
NOTICE OF DECISION

Case File: T2-2022-15542

Permit: Significant Environmental Concern for wildlife habitat and Significant Environmental Concern for streams, Accessory Use Determination, and Adjustment to the Forest Practices Setbacks

Applicant: Walt Woods **Owners:**

Location: Address: 14635 NW Germantown Road, Portland Map, Tax Lot: 1N1W08A -00300
Alternate Account #: R961080390 Property ID #: R323999

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

Overlays: Significant Environmental Concern for Streams (SEC-s), Significant Environmental Concern for Wildlife Habitat (SEC-h), Geologic Hazards (GH)

Proposal Summary: The applicant requests an Accessory Use Determination for an existing 646-square-foot accessory building, a Significant Environmental Concern for Streams (SEC-s) and for Wildlife Habitat (SEC-h) permit and Adjustment to the Forest Practices Setbacks to authorize the construction of a dwelling addition and carport. No development is proposed within the Geologic Hazards overlay.

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, August 18, 2022 at 4:00 pm.

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 Lisa Estrin via email at lisa.m.estrin@multco.us Copies of all documents are available at the rate of \$0.40/per page.

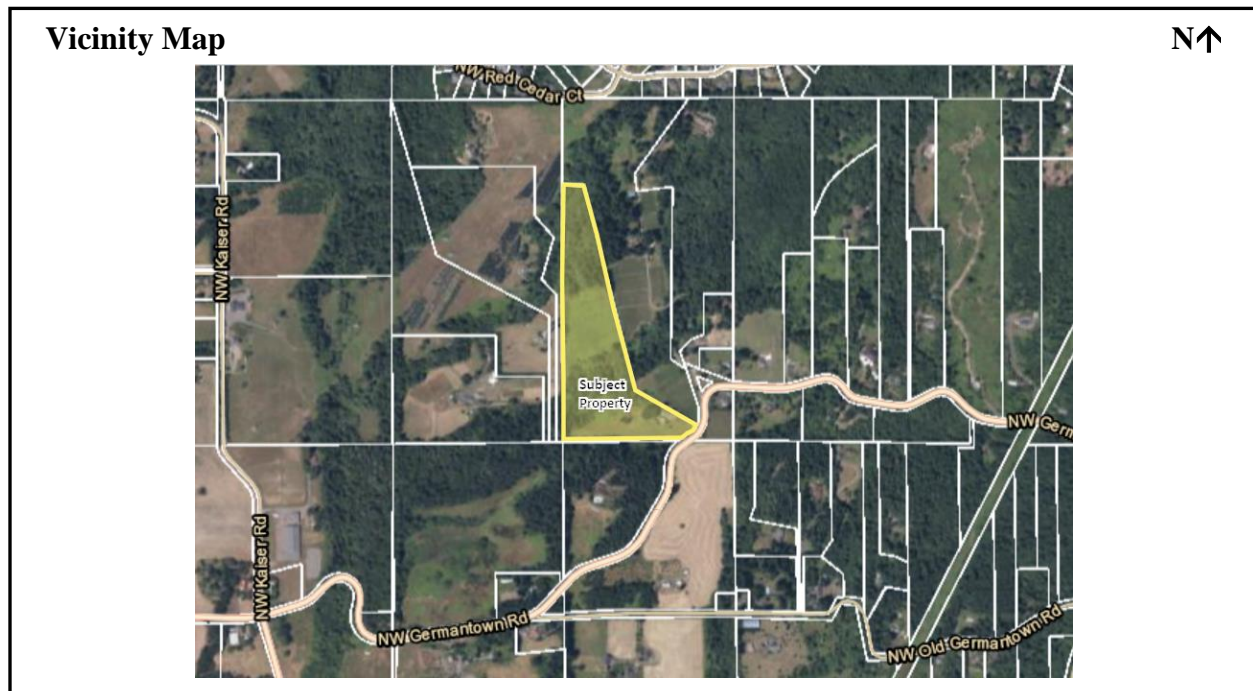
Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by: _____

By: Lisa Estrin, Planner

For: Carol Johnson, AICP
Planning Director

Date: Thursday, August 4, 2022



Applicable Approval Criteria [Multnomah County Code (MCC)]:

General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.3005 Lot of Record – Generally, MCC 39.3030 Lot of Record – Commercial Forest Use - 2, MCC 39.6850 Dark Sky Lighting Standards

CFU-2 Zone: MCC 39.4070(D) & (T) – Allowed Uses, Alteration of an Existing Single-Family Dwelling and Accessory Structures, MCC 39.8860 Condition of Approval – Accessory Structures, MCC 39.4105 Building Height Requirements, MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones, MCC 39.4115(B) and (C) – Development Standards for Dwellings and Structures

Accessory Use Determination: MCC 39.4075(L) – Review Uses – Accessory Structures greater than 100 ft. from a dwelling,

Significant Environmental Concern: MCC 39.5510 Uses; SEC Permit Required, MCC 39.5520 Application for SEC Permit, MCC 39.5750 (A) – (F) - Criteria for Approval of SEC-s Permit, MCC 39.5860 Criteria for Approval of SEC-h Permit

Adjustment: MCC 39.8205 Scope, MCC 39.8210 Adjustment Approval Criteria

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

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.

1. Permit Expiration – This land use permit shall expire as follows:

- a. Dwelling Addition: Within four (4) years of the date of this final decision for residential development associated with the dwelling on land zoned for Commercial Forest Use outside of an urban growth boundary when construction has not commenced.
 - 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 Condition 1.a.i, 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.
- b. Within four years of the date of commencement of construction when the structure has not been completed.
 - i. For the purposes of Condition 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.
- c. 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. [MCC 39.1185]
- d. Accessory Building (646 sq. ft.): Within two years of the date of this final decision, if the registration process with the County has not commenced or if building permits with the City of Portland are not obtained & finalized. [MCC 39.1185(A)]

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 land use sign-off for building plan check**, the property owners or their representative shall:
 - a. 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 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. The property owners shall record a covenant with County Records that states that the owner understands and agrees that the 646-square-foot accessory structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use in order to comply with MCC 39.8860 Condition of Approval – Accessory Structures.

