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

NOTICE OF DECISION

Case File: T2-2019-12723

Permit: Verification & Alteration of a Nonconforming Use and Lot of Record Verification

Applicants / Owners: Michael Miller & Heather Poehler

Location: 18015 NW Sauvie Island Road, Portland
Tax Lot 3100, Section 17D, Township 2 North, Range 1 West, W.M.
Tax Account #R971170100 Property ID #R324973

Base Zone: Multiple Use Agriculture – 20 (MUA-20)

Overlays: Willamette River Greenway (WRG) and Flood Hazard (FH)

Proposal Summary: Applicants are seeking a Verification of a Nonconforming Use for two existing dwellings on the subject property. Upon verification that there are two lawful dwellings, the applicants request to renovate the original 1918 dwelling in an effort to restore the home's traditional design. In addition, the applicants have requested a Lot of Record Verification that the subject property was lawfully established.

Decision: Approved with Conditions

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, April 10, 2020 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 at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact Lisa Estrin, Staff Planner at 503-988-0167 or at lisa.m.estrin@multco.us

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: Lisa Estrin Digitally signed by Lisa Estrin
Date: 2020.03.25 11:17:04
-07'00'

By: Lisa Estrin, Planner

For: Carol Johnson, AICP
Planning Director

Date: Friday, March 27, 2020



Applicable Approval Criteria:

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

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

Lot of Record Verification: MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record – Multiple Use Agriculture – 20;

Verification and Alteration of a Nonconforming Use: MCC 39.8300 through MCC 39.8315 Nonconforming Uses; and

Multiple Use Agriculture – 20: MCC 39.4310 Allowed Uses, (A) Single Family Dwelling , MCC 39.4325 Dimensional Requirements and Development Standards

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. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

1. **Permit Expiration** – This land use permit shall expire within two (2) years of the date of the final decision if the development was not established in accordance with this decision and the conditions of approval. [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. **At the time of land use sign-off for building plan check, the property owner or their representative shall:**
 - a. Mark the location of all exterior lighting on the subject site plan. In addition, provide photographs of all lighting on the property to remain. For the 1918 dwelling, all exterior lighting fixtures shall be replaced with fixtures that comply with MCC 39.6850(C)(1) and (2). [MCC 39.4325(J)]
3. **Within two years of the date of the final decision**, the property owners shall demonstrate the connection of the two dwelling units to the same septic drainfield as Sauvie Island Moorage obtained all land use approval through Multnomah County Land Use Planning, gain the necessary land use permits to legalize the connection to the Sauvie Island Moorage septic drainfield or install individual septic systems for the 2-story dwelling constructed in 1918 and the cottage constructed in 1950. [MCC 39.4325(G)]
4. This decision verifies that two legal dwellings exist on the subject property and allows the renovation of the 2-story dwelling originally constructed in 1918. It does not authorize or legalize any other physical improvements that have been completed on the property without land use approval. [MCC 39.1515 & MCC 39.1130(B)]

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:

