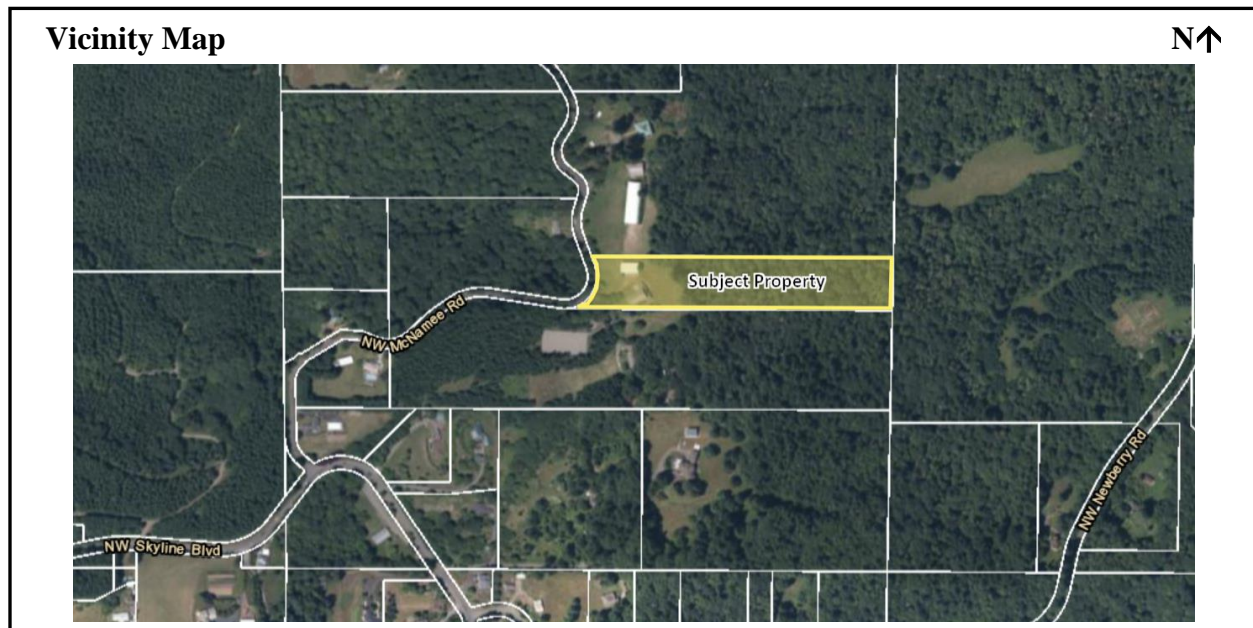


Date: Friday, September 30, 2022



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

General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3030 Lot of Record – Commercial Forest Use – 2

Lawfully Established Habitable Dwelling: MCC 39.2000 Definitions – Lawfully Established Dwelling; Habitable Dwelling, Conditional Use 2-84

Accessory Use: MCC 39.2000 Definitions – Accessory Use, Accessory Building, and Building Permit, MCC 39.4070(T)(8) Accessory Structures, Buildings in Conjunction with Farm Uses...

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:

1. Prior to occupancy of the dwelling, the property owner or their representative shall contact the City of Portland Building Department and make sure the building permits (structural, electrical, mechanical, plumbing, septic) for the dwelling are final.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.0 PROJECT DESCRIPTION:

Staff: The applicant requests a Decision by the Planning Director to determine if the subject house is a lawfully established habitable dwelling as defined in MCC 39.2000. The request includes a determination that the existing outbuilding was lawfully established.

2.0 PROPERTY DESCRIPTION:

Staff: The subject property is located in the rural area of west unincorporated Multnomah County and outside the Metro Urban Growth Boundary. The subject property is zoned Commercial Forest Use – 2 (CFU-2). Portions of the property are within the mapped Geologic Hazards (GH) overlay. The entire property is within the Significant Environmental Concern for wildlife habitat (SEC-h) and Significant Environmental Concern for scenic views (SEC-v) overlays. According to County Assessment and Taxation records, the subject property contains a single-family dwelling and an outbuilding.

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 received the following public comments during the 14-day comment period.