4. **At the time of land use sign-off for building plan check**, the property owner or their representative shall:
- a. Demonstrate any proposed exterior lighting complies with the Dark Sky Lighting Standards of MCC 39.6850. and shall be of a fixture type and shall be placed in a location, shaded and/or screened to avoid shining directly into a Stream Conservation Area [MCC 39.5750 (E) (3)], undeveloped water resource or habitat area. This shall include identifying the location of proposed exterior lighting on the site plan, showing proposed exterior lighting on the elevation drawings, and providing exterior lighting details (i.e., model #s & spec. sheets). All exterior lighting shall be a fixture type that is fully shielded with opaque materials and directed downwards. [MCC 39.5860(C)]
 - b. Demonstrate that the 646-square-foot accessory structure roof is fire retardant and the dwelling and its addition complies with MCC 39.4115(C).
 - c. Obtain the appropriate Ground Disturbance permit (Minimal Impact Project permit or Erosion & Sediment Control permit) sign-off for the proposed ground disturbance associated with the garage conversion and carport addition and the two rain gardens/infiltration facilities. [MCC 39.6220]
 - d. Modify the site plan to show the required primary and secondary fire safety zones (as applicable) around the accessory building and single-family dwelling. [MCC 39.4110]
 - e. Modify the location of the carport addition on the single-family dwelling to comply with the Primary Fire Safety Zone required by MCC 39.4110 or remove the carport addition.
 - f. Submit a planting plan that shows the locations within the SEC-s zone, the species, size, and spacing of the required minimum mitigation of 12 trees and 58 shrubs; areas of bare ground to be planted or seeded with native grasses or herbs or non-native sterile wheat grass; identifies the location of the one Douglas-fir tree 18 inches DBH proposed for removal to address fire regulations; shows the location, species, size, and spacing of the replacement tree(s); and identifies the locations and species of the nuisance plants to be removed. The planting plan must be consistent with the requirements of (C)(5)(e) through (o), including plant size, spacing, and diversity. [MCC 39.5750 (E)(4), MCC 39.5860 (B)(7), MCC 39.5860 (C)(5)(d)]
 - g. Contact case planner, Lisa Estrin via email at lisa.m.estrin@multco.us to obtain a site inspection for the 646-square-foot accessory structure to verify it physical improvements. [MCC 4070(T)]
5. **Prior to construction**, obtain a building permit(s) and ensure that development complies with the standards of the applicable building code.
6. **During construction and installation of the stormwater drainage control systems:**
- a. No ground disturbance shall occur in the Significant Environmental Concern for Streams (SEC-s) overlay area except for the period between June 15 and September 15, revegetation/soil stabilization to be accomplished no later than October 15.
 - b. Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to stream habitat outside of the work area. The work area shall remain marked through all phases of development.
 - c. Trees shall not be used as anchors for stabilizing construction equipment.
 - d. Conserve native soils disturbed during development on the property.

- e. For the Wildlife Conservation Plan ensure that the standards of MCC 39.5860 (C)(5) are followed.
7. **Prior to issuance of the Certification of Occupancy**, the property owners or their representative shall:
- a. Install the stormwater drainage control systems [MCC 39.6235]: One infiltration facility/rain garden that is 3-feet wide, 5 feet-long, 1.25-feet deep with 3H:1V side slopes north of the dwelling near the property line and one infiltration facility/rain garden that is 3-feet wide, 10-feet long, and 1.25-deep with 3H:1V side slopes southwest of the 646-square-foot accessory structure.
 - b. Establish the required primary and secondary fire safety zone around the 646-square-foot accessory structure and within the subject property as outlined in MCC 39.4110(D) within two years of the date of this decision becoming final. In addition, establish the primary fire safety zone around the dwelling and addition. [MCC 39.4110(D)(4)]
8. Within one year of the final decision, all nuisance plants shall be removed from the property as shown on the planting plan and the required mitigation plantings shown on the planting plan shall be planted. [MCC 39.39.5750 & 39.5860(C)]
9. Within one year of the final decision, remove or demolish the shed accessory building completely from the property. If necessary, the property owner or their representative shall obtain a demolition permit for its removal/demolition from the City of Portland. Within 5 days of removal, the property owner shall contact case planner, Lisa Estrin via email at lisa.m.estrin@multco.us to request a field inspection to verify its removal.
10. **As an on-going condition**, the property owner or their representative shall:
- a. Maintain the required primary and secondary fire safety zones for the life of the accessory structure. [MCC 39.4110(D)(5)]
 - i. Maintain trees within the primary fire safety zone spaced with greater than 15 feet between the crowns and all other vegetation must be kept less than 2 feet in height. [MCC 39.4110 (D)(1)(a)]
 - ii. Maintain the secondary fire safety zone of 100 feet beyond the 80-foot primary fire safety zone by pruning, spacing, and removing vegetation, as appropriate to prevent and minimize spread of fire. [MCC 39.4110 (D)(2)]
 - b. Maintain the required primary fire safety zone for the life of the single-family dwelling.
 - c. Monitor plantings for a 5-year period and replace plants in-kind as needed to ensure a minimum 80 percent survival rate.
 - d. Ensure that the 646-square-foot accessory building shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters, or any other residential use. [MCC 39.4360(F)(2)]
 - e. Ensure that within the 646-square-foot accessory building, a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose is disassembled for storage. [MCC 39.4310(F)(4)]
 - f. Ensure that nuisance plants in MCC 39.5580 Table 1 below shall not be used as landscape plantings on the subject property. The property owners shall remove the nuisance plants listed in Table 1 from the cleared areas of the property. Once removed,

the property owners shall maintain the cleared area free of these nuisance plants [MCC 39.5750 (F), MCC 39.5580, MCC 39.5860(B)(7)]

Table 1 - Nuisance Plant List:

Common Name	Scientific Name
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler's Joy	<i>Clematis vitalba</i>
Poison hemlock	<i>Conium maculatum</i>
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady's nightcap	<i>Convolvulus sepium</i>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Anne's Lace	<i>Daucus carota</i>
South American Waterweed	<i>Elodea densa</i>
Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telmateia</i>
Cranesbill	<i>Erodium cicutarium</i>
Roberts Geranium, Herb Robert	<i>Geranium robertianum</i>
English Ivy	<i>Hedera helix</i>
St. John's Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex aquafolium</i>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>