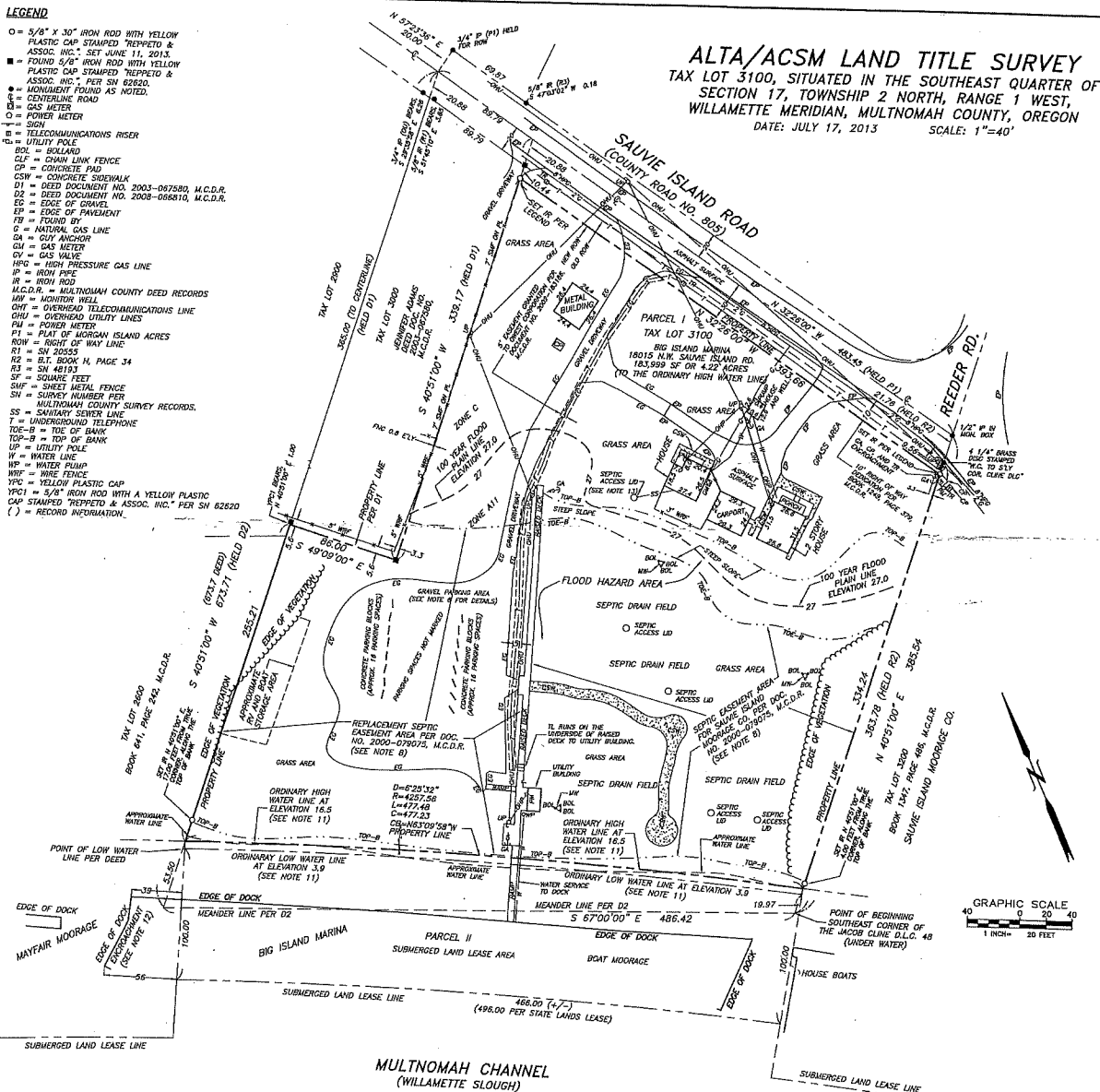
1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, "Prior to land use sign-off for building plan check..." Be ready to demonstrate compliance with the conditions.
2. Contact Right-of-Way Permits at row.permits@multco.us to review your plans, obtain any required 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. Contact Lisa Estrin, Senior Planner, at 503-988-0167 or lisa.m.estrin@multco.us, **for an appointment** for review of the conditions of approval and to sign the building permit plans. Please ensure that any items required under, "At the time of land use sign-off for building plan check..." are ready for land use planning review. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department.

The above must be completed before the applicant can obtain building permits from 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, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

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.

