

**STAFF REPORT FOR THE PLANNING COMMISSION WORKSESSION
AUGUST 1, 2016**

**ACCESSORY STRUCTURE PROVISIONS IN UNINCORPORATED MULTNOMAH COUNTY
(PC-2016-4940)**

Staff Contact:
Adam Barber, Senior Planner
adam.t.barber@multco.us (503) 988-0168

1.0 SUMMARY

The proposed Accessory Structure code amendments are intended to accomplish three main objectives:

- 1) Clarify the internal features allowed within Accessory Structures through the non-discretionary Allowed Use review process (i.e., Type I review);
- 2) Clarify the internal features allowed within Accessory Structures through the discretionary Review Use review process (i.e., Type II review); and
- 3) Clearly state within the code that Accessory Structures cannot be used as a temporary or permanent dwelling.

Additionally, Section 3.0 of this report adds flexibility by amending setback requirements for the siting of small accessory structures and fences. This staff report addresses projects #14 (Accessory Structures) and #18 (Fence Setbacks) on the Commission's 2016 Work Program attached as Exhibit C.

2.0 INTRODUCTION AND BACKGROUND

Accessory Structures are those structures that are customarily accessory or incidental to a lawfully established use. Accessory Structures include non-building structures (e.g., swimming pool, deck) and buildings (e.g., storage shed, workshop, greenhouse).

Many elements of the current Accessory Structure regulations date back to the commencement of land use regulation in Multnomah County in the 1950s (e.g., the current definition of "Accessory Building" was adopted in 1955).

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In 2007, the Accessory Structure regulations were amended in three respects. First, the meaning of “Accessory Structure” was clarified through a list of qualifying structures. Second, Accessory Buildings (i.e., Accessory Structures that also fall within the definition of “Building”) were limited to a cumulative footprint area of 2,500 square feet. Accessory Buildings exceeding the 2,500 cumulative footprint threshold became subject to a discretionary land use review to confirm the structure would be ‘customarily accessory or incidental’ to any use permitted or approved in the district. Third, a new notice requirement was imposed requiring notice to neighbors for proposals exceeding the 2,500 cumulative square foot footprint threshold. Together, these amendments in 2007 were intended to address concerns at that time regarding approval of uncommonly large Accessory Buildings.

Today, interest in the use of Accessory Structures for *dwelling* purposes is on the rise. In fact, Staff now receives inquiries into such use on a nearly daily basis. Most of these inquiries relate to the use of Accessory Structures as accessory dwelling units (ADUs). ADUs are typically smaller, auxiliary dwellings with their own independent living facilities located on the same lot as or within a primary dwelling. This trend seems to correspond with the rise in popularity of on-line short-term rental sites, like Airbnb, and the increased housing rental rates in the metro area squeezing affordable rental opportunities. **Importantly, state law largely prohibits ADUs in rural areas and ADUs are not presently allowed under the Multnomah County Code.**

Along with this increased interest in ADUs, Staff is receiving an increased number of complaints alleging the unlawful conversion of Accessory Structures to Dwelling Units. Many Accessory Structures are approved with facilities such as a sink, toilet, stove, or shower and, consequently, unlawful conversion for residential uses is not difficult.

Lastly, a corollary to the conversion issue described above is that the current code lacks clear standards regarding the nature and extent of facilities that may be approved within an Accessory Structure. The absence of such standards leads to uncertainty, delays, and disproportionate consumption of Staff and property owner resources and the expenditure of these resources does not appear to result in preventing conversion of these structures to a prohibited dwelling use.

Accordingly, the proposed code amendments in Section 3.0 of this Staff Report are intended to address the foregoing issues by explicitly listing the internal features and facilities that are permissible within Accessory Structures. The regulations provide for expedient, nondiscretionary Allowed Use review appropriate for proposals involving fewer internal features and facilities, and provide a discretionary Review Use review process appropriate for proposals including internal features and facilities beyond those allowed under the nondiscretionary review process.