Common Name	Scientific Name
Fall Dandelion	<i>Leontodon autumnalis</i>
Purple Loosestrife	<i>Lythrum salicaria</i>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Reed Canary grass	<i>Phalaris arundinacea</i>
Annual Bluegrass	<i>Poa annua</i>
Swamp Smartweed	<i>Polygonum coccineum</i>
Climbing Bindweed, Wild buckwheat	<i>Polygonum convolvulus</i>
Giant Knotweed	<i>Polygonum sachalinense</i>
English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Poison Oak	<i>Rhus diversiloba</i>
Himalayan Blackberry	<i>Rubus discolor</i>
Evergreen Blackberry	<i>Rubus laciniatus</i>
Tansy Ragwort	<i>Senecio jacobaea</i>
Blue Bindweed	<i>Solanum dulcamara</i>
Garden Nightshade	<i>Solanum nigrum</i>
Hairy Nightshade	<i>Solanum sarrachoides</i>
Common Dandelion	<i>Taraxacum officinale</i>
Common Bladderwort	<i>Utricularia vulgaris</i>
Stinging Nettle	<i>Urtica dioica</i>
Periwinkle (large leaf)	<i>Vinca major</i>
Periwinkle (small leaf)	<i>Vinca minor</i>
Spiny Cocklebur	<i>Xanthium spinosum</i>
Bamboo sp.	<i>various genera</i>

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.

2. Contact Right-of-Way Permits at row.permits@multco.us to review your plans, obtain your access permit, and satisfy any other requirements. You may schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/> or leave a message at 503-988-3582. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. 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. Make sure the email references this land use decision, T2-2022-15541. If paper plans will be used, please [obtain](#) 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.
4. 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.

The above must be completed before the applicant can obtain building permits from the City of Portland. At the time of building permit review, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable. 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:

Staff: The 20-acre property contains a dwelling with attached garage and carport, a 646-square-foot accessory building (barn), and a second accessory building (shed). According to the applicant, the two accessory buildings were constructed in the 1970s. The County does not have any permit records for the two outbuildings or for the concrete pad added to the north side of the house. The applicant requests a retroactive Accessory Use Determination to retain the 646-square-foot accessory building, because it is further than 100 feet from the dwelling and proposes to remove the shed. The applicant proposes to improve the concrete pad on the north side of the dwelling into a carport by extending the roof from the primary dwelling over the concrete pad and adding two supports to bear the load. The carport would be attached to the dwelling and be set back 23.5 feet from the northeastern property line. The applicant proposes to convert the existing garage into a living space by removing the existing garage doors and replacing them with windows and adding a sliding door on the existing house. The dwelling addition (garage conversion) requires an Adjustment to the Forest Practices Setbacks. The entire subject property is within the Significant Environmental Concern – wildlife habitat (SEC-h) overlay, therefore an SEC-h permit is required. A portion of the subject property, which includes the 646-square-foot accessory building, is within the SEC-s overlay, therefore, a Significant Environmental Concern for Streams (SEC-s) permit is required. No development is proposed within the Geologic Hazards (GH) overlay.

2.0 Property Description & History:

Staff: This application is for 14635 NW Germantown Road, Portland (“subject property”). The subject property is located between NW Skyline Boulevard and NW Kaiser Road in unincorporated west Multnomah County in the area known as the West Hills Rural Area. The subject property is zoned Commercial Forest Use-2 (CFU-2) and is approximately 20 acres in size. The property has Significant Environmental Concern for Streams (SEC-s), Significant Environmental Concern for Wildlife Habitat (SEC-h), and Geologic Hazards (GH) overlays. The entire subject property is within the SEC-h overlay, A portion of the subject property, which includes the 646-square-foot accessory building, is within the SEC-s overlay.

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 (Exhibit C.2). Staff did not receive any public comments during the 14-day comment period.

4.0 General Provisions:

4.1 § 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.

For purposes of the current application, there are two accessory buildings that required land use approval when constructed. This application will correct these issues via conditions of approval. *Through conditions, this criterion is met.*

4.2 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.

(a) “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.

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

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. 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
3. 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
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

Staff: The County in Lot of Record Verification, T2-2021-14680 verified that the 20-acres unit of land is a Lot of Record (Exhibit B.2).

4.3 39.6235 Stormwater Drainage Control

(A) Persons creating new or replacing existing impervious surfaces exceeding 500 square feet shall install a stormwater drainage system as provided in this section. This subsection (A) does not apply to shingle or roof replacement on lawful structures.

* * *

Staff: The applicant is proposing to legalize a 646-square-foot accessory building and construct a carport on top of an unpermitted concrete slab. The subject development has reached the threshold for stormwater control. The applicant has provided a Stormwater Drainage Control Certificate signed by a licensed engineer who has designed two rain garden facilities for the stormwater (Exhibit A.12).

(D) The stormwater drainage system required in subsection (A) shall be designed to ensure that the rate of runoff for the 10-year 24- hour storm event is no greater than that which existed prior to development at the property line or point of discharge into a water body.

Staff: The applicant proposes to install two rain garden facilities (Exhibit A.12) to manage the runoff from the total roof area of the garage conversion and the 646-square-foot accessory building. A condition of approval requires that prior to the issuance of the Certificate of Occupancy, the applicant will install the two infiltration facilities. *As conditioned, this criterion is met.*

(E) At a minimum, to establish satisfaction of the standards in this section and all other applicable stormwater-related regulations in this code, the following information must be provided to the planning director...

* * *

Staff: The Stormwater Drainage Report n Exhibit A.12 contains the submittal requirements (1) through (4).

4.4 MCC 39.6850 Dark Sky Lighting Standards

* * *

(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

(1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. “Fully shielded” means no light is emitted above the horizontal plane located at the lowest point of the fixture’s shielding. Shielding must be permanently attached.

(2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.

Staff: The submitted 646-square-foot accessory building elevation plans in Exhibit A.8 and the garage conversion/dwelling elevation plans in Exhibit A.11 do not show any proposed exterior lighting. A condition of approval requires that any new exterior lighting shall meet the Dark Sky Lighting Standards of MCC 39.6850. *As conditioned, the above criteria are met.*

5.0 Commercial Forest Use – 2 Zone Criteria:

5.1 MCC 39.4070(D) & (T) – Allowed Uses

(D) Alteration, maintenance, replacement or restoration of an existing lawfully established habitable dwelling as defined in MCC 39.2000 and located within 100-feet from an existing dwelling.