N = 5/4" x 30" IRON ROD WITH YELLOW
 PLASTIC CAP STAMPED "REPTED &
 ASSOC. INC.", SET JUNE 11, 2013.
 ■ = FOUR INCH IRON ROD WITH YELLOW
 PLASTIC CAP STAMPED "REPTED &
 ASSOC. INC.", PER SN 62820.
 * = MONITOR WELL AS NOTED.
 G = CENTERLINE ROAD
 M = METER
 O = POWER METER
 = SIGN
 = TELECOMMUNICATIONS RISER
 = UTILITY POLE
 BOL = BOLLARD
 CLF = CHAIN LINK FENCE
 CP = CONCRETE PAD
 CSR = CONCRETE SIDEWALK
 D1 = DEED DOCUMENT NO. 2003-067580, M.C.D.R.
 D2 = DEED DOCUMENT NO. 2008-068610, M.C.D.R.
 EDG = EDGE OF
 FPG = EDGE OF PAVEMENT
 FSD = FENCED
 G = NATURAL GAS LINE
 H = HIGH WATER
 M = GAS METER
 CV = GAS VALVE
 HPC = HIGH PRESSURE GAS LINE
 PR = IRON PIPE
 R = ROAD
 M.C.D.R. = MULTITHOMSON COUNTY DEED RECORDS
 HW = MONITOR WELL
 DNT = DEED NOTIFICATION RECOMMUNICATIONS LINE
 GHU = OVERHEAD UTILITY LINES
 OM = ORIGIN
 P1 = PLAT OF MORGAN LAND ACRES
 RDN = RIGHT OF WAY LINE
 R1 = ROAD
 R2 = B1, BOOK H, PAGE 34
 S1 = SQUARE FEET
 SF = SQUARE FEET
 SWF = SHEET METAL FENCE
 SN = SURVEY NUMBER PER
 MULTITHOMSON COUNTY SURVEY RECORDS.
 SS = SURVEY
 T = UNDERGROUND TELEPHONE
 TGE-B = TOP OF BANK
 TGP-B = TOP OF BANK
 UP = UTILITY POLE
 W = WATER LINE
 WP = WATER PUMP
 WWF = WIRE FENCE
 YPC = YELLOW PLASTIC CAP
 YPC1 = 5/4" IRON ROD WITH A YELLOW PLASTIC
 CAP STAMPED "REPTED & ASSOC. INC.", PER SN 62820.
 * = RECORD AS NOTED



PARCEL K:

[illegible]

PARCEL N:

A Leasehold Estate as created by that certain Submerged and Submersible Land Lease (16832-ML) dated September 1, 2013, recorded September 1, 2013, as recording No. _____ between The State of Oregon, by and through the Oregon State Land Board and the Department of State Lands, Lessor, and Big Island Marina 18015 LLC, Lessee, for the terms and upon and subject to all the provisions therein contained in and to the following described land:

Commencing at a point on the intersection of the East line of Tax Lot 3100 (Multnomah County Assessor's Map Number 7-26-18) and Ordway Highway Water on the right bank of the Multnomah Channel; Thence riverward along the perpendicular to the threshold of the channel a distance of 100 feet; Thence northward along the perpendicular to the threshold continuing riverward along said perpendicular line a distance of 100 feet; Thence eastward along the perpendicular to the threshold continuing riverward along said perpendicular line a distance of 100 feet; Thence southward along the perpendicular to the threshold continuing riverward from the end of line of Ordinary Low Water as extended past the point of beginning a distance of 100 feet; Thence upstream along the West line of Tax Lot 3100 (Multnomah County Assessor's Map Number 7-26-18) and Ordway Highway Water a distance of 100 feet to the line of Ordinary Low Water; Thence upstream along said line of Ordinary Low Water a distance of 100 feet to the line of Ordinary Low Water.

TO JOSEPH O. TOBIN II, CHICAGO TITLE INSURANCE COMPANY OF OREGON, JUNE PARKER, LLC, AN OREGON LIMITED LIABILITY COMPANY, MIKE HASHIM AND BIG ISLAND MARINA 18015 LLC, AN OREGON LIMITED LIABILITY COMPANY;

THIS IS TO CERTIFY THAT THIS MAP AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011-MINIMUM STANDARD-DETAIL REQUIREMENTS FOR "ALTA/ACSM-LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES TABLE A ITEMS 1, 2, 3, 4, 5A, 6A, 7A, 9, 11B, AND 20 THEREOF. THE FIELD WORK WAS COMPLETED ON JUNE 11, 2013.

