

1600 SE 190<sup>th</sup> Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

## NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-2017-7884

**Permit:** Verification & Alteration of a Nonconforming Use

**Location:** 10450 NW Laidlaw Rd, Portland  
Tax Lot 1700, Section 26BB, Township 1 North, Range 1 West, W.M.  
Tax Account #R961260050

**Applicants:** Yibing Jia

**Owners:** Chunzhi Dong & Yibing Jia

**Base Zone:** Rural Residential (RR)

**Overlays:** Significant Environmental Concern for streams (SEC-s)

**Summary:** Applicant is requesting a verification of nonconforming front, side and rear yard setbacks. If verified, the applicant is proposing to rebuild a portion of the existing dwelling and remodel the remaining portion of the dwelling. A Verification and Alteration of a Nonconforming Use application has been submitted.

**Decision:** Approved with Conditions

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, January 9, 2018 at 4:00 pm.

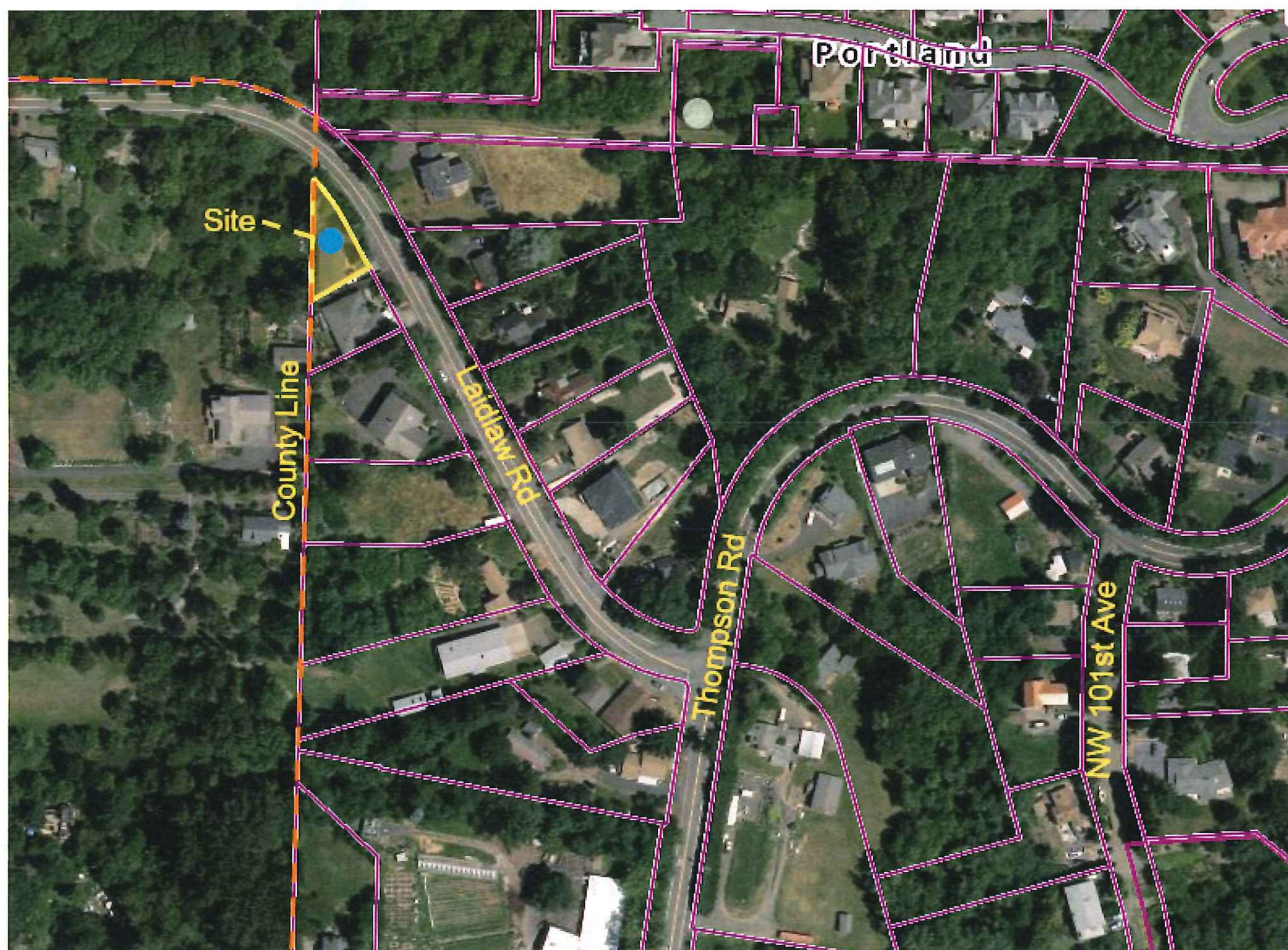
**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by:

By:   
Lisa Estrin, Planner

For: Michael Cerbone, AICP  
Planning Director

Date: Tuesday, December 26, 2017



**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-0167 or [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@multco.us).

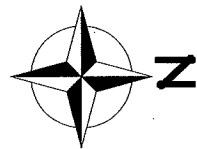
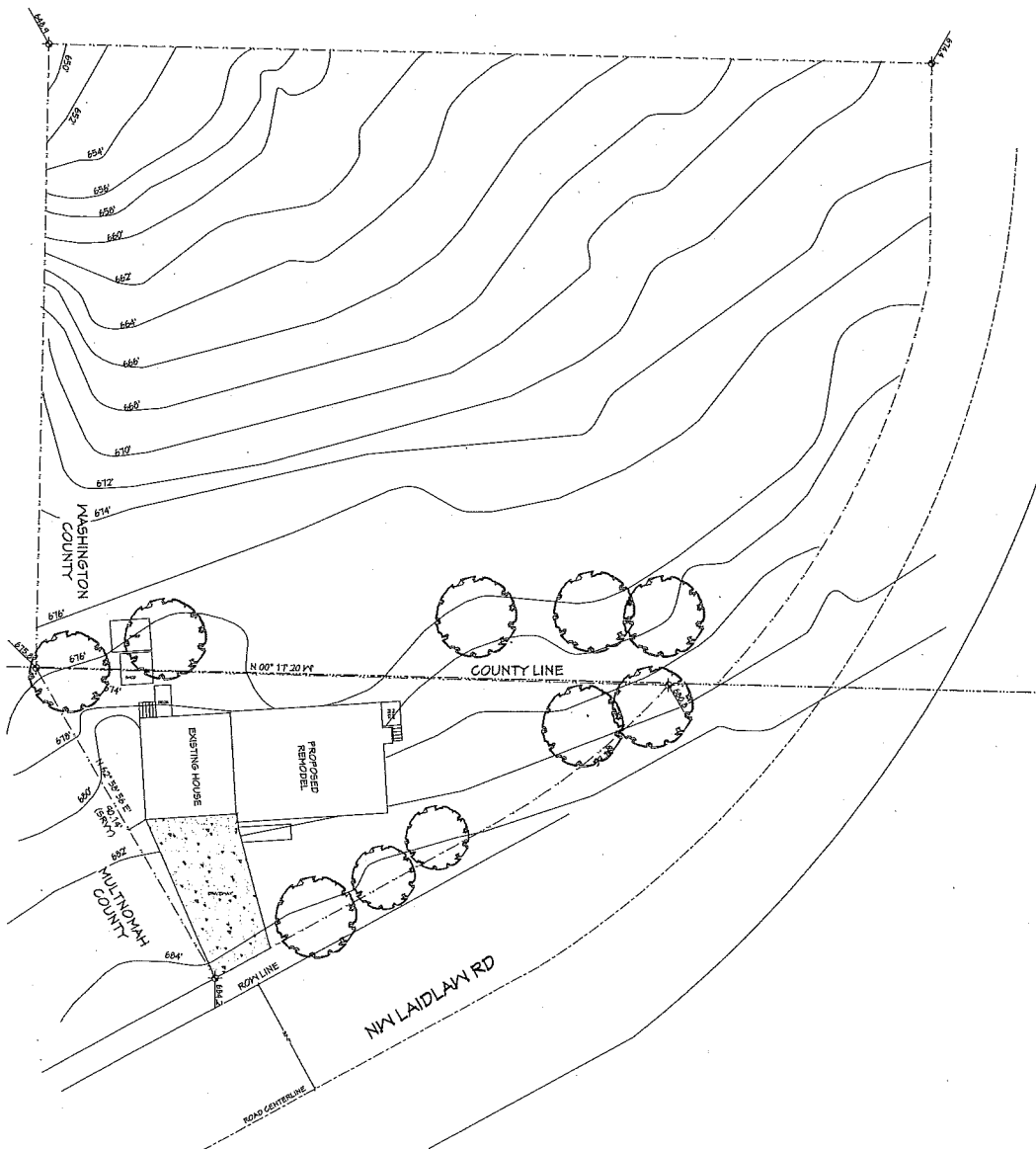
**Applicable Approval Criteria:** Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): *Rural Residential*: MCC 33.3155, MCC 33.3170, MCC 33.3180; *Nonconforming Uses*: MCC 33.7200, MCC 33.7204, MCC 33.7214; and *Significant Environmental Concern*: MCC 33.4515(A)(8)(b) & (c).