3.1 Comments from neighbor Jess Gutierrez, submitted via email on September 07, 2022 (Exhibit D.1).

Gutierrez lives next to the subject property [since 2013] and states that they personally knew the previous owner [Larry; a relative of the current owner] of the subject property. Gutierrez notes that Larry built the subject house, but never finished the house as Larry resided elsewhere. Gutierrez recalled that there were no fixtures of any kind in the subject house, including the areas for the bathrooms, kitchen, and all rooms, and the house only had drywall. According to Gutierrez, Larry shared that the permits expired and that he [Larry] was not in a rush to finish the house. According to Gutierrez, the current owner brought a contractor to the property recently to make the subject house look lived in, but the subject house is not habitable. Gutierrez notes that because the project [subject house construction] was abandoned years ago, any work should be done in accordance with current regulations.

Gutierrez also noted that the subject house is close to their property line and may violate easements.

Staff: In section 5.2 of this decision, staff addresses the documentary evidence provided by the applicant regarding the Habitable Dwelling features outlined in MCC 39.2000. The commenter [Gutierrez] did not have any photographs or other documentation to support their statements regarding the condition of the subject house. According to the site plan for the subject house,

the setback from the southern property line is 25 ft. (Exhibit A.4). There is no information in the record that suggests the subject house has any other setback from the southern property line. If the house is located within an easement, it is a civil matter between the two parties.

Staff notes Gutierrez's comments; a copy of the comments are included in the case record as Exhibit D.1.

4.0 GENERAL PROVISIONS:

4.1 MCC 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.

* * *

Staff: As noted in Section 1.0 above, this decision does not approve any development, land divisions, or property line adjustments. Therefore, 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**

* * *

MCC 39.3030 Lot of Record – Commercial Forest Use – 2

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 district a Lot of Record is either:

- (1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or**
- (2) A group of contiguous parcels or lots:**
 - (a) Which were held under the same ownership on February 20, 1990; and**
 - (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.**

* * *

Staff: Land use case no. CU 2-84 found that the configuration of the subject property at that time was a single Lot of Record (Exhibit B.4). There have been no changes to the configuration of the subject property since 1984, and the current deed for the property (Exhibit B.8) supports this fact. The subject property was rezoned in 1993 from MUF to CFU zoning. Lot of Record provisions in the CFU zones are different than the MUF zone. The subject property is 6.87 acres. Planning staff reviewed property ownership for adjacent tax lots on February 20, 1990. Lawrence and Sheryl Bartel were the listed property owners for the subject property on February 20, 1990; the Bartels were not the listed property owners for any adjacent tax lots on February 20, 1990. *Criteria met.*

5.0 DECISION BY THE PLANNING DIRECTOR:

5.1 MCC 39.2000 Definitions

As used in this Chapter, unless the context requires otherwise, the following terms and their derivations shall have the meanings provided below:

* * *

Habitable Dwelling – An existing dwelling that:

- (a) Has intact exterior walls and roof structure;**
- (b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;**
- (c) Has interior wiring for interior lights;**
- (d) Has a heating system; and**
- (e) Was lawfully established.**

* * *

Lawfully Established Dwelling – A dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include zoning, land division and building code requirements. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a dwelling unit were obtained and all qualifying permitted work completed.

Staff: As discussed in Section 5.2 below, the Dwelling is a ‘Habitable Dwelling’ as it is an existing dwelling that has the amenities listed in (a)-(d). As discussed in Section 5.3 below, the evidence in the record is sufficient to demonstrate that the Dwelling was lawfully established and in compliance with (e) above.

5.2 Habitable Dwelling Analysis

Staff: The following documentary and photographic evidence establishes that the Dwelling has the required amenities of a habitable dwelling as described below:

1. Intact Exterior Walls and Roof Structure

Exhibits A.6 and A.11 contain pictures of the intact exterior walls and roof structure of each side of the Dwelling (East, West, North, and South).

2. Indoor Plumbing/Sanitary Waste Disposal

Exhibit A.5 is a copy of the original 1984 plumbing inspection permit and septic permit. Exhibit A.8 is a picture of a bathroom in the Dwelling. Exhibit A.9 is a picture of the kitchen in the Dwelling.

3. Interior Wiring for Interior Lights

Exhibit A.12 contains a picture of the Electrical Panel. Exhibit A.8 and A.9 are pictures showing working interior lighting in various rooms of the Dwelling. Exhibit A.3 contains the signatures for the electrical system installation on the 1984 permit inspection card for building permit no. 840669.

4. Heating System

Exhibit A.12 contains a picture of the HVAC system in the Dwelling. Exhibit A.3 contains the signatures for the heating system installation on the 1984 permit inspection card for building permit no. 840669.