SEPTEMBER 9, 2013
STEVEN P. BUCKLES - OREGON RLS 7231 - DATE

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 17, 1986
STEVEN F. BUCKLES
2231
RENEWABLE: 12/31/13

REvised: SEPT. 9, 2013, LEGAL DESCRIPTION

REPPETO & ASSOCIATES, INC.
LAND SURVEYORS

Plaza 125, Building
12730 SE Stark Street
Portland, Oregon 97236
Phone: (503) 408-1511
Fax: (503) 408-2311

DATE: JULY 17, 2013	FILE: H09026-ALTA.DWG
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DRAWN BY: CJH	JOB NO. H0902
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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 is requesting that Multnomah County Land Use Planning verify that there are two lawfully established habitable dwellings on the subject property known as 18015 NW Sauvie Island Road (R324973). The subject property is zoned Multiple Use Agriculture – 20 which allows one single family dwelling per Lot of Record [MCC 39.4310(A)]. The existence of two lawfully established dwellings on the property would be a nonconforming use requiring the County to do a Verification & Alteration of a Nonconforming Use application prior to allowing the original 1918 dated dwelling to be renovated.

A Nonconforming Use is a legally established use, structure or physical improvement in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the use regulations of the base zone. A use approved under criteria that have been modified or are no longer in effect is considered nonconforming.

In addition, the applicant requests a Lot of Record Verification for the subject property. Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot or unit of land involved in the request. The County then verifies that the creation or reconfiguration of the unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. If the unit of land met all the applicable zoning and land division laws in effect at the time, it may be determined to be a Lot of Record.

2.0 Property Description, History and Code Compliance:

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.

(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: The 4.99 acre subject property is located along the southwest shoreline of Sauvie Island adjacent to the Multnomah Channel which forms the southwest boundary of the property. The property is also adjacent to NW Sauvie Island Road to the northeast, Sauvie Island Moorage to the southeast, and to the Mayfair Moorage and a single family residence to the northwest.

The property contains two single-family dwellings located in the northeast quadrant of the property. The two dwellings are separated by a carport. The property also contains a 10.6-ft x 12.6-ft pump house, a 26.4-ft x 24.4-ft outbuilding, a raised deck, a utility building, RV and Boat Storage Area, and various other improvements that support Big Island Marina. The submerged Land Lease Area to the south of the subject property contains a sailboat marina that was approved by way of a Community Service (CS) permit in 1975 (County case file CS 2-75). CS 2-75 allowed a maximum of 38 boat slips of which three spaces were allowed to be occupied as permanent live-aboard spaces.

The County has issues with a number of physical improvements on this site and in the sailboat marina that will need to be rectified to bring the property into compliance with land use regulations. The County has entered into a Voluntary Compliance Agreement to allow the property owners to process the Verification and Alteration of a Nonconforming Use for the two existing dwellings and to allow for renovation if approved. All other issues identified in UR 2012-2619 remain to be dealt with in a separate application(s) in the future (Exhibit B.11).

3.0 Lot of Record Verification

3.1 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: To qualify as a Lot of Record, the subject property, when created or reconfigured, must have (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

The applicant provided a Warranty Deed dated November 16, 1962 (Exhibit A.9) that first described the subject property separate from its parent parcel (Exhibit A.8). In 1962 the property and area was zoned Suburban Residential (SR) and Retail Commercial District (C-3). The C-3 zone did not have a minimum lot size (Exhibit B.8). Between 1958 and 1977, the SR zone had a minimum lot size matrix with three potential minimum lot sizes depending on available services to the property. The largest SR minimum lot size was 40,000 sq. ft. A newly created parcel in the SR zone was also required to have public road frontage, public water service or a private well, and an approved individual sewage disposal system (Exhibit B.5). In addition, the SR zone required **"The minimum average lot width shall be seventy (70) feet, and the minimum lot width at the building line shall be 70 feet. The minimum lot depth shall be one hundred (100) feet"** [Exhibit B.5, MCC 3.153(c)]

The County's tax map (Exhibit B.6) lists the size of the subject property at 4.99 acres. It has 393.66 ft. of road frontage on the public road known as Sauvie Island Road and is 393.66 ft. wide at the building line for both dwellings (Exhibit B.7 and A.3). The depth of the parcel is a minimum of 334.24 ft. (Exhibit B.7). The subject parcel is served by a private well and septic to support the dwellings (Exhibit A.3). *The subject property satisfied all applicable zoning laws in 1962.*