3.0 PROPOSED CODE AMENDMENTS

***Staff Note:** Below are select definitions related to this project for orientation. Chapter 33 text, applicable to the West Hills Rural Plan Area, is used for illustration purposes. Code amendments will be applied to other chapters of code prior to the Planning Commission hearing including Chapters 11.15 (urban unincorporated lands), Chapter 34 (Sauvie Island/Multnomah Channel), Chapter 35 (East of Sandy River and 36 (West of Sandy). We are still assessing*

whether similar changes will be made to Chapter 38 applying to the Columbia River Gorge National Scenic Area. The Chapter 38 Accessory Structure code uses a different framework with different thresholds and standards.

The following text formatting is used to differentiate existing, proposed and deleted language:

Bold = Existing language to remain

Double Underline = Proposed new language

~~Strikethrough~~ = Language proposed for deletion

* * * = separates non-contiguous code sections (if applicable)

33.0005 DEFINITIONS.

Accessory Building – A subordinate building, the use of which is clearly incidental to that of the main building on the same lot.

Accessory Use – A lawful use that is customarily subordinate and incidental to a primary use on a lot

Building – Any structure used or intended for supporting or sheltering any use or occupancy.

Cooking Facilities – Facilities such as a range, stove, oven, hotplate, microwave, or similar facilities, but not including a facility designed primarily for room heating, such as a wood or pellet stove.

Dwelling Unit – A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Dwelling (Duplex or Two-Unit) – A detached building designed for two dwelling units, whether in separate or single ownership.

Dwelling (Single Family Detached) – A detached building designed for one dwelling unit including Mobile Homes under the provisions as specified within the district.

Dwelling (Multi-Plex Structure) – See Multi-plex Dwelling Structure.

Duplex Dwelling – See Dwelling (Duplex or Two Unit).

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.

Half-Bathroom – Within a Building, an area containing a sink and toilet but no bathing facilities such as a shower or bathing tub.

Setback – At times this term is used interchangeably with *yard*. However, *setback* (and *Buffer*) may also be a needed separation between a land use/structure and a feature of the land that could be adversely impacted by the land use/structure (e.g. between structures and wetlands). Other *setback* requirements are for such purposes as public safety or reduction of nuisances such as the distance needed between a guyed television transmission tower and the property line in order to provide an area for potential ice fall and tower failure or it may be a distance to reduce the level of adverse noise, odor, or visual impacts to sensitive land uses.

Structure – That which is built or constructed. An edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

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

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

Yard (Rear) – A yard extending across the full width of the lot between the most rear building other than an accessory building and the rear lot line. The depth of the required rear yard shall be measured horizontally from the nearest point of the rear lot line toward the nearest part of the building. Where there is no rear lot line, the depth of the rear yard shall be the distance from a ten foot line parallel to the front lot line, measured from one side line to the other.

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

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RURAL RESIDENTIAL - RR

§ 33.3120 ALLOWED USES

* * *

(F) Accessory Structures subject to the following:

(1) The following Accessory Structures ~~or uses listed below~~ may be approved under this subsection (F) when customarily accessory or incidental to any use permitted or approved in this district:

- (a) Garages or carports;
- (b) Pump houses;
- (c) Garden sheds;
- (d) Workshops;
- (e) Storage sheds, including shipping containers used for storage only;
- (f) Greenhouses;
- (g) Woodsheds;
- (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;
- (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;
- (j) Sport courts;
- (k) Gazebos, pergolas, and detached decks;
- (l) Fences, gates, or gate support structures; ~~and~~
- (m) Mechanical equipment; and
- (n)~~(m)~~ Similar structures.

Staff note: The proposed additions above clarify shipping containers can be authorized for storage only and that mechanical equipment, such as air conditioning units, heat pumps, and electrical boxes are common structures customarily accessory

and incidental to a primary use.

Below staff presents amendments identifying the internal features allowed through the Allowed Use provisions. A matrix table showing this information is a different format is available in Exhibit A. The table in Exhibit A is not intended to be adopted within county code but has been provided as a visual tool to help Commissioners understand the proposal.