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at [www.multco.us/landuse](http://www.multco.us/landuse) under the link *Chapter 33: West Hills Rural Plan Area*.

### **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.





RECEIVED  
SEP 14 2017

SITE PLAN  
SCALE: 1" = 30'



3D DESIGN NORTHWEST  
2500 NE 148TH COURT  
VANCOUVER, WA 98684  
360-980-3208  
3ddesignnw@gmail.com

DESIGN DATE:  
9/12/2017  
REVISION DATE:

PROJECT:  
JAI  
RESIDENCE

1. 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.
2. Pursuant to MCC 37.0690(B), this land use permit shall expire as described in a. or b. below:
  - a. When construction has not commenced within two years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
  - b. When the structure has not been completed within four years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surfaces(s) of the structure and compliance with all conditions of approval in the land use approval.

The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. Prior to land use approval of building plan check, the building plans shall be modified to show the location of the exterior lighting on the proposed remodel of the dwelling. The exterior lights shall meet the requirements of MCC 33.0570. [MCC 33.3155(F)]
4. The two deck expansions shall not expand the dwelling by more than 400 sq. ft. without first obtaining a Significant Environmental Concern for streams (SEC-s) permit. [MCC 33.4515(A)(8)(a)]

**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, the applicant shall call the Planner, Lisa Estrin, at (503) 988-0167 or [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@multco.us), for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

**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*.

### **1.00 Project Description:**

**Staff:** The applicant is requesting approval of a Verification and Alteration of a Nonconforming Use on an existing single family dwelling in the Rural Residential (RR) zone. If the house is found to be nonconforming, the property owner will remove about 63% of the existing dwelling and replace the foundation walls and add a second story to the footprint of the dwelling portion of the structure. The portion of the structure which was originally constructed as a garage will be returned to its original use as a garage for the dwelling.

### **2.00 Property Description & History:**

**Staff:** The subject tax lot contains a single family dwelling. The existing dwelling has had the original attached garage converted to living space as a master bedroom. Tax records indicate the dwelling was constructed in the year, 1933. The dwelling is located in Multnomah County. Related accessory buildings and septic system are located in Washington County.

### **3.00 Rural Residential Criteria:**

#### **3.01 § 33.3155 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS**

##### **(C) Minimum Yard Dimensions – Feet**

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

**Maximum Structure Height – 35 feet**

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

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

**Staff:** The subject property fronts onto NW Laidlaw Road. Transportation Planning has indicated that no additional right-of-way is required at this time. The reconstructed dwelling will be located five feet from the south property line, 20 feet from the eastern property line (front) adjacent to Laidlaw Road, and 157 feet from the western (rear) property line. The property has a front lot line length of approximately 205 feet or more (Exhibit A.26). The proposed dwelling will be approximately 33 ft. tall. The subject dwelling has been determined to be nonconforming to present day yard dimensions. Please see Sections 5.01 through 5.04 below for additional findings. *Criteria met.*

#### **3.02 (F) All exterior lighting shall comply with MCC 33.0570.**

**Staff:** A condition of approval has been included requiring at time of land use approval for building plan check that the lighting details be shown on the plans.

#### **3.03 § 33.3170 LOT OF RECORD**

**(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, RR zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

**(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 33.3185, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**(C) Except as otherwise provided by MCC 33.3160, 33.3175, and 33.4300 through 33.4360, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.**

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

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

**Staff:** The subject property is located in Washington County and Multnomah County. Based upon the various plat, deed, site plans and survey information presented by the applicant in the record (Exhibit A.8, A.9, A.10, A.11, A.16, A.17 and A.26), the two tax lots combined have been transferred together and are used as a single parcel to support the existing single family dwelling and are a Lot of Record.