In 1962, the County's Subdivision ordinance (Exhibit B.2) did not regulate the creation of 3 or less parcels. The process to create a new unit of land in 1962 was to write a new legal description and record a new deed or contract that utilized the new legal description. As stated above, a warranty deed including a new legal description for the subject parcel was recorded in November 1962 (Exhibit A.9). *The recordation of this warranty deed in 1962 satisfied all applicable land division laws at the time.*

3.2 MCC 39.3080 LOT OF RECORD – MULTIPLE USE AGRICULTURE-20 (MUA-20).

(A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 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, MUA-20 zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;
- (6) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

Staff: MCC 39.3080(A)(1) through (6) is informational to assist individuals determine relevant dates of code changes that could affect a Lot of Record Verification. *They are not approval criteria to this application.*

- 3.3** (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 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: The subject property is a Lot of Record that is only 4.99 acres. The current MUA-20 zone has a minimum lot size of 20 acres as such the Lot of Record is subject to the provisions of MCC 39.3080(B).

- 3.4** (C) Except as otherwise provided by MCC 39.4330, 39.4335, and 39.5300 through 39.5350, 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.

Staff: At present, the applicant is not proposing to alter the size or configuration of the subject property. *This provision is not applicable to this decision.*

- 3.5** (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 not an area of land described solely for assessment and taxation purposes, an area of land created by the foreclosure of a security interest, or an area of land created by court decree. *The subject property was lawfully established by the recordation of a new legal description as explained in Section 3.1 above.*

4.0 Multiple Use Agriculture – 20:

4.1 MCC 39.4325 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

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: Transportation Planning has not indicated that additional right-of-way may be needed in the future for Sauvie Island Road, so no additional yard area is needed pursuant to MCC 39.4325(D). Based upon the applicant’s Exhibit A.3, the buildings on the property have the following setbacks/yards:

Building Label	Front	Closest Side	Rear
Metal Building	40 +/- ft.	57+/- ft.	400+/- ft.
2-story House (1918)	75+/- ft.	86+/- ft.	245 +/- ft.
House (1940)	95+/- ft.	170+/- ft.	280+/- ft.
Carport	102+/- ft.	125+/- ft.	258+/- ft.
Pump House	32+/- ft.	140+/- ft.	340+/- ft.
Utility Building	370+/- ft.	215+/- ft.	35+/- ft.

This decision cannot authorize or legalize the Utility Building at this time. A community service approval of an accessory building for the sailboat moorage must be applied for an approved before that can happen. *All of these buildings/structures meet the Minimum Yard Dimensions as listed in (C) above.*

4.2 (G) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The County Sanitarian has indicated that the property is served by an existing septic system (Exhibit A.16). The Sanitarian has indicated that the two dwellings are connected to the drainfield for Sauvie Island Moorage and she is uncertain at this time when this occurred

and under what permits (Exhibit B.13). Pursuant to OAR 660-011-00600(1)(f), the connection of two parcels to one septic system constitutes a sewer system. In addition, the connection of two homes to one septic system constitutes a sewer system. Sewer systems are not authorized outside of the urban growth boundary unless an exception is taken. A condition of approval has been included with this permit that the property owner demonstrate the connection is lawful, gain the necessary land use permits to make it so or install individual septic systems for the 2-story house and the cottage.

At present, the improvements on the site have not triggered the County's Stormwater Drainage Control requirements listed in MCC 39.6235. Authorization of any 500 sq. ft. or more impervious surfaces will need to demonstrate that the site can handle the rate of runoff for a 10 year/24-hour storm event. *Through a condition, these criteria will be met.*

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

- (1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or**
- (2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that states he recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.**

Staff: At present, no expansion or replacement of a dwelling is proposed. *This criterion not applicable at this time.*

4.4 (I) Required parking, and yard areas shall be provided on the same Lot of Record as the development being served.

Staff: The subject property has room available for the parking of 4 cars. The County parking code requires 2 parking spaces per single family dwelling unit. Review of the required parking for the sailboat moorage is not part of this application. *Criterion met.*

4.5 (J) All exterior lighting shall comply with MCC 39.6850.