The documentary and photo evidence described above suffices to establish that the Dwelling has the required amenities of a habitable dwelling. Therefore, the evidence suffices to find that the Dwelling is habitable.

5.3 Lawfully Established Dwelling Analysis

Staff: As defined in MCC 39.2000, a *Lawfully Established Dwelling* is a dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include *zoning (land use approval, setbacks, development standards), land division and building code requirements*. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a dwelling unit were obtained and all qualifying permitted work completed.

1. Establishment of the Dwelling

The applicant’s narrative (Exhibit A.2) states that construction of the Dwelling’s foundation commenced on July 09, 1984. As the applicant notes, construction commenced following the approval of land use case no. CU 2-84 (Exhibit B.4) and the issuance of building permit no. 840669 (Exhibit A.3 & B.7). Current County Assessor records list 1989 as the ‘year built’ for the Dwelling.

2. Historical Evidence for the Application

The following summarizes the documentary evidence provided by the applicant to support the subject application:

- **1984 - Land Use Case no. CU 2-84 (Exhibit B.4):** Case no. CU 2-84 approved a conditional use request to establish a non-resource related single-family residence on the subject property. The decision contains a condition of approval that required the applicant to complete an action [recording a document] “*Prior to issuance of building permits*”.
- **1984 – Plumbing Inspection permit no. 041687 and Septic Permit no. 9075 (Exhibit A.5):** On May 14, 1984, the City of Portland issued a Plumbing Inspection permit to L. Bartel for the Dwelling. The permit lists the date of final inspection as November 14, 1985. On May 08, 1984, Multnomah County issued septic permit no. 9075 for a new septic tank and drainfield to Larry Bartel. The date of inspection is listed as June 14, 1984.
- **1984 – Multnomah County Building Permit no. 840669 (Exhibit B.7):** On May 11, 1984, Multnomah County issued building permit no. 840669 for a new single-family dwelling to Lawrence Bartel. In the signature section, there are signatures [with sign-off dates ranging from April to May of 1984] for ‘Zoning’, ‘R/W Use’, ‘Plumbing’, ‘Sewer or Sub-Surface’, and ‘Fire and Life Safety’. In the special conditions of approval section, there is a reference to ‘CU 2-84’.
- **1984 – Multnomah County Building Permit Signature Card for permit no. 840669 (Exhibit A.3):** The applicant provided a copy of the permit signature card for building permit no. 840669. Under section no. 1 of the card, ‘building setbacks’, ‘footing(s)’, ‘foundation’, and ‘plumbing ground’ were noted as OK with signatures completed between July 1984 and August 1986. Under section no. 2 of the card, ‘electrical – cover’, ‘plumbing – cover’, ‘heating – cover’, and ‘framing’ have signatures completed between June 1993 and July 1993. Under section no. 3 of the card, ‘wallboard / lath’, ‘concrete slabs / floors’, and ‘chimneys’ have signatures completed between September 1986 and September 1993.

3. Applicable Laws in effect at the time of establishment (1984)

In 1984, the subject property was zoned ‘MUF-19’ per historic county zoning maps (Exhibit B.5). The MUF zoning regulations provided for the review of a non-resource related residential use [single-family dwelling] via the Conditional Use review process [MCC 11.15.2172]. As noted above, the property owner received a Conditional Use approval for a non-resource related single-family dwelling via land use case no. CU 2-84 (Exhibit B.4). MCC 11.15.2178 outlined required setbacks and MCC 11.15.2194 outlined development standards for residential uses (Exhibit B.6).

The Minimum Yard Dimensions for a dwelling under MCC 11.15.2178 were as follows: 30-ft. Front, 10-ft Side, 30-ft Street Side and 30-ft Rear. The dwelling is located 160 +/- ft. from NW McNamee Rd, 13 +/- ft. from the southern side property line, 113 +/- ft. from the northern side property line, and over 1,000 ft. from the rear property line. Under MCC 11.15.2194(G) and (H), construction [of a dwelling] must comply with the standards of the Building Code and the dwelling must be attached to a foundation for which a building permit has been obtained. In addition, a 30-ft wide fire lane was required between a residential structure and an adjacent

forested area. The only forested area near the dwelling is to the west on the subject property. The distance between the dwelling and the forest is approximately 160 +/- ft. Multnomah County issued a building permit on May 11, 1984 (Exhibit B.7). A number of inspections were completed in a timely fashion on the dwelling (Exhibit A.3 and A.5). During this time period, no Certificate of Occupancy was required to occupy a single-family dwelling.