* * *

Staff: The conversion of the garage into a living space is an Allowed Use. The applicant submitted photographs of the existing dwelling in Exhibit A.13 that demonstrate that it meets the definition of habitable dwelling: [MCC 39.2000]: It has intact exterior walls and roof structure; indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system; interior wiring for interior lights; and a heating system. The house was originally constructed around 1972 and a second-story addition was permitted in 1995. The dwelling was lawfully established.

(T) Accessory Structures subject to the following:

(1) The accessory structure is customarily accessory or incidental to any use permitted or approved in this base zone, is located within 100 feet of the dwelling and is a structure identified in the following list: (

*** * ***

Staff: The 646-square-foot accessory structure is accessory and incidental to the residence on the property. The site plan in Exhibit A.5 does not label the distance between the 646-square-foot accessory structure and the dwelling, but based on the scale, aerial photographs, and the information in the pre-file notes (PF-2021-14723), the structure is more than 100 feet from the dwelling. Therefore, per (7), the 646-square-foot accessory structure is reviewed as a Review Use—see Staff findings for MCC 39.4075 Review Uses (L) in Section 6.0, below.

The applicant identifies it as a structure on the list: “(g) Woodsheds; (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area; (n) Similar structures.”

(2) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.

(3) The Accessory Structure may contain one sink.

(4) The Accessory Structure shall not contain:

(a) More than one story;

(b) Cooking Facilities;

(c) A toilet;

(d) Bathing facilities such as a shower or bathing tub;

(e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or

(f) A closet built into a wall.

Staff: The applicant does not provide photographs of the interior of the 646-square-foot accessory structure, but states that “the barn is neither designed nor used as a dwelling; contains neither bathtub, toilet, bathing, nor cooking facilities. The barn does not contain any sleep aid.” On the Septic Review Certification, the Sanitarian noted that the structure contains “no interior plumbing per 3/15/22 phone call with applicant.” Based on the site photographs and the 646-square-foot accessory structure elevations in Exhibit A.8, the 646-square-foot accessory structure is not more than one story. *These criteria are met.*

(5) Compliance with MCC 39.8860 is required.

Staff: See Staff finding for compliance with MCC 39.8860 in Section 5.2. *This criterion is met.*

(6) The combined footprints of all Accessory Buildings on a Lot of Record shall not exceed 2,500 square feet.

Staff: According to the site plan and elevations in Exhibit A.8 and the applicant’s narrative, the accessory structure is approximately 646 square feet (368 square feet of enclosed space and 278 square feet of patio). The applicant does not provide the area of the other accessory structure, which the applicant will remove, but it is substantially smaller than the 646-square-foot accessory structure. The combined footprints of both accessory buildings do not exceed 2,500 square feet. *This criterion is met.*

(7) An Accessory Building exceeding any of the Allowed Use provisions above shall be considered through the Review Use provisions.

(8) Buildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions. Such buildings shall be used for their allowed farm purposes only and, unless so authorized, shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.

Staff: There are no farm uses or buildings in conjunction with farm uses on the property. *This standard is not applicable.*

5.2 MCC 39.8860 Condition of Approval – Accessory Structures

Prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use.

Staff: The property owner must record such a covenant with County Records. See Condition of Approval #3b. *As conditioned, this criterion is met.*

5.3 MCC 39.4105 Building Height Requirements

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: The exterior elevation plans in the applicant's Exhibit A.11 show the height of the dwelling addition (garage conversion) to be 16 feet and $\frac{3}{4}$ -inch, less than the 35-foot maximum. The floor and elevation plans in the applicant's Exhibit A.8 show the peak of the 646-square-foot accessory structure's roof as 13.5 feet in height, less than the 35-foot maximum. Therefore it meets the standard in (A) and the applicant is not requesting to exceed the height requirement as allowed in (B). The applicant proposes to remove the other accessory structure (shed). *This criterion is met.*

5.4 MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Replaced or restored dwelling in same location & greater than 400 sq. ft. additional ground coverage; Alteration and maintenance of dwelling	Nonconforming setback(s) of less than 30 ft. to property lines that existed as of August 26, 2006 may be maintained	30	30	Primary is required, except that if there was a nonconforming Forest Practice setback of less than 30 feet to property lines as of August 26, 2006, Primary is required to the full extent of the nonconforming Forest Practice setback as it existed on August 26, 2006
Accessory structures located more than 100 ft. from the dwelling	N/A	30	130	Primary & Secondary required

Staff: The proposed garage conversion to living space with attached carport falls under the category “replaced or restored dwelling in same location & greater than 400 sq. ft. additional ground coverage; Alteration and maintenance of dwelling” in Table 1 due to the attached carport. At present, the garage is approximately 35 feet from the side property line to the northeast. The minimum Forest Practice Setbacks are 30 feet or “may maintain current nonconforming setback(s) if less than 30 ft. to property line.” The current setback is not nonconforming. The applicant is proposing to construct an attached carport with the dwelling remodel. The distance from the edge of dwelling with new carport to the northeastern property line will be 23.5 ft. including eaves (Exhibit A.5). An Adjustment will need to be approved to allow the reduced side Forest Practice Setback. See Section 8.0 for the Adjustment findings.

The 508-square-foot carport addition to the dwelling requires that a 30-ft wide Primary Fire Safety Zone (FSZ) be constructed between the dwelling and the northeast property line. If an Adjustment is granted to reduce the side Forest Practice Zone to 23.5 ft, the Primary FSZ cannot be provided. The Primary FSZ requirement of MCC 39.4110 has not been met. The

location of the carport will need to be modified to meet the Primary FSZ (Exhibit A.5).
Through a condition, this criterion can be met.

The 646-square-foot accessory structure falls under the “accessory structures located more than 100 ft. from the dwelling” category in Table 1, which requires 30 feet from the front Property Line Adjacent to County Maintained Road and 130 feet for all other setbacks. Both Primary and Secondary Fire Safety Zones setbacks are required. The 646-square-foot accessory structure is set back more than 30 feet from NW Germantown Road, a County-maintained road. The 646-square-foot accessory structure is set back more than 130 feet from all other property lines (Exhibit A.5).

The shed accessory structure will be removed (Exhibit A.5).