- (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 a Half-Bathroom, provided that:
 - (a) The Half-Bathroom is located on the ground floor of the Accessory Structure and the Accessory Structure does not contain any other bathing facilities such as a shower or bathing tub except as provided in paragraph (6) of this subsection; and
 - (b) The Accessory Structure does not contain any Cooking Facilities.
- (4) The Accessory Structure may contain Cooking Facilities, provided that:
 - (a) The Cooking Facilities are located on the ground floor of the Accessory Structure; and
 - (b) The Accessory Structure does not contain a Half-Bathroom or any other bathing facilities such as a shower or bathing tub except as provided in paragraph (6) of this subsection.
- (5) The Accessory Structure shall not contain more than one sink. If the Accessory Structure contains a Half-Bathroom, then the sink shall be located in the Half-Bathroom.
- (6) A shower-style bathing facility ("Shower") may be approved as part of an Accessory Structure, provided that the Shower is accessory or incidental to a swimming pool, hot tub or sauna. If the Accessory Structure is a Building that contains a sink or a toilet, then the Shower shall be located on the outside of the Building.
- (7) The Accessory Structure shall not contain:
 - (a) A clothing washer or dryer unit;
 - (b) A mattress, bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or
 - (c) A closet built into a wall.

~~(8)(3)~~ **If the aAccessory sStructure has a ~~bathroom, or kitchen facilities~~ Cooking Facilities, a sink, a Half-Bathroom, or any bathing facilities such as a shower, then prior to issuance of the building permit the property owner shall record a deed restriction with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling.**

~~(9)(2)~~ **If the aAccessory sStructure is a bBuilding, then ~~to be an “allowed use”~~ the footprint of the bBuilding in combination with the footprint of all other aAccessory bBuildings on the property shall not exceed 2,500 square feet.**

Staff Note: In 2007 the Planning Commission asked staff to review the size range of existing accessory structures in unincorporated Multnomah county. A key finding of that analysis was that the cumulative size of existing accessory buildings on a property are less than 2,500 square feet 90% of the time and individual accessory buildings are less than 2,500 square feet 95% of the time. This 2,500 square foot threshold was carefully formulated in 2007 after extensive deliberation by the Planning Commission. Staff is not proposing modifications to this threshold at this time as it seems to be working well.

~~(10)(4)~~ **Agricultural Bbuildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions.**

§ 33.3125 REVIEW USES

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(J) Structures or uses customarily accessory or incidental to any use permitted or approved in this district, which do not meet the “accessory structures” standard in MCC 33.3120 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 use.

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

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

(4) If the Accessory Structure has Cooking Facilities, a sink, a Half-Bathroom, or any bathing facilities such as a shower, then prior to issuance of the building permit the property owner shall record a deed restriction with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling.

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§ 33.3155 DIMENSIONAL REQUIREMENTS

(A) Except as provided in MCC 33.3160, 33.3170, 33.3175 and 33.4300 through 33.4360, the minimum lot size for new parcels or lots shall be five acres. For properties within one mile of the Urban Growth Boundary, the minimum lot size shall be as currently required in the Oregon Administrative Rules Chapter 660, Division 004 (20 acre minimum as of October 4, 2000).

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.

(C) **Minimum Yard Dimensions – Feet.** A fence less than six feet in height is not subject to the minimum yard dimensions. Fences over six feet in height shall have a minimum Setback equal to the fence height.

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

(1) An Accessory structure may encroach up to 40% into any required Yard not contiguous to a street without an approved Adjustment subject to the following:

(a) The structure does not exceed five feet in height or exceed a footprint of ten square feet, and

(b) The applicant demonstrates the proposal complies with the fire code as administered by the applicable fire service agency.

(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.

(E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirement if located at least 30 feet from any property line.

4.0 EXHIBITS

EXHIBIT A: PROPOSED ACCESSORY STRUCTURE INTERNAL FEATURE MATRIX
FOR THE AUGUST 1, 2016 PLANNING COMMISSION WORKSESSION
DISCUSSION

EXHIBIT B: COVENANT - NOTICE OF ZONING COMPLIANCE – ACCESSORY
STRUCTURE

EXHIBIT C: MULTNOMAH COUNTY 2016 PLANNING COMMISSION WORK
PROGRAM