The documentary evidence in the record is sufficient to demonstrate that the Dwelling was constructed in compliance with the laws in effect at the time of its establishment from 1984 to 1993. Therefore, the Dwelling was Lawfully Established.

5.4 Lawfully Established Accessory Building Analysis

Staff: As defined in MCC 39.2000 an *Accessory Use* is a lawful use that is customarily subordinate and incidental to a primary use on the lot. MCC 39.2000 defines an *Accessory Building* as a subordinate building, the use of which is clearly incidental to that of the main building on the same lot. Therefore, to determine the outbuilding (“Barn”) lawful, the construction of the Barn must have complied with the laws in effect at the time of establishment.

1. Establishment of the Barn & Historical Evidence

According to the applicant’s narrative, the previous property owner obtained authorization to construct the Barn as an ‘Exempt Farm Structure’ in 1984. The applicant provided a copy of the Exempt Farm Structure registration acknowledged by Multnomah County on April 12, 1984 (Exhibit A.13). The registration states that the building was for use in conjunction with a farming operation. The barn was not authorized as an accessory building to the dwelling; it is accessory to a farm use.

2. Applicable Laws in effect at the time of establishment (1984)

In 1984, the subject property was zoned ‘MUF-19’ per historic county zoning maps (Exhibit B.5). The MUF zoning regulations provided for the review of Accessory Uses under MCC 11.15.2174(D), including other structures customarily accessory or incidental to any use permitted or approved in the MUF district. The Minimum Yard Dimensions for an accessory building under MCC 11.15.2178 were as follows: 30-ft. Front, 10-ft Side, 30-ft Street Side and 30-ft Rear. The barn is approximately 105 +/- ft. from NW McNamee Rd, 25 +/- ft. from the northern side property line, 158 +/- ft. from the southern property line, and over 1,000 ft. from the western rear property line.

As noted above, the applicant provided a copy of the Exempt Farm Structure registration acknowledged by Multnomah County on April 12, 1984 (Exhibit A.13). The registration states that the building was for use in conjunction with a farming operation.

The documentary evidence in the record is sufficient to demonstrate that the Barn was constructed as an Exempt Farm Structure in compliance with the laws in effect at the time of its establishment in 1984. Therefore, the Barn is a lawfully established Exempt Farm Structure and limited to use in support of a farming operation. Any potential future conversion of the Barn to an Accessory Use is subject to current zoning regulations.

6.0 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 T2-2022-15771 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	05.17.2022
A.2	5	Applicant Narrative	05.17.2022
A.3	1	Copy of Building Permit Sign-off Card	05.17.2022
A.4	10	Copy of 1984 Building Plans (Unstamped)	05.17.2022
A.5	3	Copy of 1984 Septic System Permit no. 041687	05.17.2022
A.6	1	Exterior photo of the house	05.17.2022
A.7	1	Photo of the house kitchen	05.17.2022
A.8	1	Photo of the house bathroom	05.17.2022
A.9	1	Photo of the house dining room and kitchen	05.17.2022
A.10	1	Photo of the house bedroom	05.17.2022
A.11	6	Additional exterior photos of the house	06.30.2022
A.12	2	Photo of the HVAC and Fuse Box	06.30.2022
A.13	1	Copy 1984 Exempt Agricultural Building registration	06.30.2022
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 2N1W32D -00900 (Alt Acct# R971320360)	05.17.2022
B.2	1	Division of Assessment, Recording, and Taxation (DART): Tax Map for 2N1W32D	05.17.2022
B.3	3	Copy of CU zoning code as adopted March 23, 1982	08.23.2022
B.4	7	Copy of Land Use Case no. CU 2-84	08.23.2022
B.5	1	Copy of Historic August 14, 1980 zoning map for 2N1W32D	08.23.2022
B.6	11	Copy of MUF zoning code as adopted March 23, 1982	08.23.2022

B.7	1	Copy of Historic Permit no. 840669	08.23.2022
B.8	3	Copy of Instrument no. 2021-140000	08.23.2022
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (Day 1)	06.15.2022
C.2	2	Opportunity to Comment	08.26.2022
C.3	10	Administrative Decision	09.30.2022
'D'	#	Comments	Date
D.1	1	Comments from Jess Gutierrez	09.07.2022