(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.

(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 39.4155 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

Staff: The applicant requests a reduction in the Forest Practices Setback dimension for the proposed carport addition. Staff findings per MCC 39.8210 for an adjustment to reduce the required setback by up to 40% are in Section 8.0. *With compliance with MCC 39.8210, the proposal will meet the Forest Practice Setbacks. It will not meet the Primary Fire Safety Zone requirement as proposed. A condition of approval has been included requiring the carport to be modified or removed from the development.*

(C) The minimum forest practices setback requirement shall be increased where the setback 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 setback requirements in consultation with the Road Official.

Staff: Transportation Planning Review EP # 2022-15529 approved March 17, 2022 in Exhibit A.16 did not identify the right-of-way as insufficient. No additional setbacks are required. *This criterion is not applicable.*

(D) Fire Safety Zones on the Subject Tract.

(1) Primary Fire Safety Zone.

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

Staff: A 30-ft Primary Fire Safety Zone is required around the proposed dwelling with its carport addition. A condition of approval has been included requiring the Fire Safety Zones (FSZ) be added to the plans. The distance between the carport addition and the northeastern side property line is 23.5 feet, inadequate to construct the Primary FSZ. The carport size or location will need to be modified to comply with this requirement.

Based on the subject site photographs and narrative provided in Exhibit A.7, the SEC-s Report, the vegetation within the primary fire safety zone consists mainly of mowed grass and non-native shrubs. A condition of approval requires the property owner must maintain trees within the primary fire safety zone spaced with greater than 15 feet between the crowns and all other vegetation must be kept less than 2 feet in height per MCC 39.4110 (D)(1)(a). *As conditioned, this criterion can be met.*

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended farther down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

Staff: The terrain around the dwelling within the Primary FSZ is less than 10%. No additional Primary FSZ is required for the dwelling. The slopes in the vicinity of the 646-square-foot accessory structure range from 9 percent to 18 percent, according to the stormwater report in Exhibit A.12. Therefore, the primary fire safety zone extends 50 additional feet. A condition of approval requires that the property owner must maintain the primary fire safety zone of 80 feet per MCC 39.4110 (D)(1)(b). *As conditioned, the above criterion is met.*

(c) The building site must have a slope less than 40 percent.

Staff: According to the Metro topography map provided in Exhibit A.12, the stormwater report, the building site in the south portion of the subject site has slopes less than 40 percent. *This criterion is met.*

(2) Secondary Fire Safety Zone. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required

for any dwelling or structure may be reduced under the provisions of MCC 39.4155.

Staff: A condition of approval requires that the property owner must maintain the secondary fire safety zone of 100 feet beyond the 80-foot primary fire safety zone by pruning, spacing, and removing vegetation, as appropriate to prevent and minimize spread of fire per MCC 39.4110 (D)(2). *As conditioned, the above criterion is met.*

(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules

Staff: The Fire Safety Zones conditions of approval will not restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules. *This criterion is met.*

(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.

(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: Conditions of approval require the property owner to establish and maintain the required primary and secondary fire safety zones. *As conditioned, these criteria are met.*

5.5 MCC 39.4115 Development Standards for Dwellings and Structures

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

(1) Expansion of existing dwelling.

(a) Expansion of 400 square feet or less additional ground coverage to an existing dwelling: Not subject to development standards of MCC 39.4115;

(b) Expansion of more than 400 square feet additional ground coverage to an existing dwelling: Shall meet the development standards of MCC 39.4115(C);

Staff: The proposed conversion of the garage into a living space and the carport addition would expand the ground coverage approximately 510 square feet. The dwelling with carport addition will need to comply with MCC 39.4115(C). A condition of approval has been included.

(3) Accessory buildings.

(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 39.4115(C);

(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B) and (C);

Staff: The 646-square-foot accessory building is more than 100 feet from the existing dwelling and therefore must meet the development standards of MCC 39.4115(B) and (C)—see Staff findings below.

(C) The dwelling or structure shall:

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

Staff: A condition of Approval requires that prior to construction, the applicant will obtain a building permit(s) and ensure that development complies with the standards of the applicable building code. The 646-square-foot accessory structure is not a mobile home. The applicant states in the narrative (Exhibit A.2) that the 646-square-foot accessory building roof is fire retardant. Based on Photos 3 and 4 of the building in the applicant's SEC-s Report in Exhibit A.7 (Appendix C) and the Barn Elevations and Floor Plans (Exhibit A.8), the 646-square-foot accessory structure has no chimney. A condition of approval has been included requiring that the applicant demonstrate the roof is fire retardant.

6.0 Accessory Use Determination Criteria:

6.1 MCC 39.4075(L) – Review Uses – Accessory Structures greater than 100 ft. from a dwelling

MCC 39.4075 REVIEW USES. The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

(L) Structures or uses customarily accessory or incidental to any use permitted or approved in the CFU, which do not meet the “accessory structures” standard in MCC 39.4070 Allowed Uses, but which meet the following provisions:

(1) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential unit.

(2) The Accessory Structure shall not contain a bathing tub.

(3) Any toilet or bathing facilities, such as a shower, shall be located on the ground floor of any multi-story building.

(4) An Accessory Structure containing a toilet or bathing facilities shall not contain Cooking Facilities.

(5) The Accessory Structure shall not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage.

(6) The applicant must show that building features or combined building footprints exceeding the Allowed Use provisions are the minimum possible departure from the Allowed Use standards to accommodate the use.

(7) Compliance with MCC 39.8860 is required

Staff: The applicant does not provide photographs of the interior of the 646-square-foot accessory structure, but states that “the barn is neither designed nor used as a dwelling; contains neither bath tub, toilet, bathing, nor cooking facilities. The barn does not contain any sleep aid.” On the Septic Review Certification, the Sanitarian noted that the structure contains “no interior plumbing per 3/15/22 phone call with applicant.” (6) The building feature that exceeds the Allowed Use provisions is the distance of the accessory structure from the residence—more than 100 feet. According to the applicant and online information, the accessory structure was constructed in the 1970s. Permitting the structure as a Review Use in its existing location is the minimum possible departure from the Allowed Use 100-foot separation standard to accommodate it. See Staff finding for compliance with MCC 39.8860 in Section 5.2, above. A condition of approval has been included requiring a site inspection to verify that the structure does not have any of the above features.