### **3.04 § 33.3180 OFF-STREET PARKING AND LOADING**

**Off-street parking and loading shall be provided as required by MCC 33.4100 through 33.4220.**

**Staff:** The parking requirement for a single family dwelling pursuant to MCC 33.4205(A)(1) is two parking spaces. The proposed remodel has two parking spaces in the existing driveway and will have two spaces available in the attached garage. *Criterion met.*

#### **4.00 Significant Environmental Concern Exception**

##### **4.01 § 33.4515 EXCEPTIONS**

(A) Except as specified in (B) below, a SEC permit shall not be required for the following:

(8) With respect to a structure lawfully established on or before January 7, 2010; alteration or expansion of such structure that:

(a) For the SEC-h and SEC-s overlays, result in the alteration or expansion of 400 square feet or less of the structure's ground coverage. With respect to expansion, this exception does not apply on a project-by-project basis, but rather extends only to a maximum of 400 square feet of additional ground coverage as compared to the structure's ground coverage on the date above; and...

**Staff:** The proposed remodel of the single family dwelling will add two decks to the structure. One deck will be off the rear of the garage. The other will be off the north side of the dwelling. The applicant states that the additional ground coverage will not be more than 400 sq. ft. in size. A condition of approval has been included to ensure that this SEC-s exception threshold is not exceeded. *Through a condition, this exception is met.*

##### **5.00 Verification of Nonconforming Use Criteria**

##### **5.01 § 33.7204 VERIFICATION OF NONCONFORMING USE STATUS**

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

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

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

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

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

**Staff:** Assessment and taxation records indicate that the dwelling on tax lot 1N1W26BB –

01700 was constructed around the year 1933 (Exhibit A.25 and B.1). Zoning and building permits did not commence in Multnomah County until the mid-1950's, so the existing single family dwelling was legally established at the time of enactment of the zoning code. The applicant has demonstrated that the house has been used as a single family dwelling for the last 12 years (Exhibit A.12 and A.13.). *Criteria met.*

5.02

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

- (1) Description of the use;**
- (2) The types and quantities of goods or services provided and activities conducted;**
- (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**
- (4) The number, location and size of physical improvements associated with the use;**
- (5) The amount of land devoted to the use; and**
- (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.**
- (7) A reduction of scope or intensity of any part of the use as determined under this subsection (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.**

**Staff:** The existing house is used for residential purposes by a single family. No goods or services are provided from the property. Vehicle trip generation for a single family dwelling is typically 10 vehicle trips per day. The existing dwelling has a structural footprint of approximately 28-ft wide by 61-ft long. There has been no indication that the intensity use as a single family dwelling has been reduced in the scope or intensity of use for over a two year period in the last 12 years.

5.03

**(C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.**

**Staff:** In August 1955, the County adopted an Interim Zoning Ordinance with front, side and rear yards. The dwelling met these yard requirements at the time (20 ft. – front, 5 ft. side, 25 ft. – rear). The property was zoned R-10 in July 1958 and the dwelling continued to meet the yard requirements. On October 6, 1977, the property was rezoned to Rural Residential which has minimum yard requirements of 30 ft. – front, 10 ft. side, 30 ft. - rear. The house on that date became nonconforming to the 30-ft. front and 10-ft. side yard dimensions on that date. See



Section 3.01 above for additional finding on the yard requirements.

- 5.04 (D) Except for nonconforming uses considered under MCC 33.7214 (B), the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification.**

**Staff:** No conditions of approval have been included regarding the Verification of Nonconforming Use criteria discussed above.

**6.00 Alteration of a Nonconforming Use Criteria**

**6.01 § 33.7214 ALTERATION, EXPANSION OR REPLACEMENT OF NONCONFORMING USES**

**(A) Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements.**

**Staff:** The applicant is proposing to reconstruct approximately 65% of the existing structure and construct two small deck additions. Based upon the findings below, the proposed remodel will have no greater adverse impact on the neighborhood as compared to the existing single family dwelling. See Section 6.03 below for additional findings.