Staff: At present, the applicant has not provided lighting details for the renovation of the 1918 dwelling. A condition of approval has been included requiring that the property owner demonstrate compliance with MCC 39.6850 prior to land use sign off for building plan check. *Through a condition, this criterion will be met.*

5.0 Verification of a Nonconforming Use:

5.1 § 39.8305 VERIFICATION OF NONCONFORMING USE STATUS.

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

(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.

Staff: The subject property has two existing dwellings. Based on Assessment and Taxation records, the two-story dwelling was originally constructed in 1918 (Exhibit B.4). The smaller dwelling, known as the cottage, was constructed in 1940 based on tax records (Exhibit B.4). Multnomah County first implemented zoning in 1955. Both of these dwellings existed before that date so they were legally established. The applicant has provided information that the dwellings have continued to be used as single family dwellings without interruption (Exhibits A.19 through A.21). *The two dwellings qualify as nonconforming uses on the subject property.*

5.2

(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: Both buildings are used as single family dwellings. The applicant has made no claim that goods or services are provided from the dwellings. The buildings are used for residential purposes. There is no fluctuation in the level of activity associated with a single family dwelling. The 2-story dwelling has a main floor of 806 sq. ft., a finished second story of 624 sq. ft., an unfinished basement of 754 sq. ft., and a 114 sq. ft. covered porch (Exhibit B.4). The cottage has one floor that is 660 sq. ft. (Exhibit B.4). A carport exists between the two dwellings to be used by one or both as an accessory building.

Other physical improvements on the property have not been determined to be lawfully established as part of this permit. Future land use actions will be needed by the property owner in establishing their lawful establishment or in obtaining necessary permits.

- 5.3 (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: The two dwellings were established prior to zoning.

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

Staff: At present, planning staff has not identified the need to impose conditions regarding the verification portion of this decision.

- 5.5 (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.

Staff: The applicant has provided information regarding the continued use of the two dwellings during the prior ten years (Exhibits A.19 through A.21).

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

Staff: Land Use Planning has not identified any evidence that the use of the two single family dwellings has ceased in the past twenty years. A comment received from a nearby neighbor has indicated that the homes have been used as dwellings (Exhibit D.1).

6.0 Alteration of Nonconforming Use

6.1 MCC 39.8315 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 will be renovating an existing two-story dwelling originally constructed in 1918. Exterior modifications will involve installing a bay window in the dining room area and removing the aluminum siding to restore the shiplap siding on the dwelling. Any replacement of the shiplap will be minimal and materials will be crafted to match the existing siding as much as possible. Building expansion will occur in a very minor way by the addition of the bay window and small landing off the back of the building.

Interior renovations will include converting the first floor full bath to a powder room (1/2 bath), adding the bay window to the dining area, re-arranging the stairs for better interior flow, removing interior walls to make the living room and dining room larger. The second story will have three bedrooms converted to two, add a second bathroom and creation of a master bedroom area.

The structural re-enforcement will occur to allow for these modifications and to comply with building codes.

6.2 (B) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 39.8305, 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: At this time, state or local health or safety requirements are not being mandated for the occupancy of the home. Some of the structural modifications will strengthen the building's wall to hopefully help it remain intact after a natural disaster such as an earthquake. The removal of the aluminum siding will restore the building's shiplap siding.

6.3 (C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 39.8305, 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 subject property contains two lawfully established dwellings currently in addition to other physical improvements that may or may not be lawful. The renovation of the existing 1918 2-story dwelling will not alter the character of the surrounding area. After construction, no additional noise, vibration, dust, odor, fumes, glare or smoke that is not normally associated with a single family dwelling should occur due to the renovation. Vehicle trips associated with a dwelling are expected at ten trips per dwelling per day currently and will be expected to remain at the same rate. The exterior renovation of the 1918 dwelling will improve its visual appearance by removing the aluminum siding. Single family dwellings are operated 24 hours a day at various times of the year and this operational characteristic will remain. The property owner has not indicated a significant modification of the flora near the homes. As the renovation will not increase impervious surfaces, stormwater drainage or amount should not be affected. Planning staff has not identified any additional impacts that will alter the character of the neighborhood or add the need for public services above the existing situation for the two dwellings.

