff: A condition of approval has been included if the property owner wants to do work that is beyond the scope of maintenance.

9.6 (E) An applicant may prove the continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.

(F) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 20-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.

Staff: The applicant has provided the necessary information to prove lawful establishment and that the outbuilding has existed for the homeowner's use for at least the last 10 years from date of application. The County has no evidence that would suggest the 20 year time period should be used. *Criteria met.*

10.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern permit for wildlife habitat, the exemption from the Significant Environmental Concern for stream permit, Verification of a Nonconforming Use and Adjustment in the Rural Residential (RR) zone. This approval is subject to the conditions of approval established in this report.

11.0 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review by contacting the case planner at lisa.m.estrin@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	4.26.2021
A.2	1	Letter of Authorization	4.26.2021
A.3	2	Project Description Letter	4.26.2021
A.4	2	Carriage House Opinion	4.26.2021
A.5	7	Photos of Carriage House	4.26.2021
A.6	1	Supplemental Information – Statement from Long Term Neighbor	4.26.2021
A.7	1	Ranch House Title Transfers and Important Dates	4.26.2021
A.8	7	SEC-h Type I	4.26.2021
A.9	1	Existing and Proposed Site Plan	4.26.2021
A.10	1	Floor Plans and Building Elevations	4.26.2021
A.11	1	Existing Deck Remodel	4.26.2021
A.12	1	Remodeled Deck	4.26.2021
A.13	2	Sanitation Certificate	8.25.2021
A.14	2	Transportation Cert & Email	8.25.2021
A.15	2	Fire Service Agency	8.25.2021
A.16	4	Email & Photos re: Stairs Leading to Carriage House	8.27.2021
A.17	2	Email regarding Ground Disturbance	8.27.2021
A.18	2	Email regarding Incomplete Letter	8.27.2021
A.19	2	Ground Disturbance Information	8.27.2021
‘B’	#	Staff Exhibits	Date
B.1	2	Assessment & Taxation Property Information for 1N1W09C-01300 (R026701600/R106141)	4.26.2021
B.2	2	Assessment & Taxation Property Information for 1N1W09C-01200 (R026701300 / R106140)	4.26.2021
B.3	1	2021 Aerial of Surrounding Properties	1.28.2022
B.4	1	Portion of 1N1W09C Tax Map	1.28.2022

‘C’	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	5.21.2021
C.2	1	Complete Letter (Day 1: September 24, 2021)	11.16.2021
C.3	5	Opportunity to Comment	11.18.2021
C.4	21	Administrative Decision	2.03.2022