7.0 Significant Environmental Concern Criteria:

7.1 MCC 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: As discussed in Section 6.1, the applicant is requesting retroactive approval of an existing 646-square-foot accessory building associated with the residential use, a garage conversion to living space, and carport addition that are allowed under MCC 39.4310. The proposal is an allowed use in the underlying zoning district, if the proposal meets certain requirements of Multnomah County Code. They have met the approval criteria as described in this decision. A few criteria will require additional action by the applicant using Conditions of Approval to demonstrate compliance with all of the applicable approval criteria.

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:

(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

Staff: The dwelling was lawfully established prior to November 17, 1994. The proposed 508-square-foot. carport addition to the dwelling will require a SEC-h permit to allow its construction. An SEC-s and an SEC-h permits are required for the 646-square-foot accessory structure.

7.3 MCC 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 applicant's written description of the proposed development and compliance with the applicable SEC criteria are in Exhibits A.6 (SEC-h) and A.7 (SEC-s). The maps of the property are in Exhibits A.4 (existing) and A.5 (proposed).and show the SEC-h and SEC-s boundaries. The Metro topography map provided in Exhibit A.12, the stormwater report, shows contour lines of the subject site. Vegetation is described in the written descriptions in Exhibits A.6 (SEC-h) and A.7 (SEC-s). *This criterion is met.*

7.4 MCC 39.5750 (A) – (F) - Criteria for Approval of SEC-s Permit

(A) For purposes of this Section, the following terms and their derivations shall have the meanings provided below:

*** * ***

(B) Except for the exempt uses listed in MCC 39.5515, no development shall be allowed within a Stream Conservation Area unless approved by the Approval Authority pursuant to the provisions of MCC 39.5750 (C) through (F).

7.5 (C) In addition to other SEC Permit submittal requirements, any application to develop in a Stream Conservation Area shall also include:

(1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, utility installations, and topography of the site

at a contour interval equivalent to the best available U.S. Geological Survey 7.5' or 15' topographic information

Staff: The proposed site plan is in Exhibit A.5. The Metro topography map is in Attachment C of Exhibit A.12, the stormwater report.

(2) A detailed description and map of the Stream Conservation Area including that portion to be affected by the proposed activity. This documentation must also include a map of the entire Stream Conservation Area, an assessment of the Stream Conservation Area's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat

Staff: The proposed site plan in Exhibit A.5 shows the Stream Conservation Area. The assessment of the Stream Conservation Area is in Exhibit A.7, SEC-s Report.

(3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;

Staff: The map and description of soil types are in Attachment A of Exhibit A.12, the stormwater report

(4) A study of any flood hazard, erosion hazard, and/or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards as required by subsection (E) (5) below

Staff: No development is proposed in areas of the subject site with the Geologic Hazards Overlay (GH). The building areas are approximately 30 vertical feet above the stream and its ordinary high-water mark. There are no other known hazards on the subject site.

(5) A detailed Mitigation Plan as described in subsection (D), if required; and

Staff: The Wildlife Mitigation Plan is in Exhibit A.6.

(6) A description of how the proposal meets the approval criteria listed in subsection (D) below.

Staff: The applicant's narrative in Exhibit A.2 addresses the approval criteria in subsection (D). The assessment of the Stream Conservation Area is in Exhibit A.7, SEC-s Report. The Wildlife Mitigation Plan is in Exhibit A.6.

7.6 (D) For the protected stream resources, the applicant shall demonstrate that the proposal:

(1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:

(a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by subsection (C) above;

Staff: The proposed site plan is in Exhibit A.5. Written documentation is in Exhibit A.7, the SEC-s Report, and Exhibit A.6, the Wildlife Mitigation Plan.

(b) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;

Staff: The applicant's submitted materials do not mention any coordination with local, state, or federal agencies besides the required documentation by the Fire Official, County Sanitarian, and County Transportation Planning.

(c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in subsection (D) (1) above;

Staff: Exhibit A.6, the Wildlife Mitigation Plan, contains the mitigation plan.

(d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.

Staff: In the Wildlife Mitigation Plan in Exhibit A.7, the applicant states that all mitigation plantings will be monitored by the property owner and plants will be replaced in-kind to achieve a minimum survival rate of 80% after five years, but with a goal of achieving a 100% survival rate. A condition of approval requires monitoring for a 5-year period and replacement of plants as needed to ensure an 80 percent survival rate.

7.7 (E) Design Specifications: The following design specifications shall be incorporated, as appropriate, into any developments within a Stream Conservation Area:

(1) A bridge or arched culvert which does not disturb the bed or banks of the stream and are of the minimum width necessary to allow passage of peak winter flows shall be utilized for any crossing of a protected streams.

Staff: No stream crossing is proposed. *This criterion is not applicable.*

(2) All storm water generated by a development shall be collected and disposed of on-site into dry wells or by other best management practice methods which emphasize groundwater recharge and reduce peak stream flows.

Staff: The applicant proposes to install two small rain gardens designed to manage the runoff from the total roof area of the garage conversion, carport addition and the 646-square-foot accessory structure. Peak flow rates and volumes that exceed the design storm will overflow the downslope edge of the rain gardens and into existing natural drainageways. The infiltration facility/rain garden to contain the 10-year 24-hour storm event for the house addition is 3-feet wide, 5 feet-long, 1.25-feet deep with 3H:1V side slopes. It is proposed to be approximately 70 feet north of the dwelling near the

property line and require 131 square feet of temporary disturbance. The infiltration facility/rain garden to contain the 10-year 24-hour storm event for the outbuilding's roof is proposed to be 3-feet wide, 10-feet long, and 1.25-deep with 3H:1V side slopes and approximately 10 feet southwest of the 646-square-foot accessory structure. A condition of approval requires that prior to the issuance of the Certificate of Occupancy, the applicant will install the two infiltration facilities. *As conditioned, this criterion is met.*

(3) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area.

Staff: The submitted 646-square-foot accessory structure's elevation plans in Exhibit A.8 and the garage conversion/dwelling elevation plans in Exhibit A.11 do not show any proposed exterior lighting. A condition of approval requires that any new exterior lighting shall meet the Dark Sky Lighting Standards [MCC 39.6850] and be placed, shaded or screened to avoid shining directly into a Stream Conservation Area [MCC 39.5750 (E) (3)]. *As conditioned, the above criteria are met.*

(4) Any trees over 6" in caliper that are removed as a result of any development shall be replaced by any combination of native species whose combined caliper is equivalent to that of the trees removed.