The renovations of the 1918 2-story dwelling will not create any adverse effects upon the neighborhood.

6.4 (D) Any decision on alteration, expansion or replacement of a nonconforming use shall be processed as a Type II permit as described in Part 1 of this Zoning Code.

Staff: This land use permit was processed through the Type II permit process (Exhibits C.1 through C.3)

7.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Verification and Alteration of a Nonconforming Use existing on the property of two dwellings in the MUA-20 zone. This approval is subject to the conditions of approval established in this report. This decision does not authorize or legalize any other physical improvements that have been completed without approval that are associated with the sailboat marina.

8.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits
- ‘D’ Comments Received

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 T2-2019-12723 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	12/04/2019
A.2	3	Narrative	12/04/2019
A.3*	1	Site Plan	12/04/2019
A.4	1	Principle Dwelling's Building Elevations	12/04/2019
A.5	1	Principle Dwelling's Floor Plan	12/04/2019
A.6	1	Cottage Dwelling Building Elevations	12/04/2019
A.7	4	Title Plant Records Report	12/04/2019
A.8	1	Warranty Deed recorded in Book 1450, Page 301 on December 20, 1950 [TLs 3000 & 3100 combined]	12/04/2019
A.9	2	Warranty Deed recorded in Book 2143, Page 674 – 675 on November 16, 1962 [TL 3100 only]	12/04/2019
A.10	3	Bargain and Sale Deed Instrument #2013-122290 recorded on 09/06/2013 [TL 3100 only]	12/04/2019
A.11	2	Statutory Warranty Deed Instrument #2013-122291 recorded on 09/06/2013 [TL 3100 only]	12/04/2019
A.12	5	Statutory Warranty Deed Instrument #2013-122292 recorded on 09/06/2013 [TL 3100 only]	12/04/2019
A.13	5	Statutory Warranty Deed Instrument #2019-003966 recorded on 01/10/2019 [TL 3100 only]	12/04/2019
A.14	1	Tax Map 2N1W17D with Tax Lot 3100 Highlighted	12/04/2019
A.15	1	Storm Water Cert Placeholder Paper	12/04/2019
A.16	3	Septic Review Certificate #19-251974-SE dated 11/25/2019	12/04/2019
A.17	3	Fire Service Review	12/04/2019
A.18	47	Habitable Dwelling Inspection Report -Principle Dwelling (44 pages) a. Cottage Dwelling Photographs (3 pages)	12/04/2019
A.19	1	PGE Letter Continuous Use Information	12/04/2019
A.20	1	Owner's History	12/04/2019
A.21	1	Historic Tenant's Confirmation	12/04/2019
A.22	15	Transportation Planning Review	12/04/2019
A.23	1	Cottage Floor Plan	3/19/2020

A.24	1	List of Changes	3/19/2020
'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 2N1W17D -03100	12/10/2019
B.2	28	Subdivision Ord Valid 1955 through 11.12.1975	3/10/2020
B.3	2	1962 Lot Sizes	3/10/2020
B.4	1	1962 Zoning Map	3/10/2020
B.5	5	1962 SR Zone	3/10/2020
B.6	1	2N1W17D Tax Map	3/10/2020
B.7	1	Survey 63697	3/10/2020
B.8	9	Commercial Districts 11.15.1962	3/10/2020
B.9	87	CS 2-75 file	3/10/2020
B.10	4	Property Records for R324973	3/09/2020
B.11	6	Voluntary Compliance Agreement (UR 2012-2619)	3/10/2020
B.12	1	10.05.1077 Zoning Map	3/10/2020
B.13	1	Sanitarian Email regarding Septic	3/19/2020
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (Day 1)	12/20/2019
C.2	3	Opportunity to Comment	2/25/2020
C.3	15	Administrative Decision	3/27/2020
'D'	#	Comments	Date
D.1	1	Orloff Comment	2/27/2020