- 6.02 (B) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 33.7204, the Planning Director shall authorize alteration of a nonconforming use when it is demonstrated that:**

- (1) The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements, or**
- (2) The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity.**

**Staff:** The applicant has not argued that the proposed remodel is to maintain the dwelling in good repair or to comply with state or local requirements. He states that the dwelling is in “good condition as it is built” and is currently habitable. *Criterion not applicable.*

- 6.03 (C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 33.7204, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.**

- (1) The character and history of the use and of development in the surrounding area;**
- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;**
- (3) The comparative numbers and kinds of vehicular trips to the site;**
- (4) The comparative amount and nature of outside storage, loading and parking;**

- (5) The comparative visual appearance;
- (6) The comparative hours of operation;
- (7) The comparative effect on existing flora;
- (8) The comparative effect on water drainage or quality; and
- (9) Other factors which impact the character or needs of the neighborhood.

**Staff:** The applicant is proposing to reconstruct approximately 65% of an existing single family dwelling. A new foundation will be installed and a second story added above the main portion of the house. The unpermitted garage conversion will be removed and the garage re-established for the use of the dwelling. To the existing footprint, the applicant is proposing to add two small decks for access to the rear of the property from the back of the dwelling and garage. The proposed remodel will not increase the comparative number or kinds of vehicle trips to the site. The dwelling will be improved as compared to its current exterior appearance. *No adverse impacts have been found for the proposed improvements.*

**6.04 (D) Any decision on alteration, expansion or replacement of a nonconforming use shall be processed as a Type II permit as described in MCC Chapter 37.**

**Staff:** This application has been processed through the Type II permit procedures outline in MCC 37.0530(B).

**7.00 Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Alteration of a Nonconforming Use to remodel and replace approximately 65% of an existing dwelling in the Rural Residential zone. This approval is subject to the conditions of approval established in this report.

**8.00 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. All other exhibits are available for review in Case File T2-2017-7884 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	6/14/2017
A.2	4	Narrative	6/14/2017
A.3	1	Bonny Slope – Plat 2	6/14/2017
A.4	1	1N1W26BB Tax Map with Tax Lot 1700 Highlighted	6/14/2017
A.5	1	Screen Shot of Tax Lot 1700	6/14/2017
A.6	2	Parcel Record Card for 1N1W26BB	6/14/2017
A.7	1	Map #1N1W26BB01700 with subject property designated from title company	6/14/2017

A.8	3	Statutory Warranty Deed recorded in Washington County at 2011-059250 on August 29, 2011	6/14/2017
A.9	2	Statutory Warranty Deed record in Washington County in May 08, 1996	6/14/2017
A.10	2	Warranty Deed recorded at Book 2095, Page 698 & 699	6/14/2017
A.11	1	Bargain and Sale Deed recorded in Book 283, Page 617 on June 5, 1945	6/14/2017
A.12	4	Water Meter Reading List from December 2005 to December 2016	6/14/2017
A.13	6	Rental Agreement (6 Month Lease)	6/14/2017
A.14	4	Photos	6/14/2017
A.15	2	Standard or Alternative Onsite System & Authorization Notice Report	6/14/2017
A.16	1	Record of Survey for Ralph Gilliam dated May 7, 1979	6/14/2017
A.17	1	Survey for David D. Batke dated August 24, 1977	6/14/2017
A.18	2	TVFR Email dated April 27, 2017	6/14/2017
A.19	2	Fire Service Agency Review dated March 2017	6/14/2017
A.20	2	TVFR Email and Stamped Site Plan dated March 1, 2017	6/14/2017
A.21	1	Site Plan dated June 7, 2017 (Page 1)	6/14/2017
A.22	1	Proposed Front and Left Elevation (Page 2)	6/14/2017
A.23	1	Proposed Back and Right Elevation (Page 3)	6/14/2017
A.24	1	Proposed Floor Plan (Page 4)	6/14/2017
A.25	4	Revised Narrative	9/12/2017
A.26	1	Revised Site Plan	9/14/2017
A.27	2	Revised Elevations	9/14/2017
A.28	1	Revised Floor Plan	9/14/2017
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1N1W26BB - 01700	6/14/2017
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	7/14/2017
C.2	1	Applicant's Acceptance of 180 Day Clock	9/12/2017
C.3	1	Complete Letter (Day 1 – September 29, 2017)	10/10/2017
C.4	3	Opportunity to Comment	12/07/2017
C.5	10	Administrative Decision	12/26/2017