Staff: The applicant states that no trees were removed for the construction of the 646-square-foot accessory structure or the carport concrete pad—that the area was pasture. The applicant proposes to remove one Douglas-fir tree 18 inches DBH to address fire regulations. The applicant will be required to replace the tree with trees that are native species and the same aggregate caliper. A condition of approval has been included requiring that the applicant submit a planting plan that shows the location of the replacement tree. *As conditioned, this criterion is met.*

(5) Satisfaction of the erosion control standards of MCC 39.5090.

Staff: Ground disturbance is limited to the construction of the rain gardens and potentially the carport. A condition of approval has been included requiring the applicant to demonstrate compliance with the Ground Disturbance regulations of MCC 39.6200 et al. *As conditioned, criterion met.*

(6) Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area.

Staff: The only soil disturbing activity is the expansion of the existing garage by 2 square feet for its conversion. A condition of approval requires ground disturbing activities to be limited to the period between June 15 and September 15, revegetation/soil stabilization to be accomplished no later than October 15, and best Management Practices related to erosion control to be used. *As conditioned, this criterion is met.*

(7) Demonstration of compliance with all applicable state and federal permit requirements.

Staff: No work is proposed within regulated wetlands or waters of the state. *This criterion is not applicable.*

7.8 (F) For those Stream Conservation Areas located within Metro's jurisdictional boundaries, the following requirements apply in addition to subsections (C) through (E) above:

(1) The planting of any invasive nonnative or noxious vegetation as listed in subsection (A)(4) above is prohibited. In addition, the species listed in MCC 39.5580 Table 1 shall not be planted.

(2) The revegetation of disturbed areas shall primarily use native plants. A list of native plants can be found in the latest edition of the Metro Native Plant List.

(3) Outside storage of hazardous materials as determined by DEQ is prohibited, unless such storage began before the effective date of the applicable SEC ordinance; or, unless such storage is contained and approved during development review.

Staff: The stream conservation area is within Metro's jurisdictional boundaries; therefore, it must meet the requirements of this section. The Wildlife Mitigation Plan in Exhibit A.6 states that the mitigation vegetation will consist of 7 trees that will include at least two different species that may include Douglas fir, Western Red Cedar, Oregon White Oak, and Oregon Ash. A condition of approval has been included requiring that the applicant submit a planting plan that shows the location, species, size, and spacing of the mitigation vegetation. *As conditioned, these criteria are met.*

7.9 (G) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, the Mitigation Plan must comply only with measures identified in the Goal 5 protection program that has been designated for the site.

Staff: The subject site is not within a PAM Overlay. *This criterion is not applicable.*

7.10 MCC 39.5860 Criteria for Approval of SEC-h Permit

(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;

(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: The Proposed Site Plan in Exhibit A.5 shows the existing forest edge, existing and proposed structures, the existing roadway and driveway, and fencing. No new fencing is proposed.

7.11 (B) Development standards:

(1) Where a parcel contains any nonforested "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 proposed development will take place outside the forested edge, in a cleared area with mowed grass and shrubs and intermittent trees. *This criterion is met.*

(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: NW Germantown Road is a public roadway capable of providing reasonable practical access to the developed area. However, the existing dwelling is approximately 250 feet from the roadway and the 646-square-foot accessory structure is approximately 540 feet from the roadway, greater than the 200-foot threshold. *This criterion is not met.*

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

Staff: The driveway from NW Germantown Road to the existing dwelling is less than 500 feet long (Exhibit A.5). It serves the developed area, including the existing dwelling, garage to be converted, proposed carport, and 646-square-foot accessory structure. *This criterion is met.*

(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.

Staff: The driveway approach to NW Germantown Road is within approximately 20 feet of the side property line, but no adjacent driveways to cluster within the required distances. *This criterion is met.*

(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 existing dwelling is within 35 ft of a side property line. There are no adjacent dwellings to cluster with on adjacent properties. *This criterion is met.*

(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: See findings for subsection (5)(C), below.

(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 states that nuisance plants listed in MCC 39.5580 Table 1 will be removed. *As conditioned, this criterion is met.*

7.12 (C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

(1) The applicant cannot meet the development standards of subsection (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or

(2) The applicant can meet the development standards of subsection (B), but demonstrates that the alternative conservation measures exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).

Staff: The application cannot meet the development standards of MCC 39.5860 (B) because the existing development on the subject site, including the dwelling, driveway, septic tank and drainfield, and fencing, cannot be relocated to meet the standards. Therefore, a Wildlife Conservation Plan is required per subsection (1). The applicant's Wildlife Mitigation Plan is in Exhibit A.6. Findings for minimum departure from standards are in subsection (C)(5), below. *This criterion is met.*

(3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), the wildlife conservation plan must demonstrate the following:

* * *

Staff: The proposed development does meet the standards in subsection (C)(5), see findings below. *This criterion is not applicable.*

(4) For a property meeting subsection (C)(1) above, the applicant may utilize the following mitigation measures for additions instead of providing a separate wildlife conservation plan:

* * *

Staff: The applicant provided a separate Wildlife Mitigation Plan in Exhibit A.6. *These criteria are not applicable.*

(5) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, the wildlife conservation plan must demonstrate the following:

(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

Staff: The existing dwelling and 646-square-foot accessory structure were constructed in the 1970s. The applicant states that the developed area of the subject site was unforested and used for pasture prior to construction of the buildings. The proposal does not include clearing, and is outside the existing forest edge shown on the proposed site plan, Exhibit A.5. The applicant proposes to remove one Douglas-fir tree for fire safety. *This criterion is met.*

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

Staff: The area cleared for the construction of the 646-square-foot accessory structure was approximately 650 square feet, or 0.015 acres. The concrete pad that will be used as a carport was installed in a previously cleared area. No new area would be cleared for the conversion of the garage. It would require an additional 2 square feet, but the area is already cleared. The total area cleared is less than the one-acre threshold. *This criterion is met.*

(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes. Existing fencing located in the front yard adjacent to a public road shall be consistent with subsection (B)(6).

Staff: No new fencing is proposed as part of this development. The existing cleared agricultural area is bounded by existing fencing that serves the agricultural functions of the cleared area and will not be removed. Existing fencing located in the front yard adjacent to a public road is consistent with subsection (B)(6) because it is located within the area of fence exemption. The width of the area of fence exemption as calculated per subsection (6)(e) is approximately 293 feet. The straightline width of the subject property line and the existing fence within the front yard setback along the public road is approximately 150 feet, less than the calculated threshold. *This criterion is met.*

(d) For mitigation areas, all trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the total developed area (including buildings, pavement, roads, and land designated as a Development Impact Area) on a Lot of Record will be one acre or more, the applicant shall comply with Mitigation Option 2:

Staff: The applicant's proposal uses Mitigation Option 2. The disturbance area is 1,154 square feet (the 508-square-foot carport addition to the dwelling plus the 646-square-foot accessory structure). Per the Mitigation Option 2, 1,154 square feet divided by 500 is 2.308, requiring 12 trees and 58 shrubs. A condition of approval requires that the applicant submit a planting plan that shows the location within the SEC-s zone, the species, size, and spacing of the required minimum 12 trees and 58 shrubs and areas of bare ground to be planted or seeded with native grasses or herbs or non-native sterile wheat grass. The planting plan must be consistent with the requirements of (C)(5)(e) through (o), including plant size, spacing, and diversity.

(e) Location of mitigation area. All vegetation shall be planted within the mitigation area located on the same Lot of Record as the development and shall be located within the SEC-h overlay or in an area contiguous to the SEC-h overlay; provided, however, that if the vegetation is planted outside of the SEC-h overlay then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. (Note: an off-site mitigation option is provided in a streamlined discretionary review process). The mitigation area shall first be located within any existing non-

forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas and last in forested areas or adjacent to landscaped yards.

Staff: The vegetation will be planted on the same Lot of Record as the proposed development. The entire subject site is within the SEC-h Overlay. *As conditioned, this criterion is met.*

(f) Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.

(g) Trees shall not be used as anchors for stabilizing construction equipment.

(h) Native soils disturbed during development shall be conserved on the property.

(i) An erosion and sediment control plan shall be prepared in compliance with the ground disturbing activity standards set forth in MCC 39.6200 through MCC 39.6235.

(j) Plant size.

(k) Plant spacing.

(l) Plant diversity

(m) Nuisance plants.

(n) Planting schedule.

(o) Monitoring and reporting.

Staff: Compliance with Subsections (f) through (o) are required as condition of approval. *As conditioned, these criteria are met.*

8.0 Adjustment Criteria:

8.1 MCC 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:

Staff: The setback distance between the proposed carport addition and the northeastern property line is 23.5 feet, less than the 30-foot required minimum, therefore the proposal requires an adjustment. See finding for MCC 39.8210 in Section 8.2, below.

(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

Staff: The requested reduction for the proposed carport does not include a request to reduce any required SEC resource protection setback. *This criterion is not applicable.*

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

Staff: The applicant is not requesting a reduction in the GH Overlay. *This criterion is not applicable.*

(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

Staff: The applicant is not requesting a reduction in any of these code sections. *This criterion is not applicable.*

(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 is not requesting a reduction in the off-street parking and design review standards. *This criterion is not applicable.*

* * *

8.2 MCC 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

Staff: MCC defines the Forest Practices Setback as “[a] type of dimensional setback in the forest base zones that provides for separation between structures and property lines. This setback assures that accepted forestry practices can occur on adjacent properties without the adjacent property owner needing to alter those practices due to the close proximity of a dwelling or structure.” [MCC 39.2000] The proposed carport would not interfere with adjacent

forestry practices, as it consists only of a concrete slab and overhead covering support structure entirely on the subject site. *This criterion is met.*

(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

Staff: The proposed carport would not have any impacts related to the setback. It would be connected to the subject site's 16-foot-wide driveway; therefore, it would not affect access. It would not affect light or privacy of the adjoining properties. The proposed carport area of the subject site is level and immediately surrounded mostly by mowed grass and shrubs. *This criterion is met.*

(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

Staff: The applicant is requesting only one adjustment. *This criterion is not applicable.*

(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

Staff: See response to 39.8010 (A), above. The subject site is zoned CFU-2. The proposed carport would not force a change in or increase the cost of adjacent forestry practices, as it consists only of a concrete slab and overhead covering support structure entirely on the subject site. *This criterion is met.*

(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 site is in none of these base zones. *This criterion is not applicable.*

(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 carport addition is to support the dwelling, which is a lawfully established use. *This criterion is met.*

9.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Accessory Use Determination, Significant Environmental Concern for Wildlife Habitat permit, Significant Environmental Concern for Streams permit, and Adjustment to the Forest Practices Setbacks permit to establish an accessory structure, a carport addition, and a garage

conversion to living space in the CFU-2 zone. This approval is subject to the conditions of approval established in this report.

10.0 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 in Case File T2-2022-15542.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	02.24.2022
A.2	8	Applicant Narrative	02.24.2022
A.3	4	Aerial Maps and Site Plans	02.24.2022
A.4	1	Existing Conditions Site Plan	02.24.2022
A.5	1	Proposed Site Plan	02.24.2022
A.6	4	SEC-h Report	02.24.2022
A.7	11	SEC-s Report	02.24.2022
A.8	1	Barn Building Elevations and Floor Plan	02.24.2022
A.9	3	House As-Built Floor Plans	02.24.2022
A.10	1	House Proposed Floor Plans	02.24.2022
A.11	2	House Building Elevations	02.24.2022
A.12	22	Stormwater Certificate and Report	02.24.2022
A.13	22	Habitable Dwelling Photos	02.24.2022
A.14	6	Fire Agency Review	02.25.2022
A.15	5	Septic Review Certification	03.15.2022
A.16	26	Transportation Planning Review	03.17.2022
‘B’	#	Staff Exhibits	Date
B.1	2	Assessment and Taxation Property Information for 1N1W08A-00300 (Alt Acct#R961080390)	02.24.2022
B.2	10	T2-2021-14680 Lot of Record Verification	7.25.2022
B.3			

B.4			
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	03.25.2022
C.2	9	Opportunity to Comment	05.18.2022
C.3		Administrative Decision	