

NOTICE OF DECISION

Case File: T2-2020-13142
Permit: Adjustment
Applicant: Wendy Wellott **Owner:** Wendy Leader
Location: 32526 E. Historic Columbia River Highway, Corbett
Tax Lot 1700, Section 04BB, Township 1 South, Range 4 East, W.M.
Tax Account #R649730070 Property ID #R237755
Base Zone: Springdale Rural Center (SRC)
Overlays: None
Proposal Summary: Adjustment to the minimum yard requirements (setbacks) for an existing accessory building (garage). A previous owner obtained County approval for the garage; however, they placed the building in the wrong location and failed to meet the minimum 30 feet setback from the rear property line. Approving this adjustment allows the garage to stay in its current location, 25 +/- feet from the rear property line.

Decision: Approved with Conditions

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, May 20, 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 Chris Liu, Staff Planner at 503-988-2964 or at chris.liu@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.

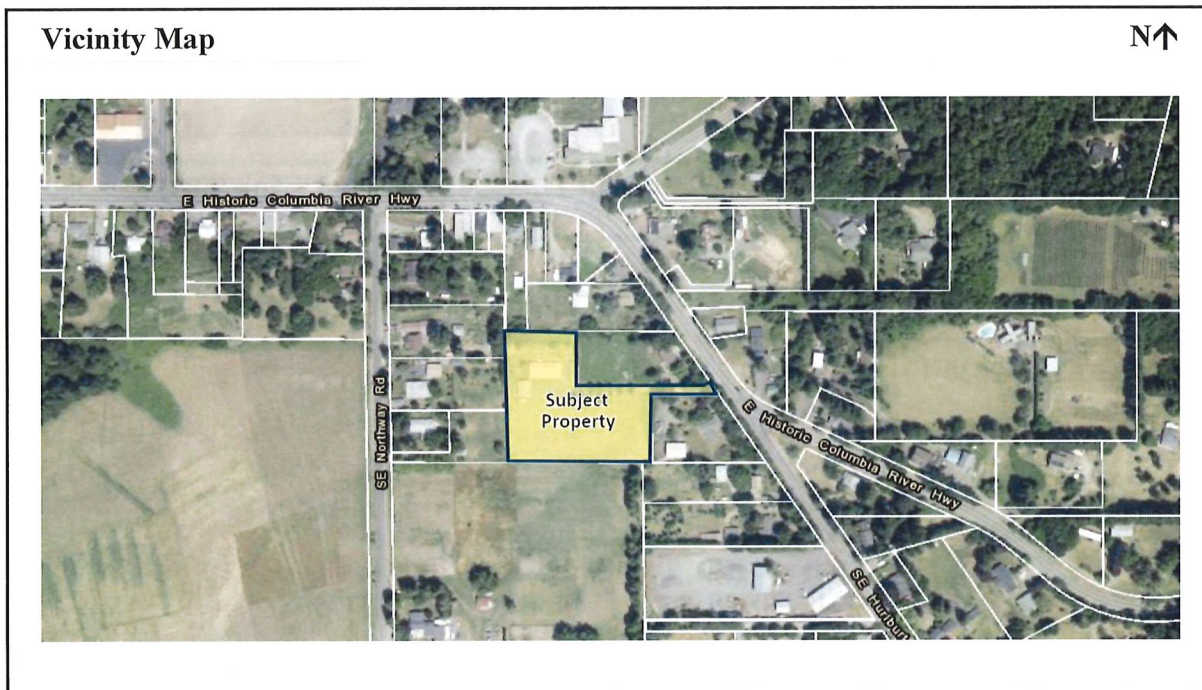
Issued by: Chris Liu Digitally signed by Chris Liu
Date: 2020.05.05 06:55:33
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By: Chris Liu, Planner

For: Carol Johnson, AICP
Planning Director

Date: Wednesday, May 6, 2020

Instrument Number for Recording
Purposes: #2017-071499



Applicable Approval Criteria:

Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3110 Lot of Record – (SRC zone), MCC 39.4560 Allowed Uses – (F) Accessory Structures, MCC 39.4575 Dimensional Requirements and Development Standards – (C), (D), MCC 39.8205 Scope, and MCC 39.8210 Adjustment Approval Criteria.

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link: **Chapter 39 - Zoning Code**

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. 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. Record pages 1 through 2 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]

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 PROPOSAL:

Staff: The Applicant requests an adjustment to the minimum yard requirements (setbacks) for an existing accessory building (garage). A previous owner obtained County approval for the garage; however, they placed the building in the wrong location and failed to meet the minimum 30 feet setback from the rear property line. Approving this adjustment will allow the garage to remain at its current location, 25 +/- feet from the rear property line.

The subject property is located in rural Unincorporated East Multnomah County and outside the Metro urban growth boundary. The property is adjacent to the E. Historic Columbia River Highway, but is not within the Columbia River Gorge National Scenic Area. Existing development on the property includes the garage subject to this application and a single-family dwelling.

2.0 GENERAL PROVISIONS:

2.1 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.

(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

Staff: This adjustment application will resolve the current compliance issue related to the garage not meeting the minimum required setback from the rear property line. There are no active compliance cases associated with the subject property. Staff is unaware of any other compliance issues on the subject property. *Criteria met.*

2.2 MCC 39.3005 Lot of Record – Generally

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

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

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

Staff: The subject property is Lot 3 of Partition Plat 1993-2. The subject property remains in the same configuration as the approved partition plat (Exhibit B.4). Therefore, the subject property remains a Lot of Record. *Criteria met.*

2.3 MCC 39.3110 Lot of Record - (SRC)

(A) In addition to the standards in MCC 39.3005, for the purposes of the BRC district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

(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 39.4495, 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 39.4480, 39.4485, 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.

(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: As stated in section 2.2 above, the subject property is Lot 3 of Partition Plat 1993-2 and a Lot of Record. The subject property is not an area of land described as a tax lot 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 (Exhibit B.4). *Criteria met.*

3.0 SRC ZONE CRITERIA:

3.1 MCC 39.4560 Allowed Uses

(F) Accessory Structures subject to the following:

(1) The Accessory Structure is customarily accessory or incidental to any use permitted or approved in this base zone and is a structure identified in the following list:

(a) Garages or carports

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

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

Staff: The accessory building (garage) was authorized by the County in 1999 (Exhibit B.3). No alterations or additions are proposed as part of this application. The garage does not have any features that would support use of the building as a dwelling. No other accessory structures exist on the property at this time. *Criteria met.*

3.2 MCC 39.4575 Dimensional Requirements and Development Standards

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 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: As described above, the garage was built within the minimum required 30 feet rear setback. The applicant requests an adjustment to the minimum required 30 feet rear setback to allow the garage to stay in its current location, 25 +/- feet from the rear property line. Staff addresses the adjustment approval criteria in section 4.0 below. The subject property abuts E. Historic Columbia River Hwy., which is not maintained by the County Transportation Division.

4.0 ADJUSTMENT CRITERIA:

4.1 MCC 39.8205 Scope

(A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) Overlays are prohibited. Additionally, reductions to the fire safety zones in the Commercial Forest Use base zones are not allowed under the Adjustment process; and

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

(3) Reduction of yards/setback/buffer/re-source protection setback requirements within the Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and

(4) Minor modification of yards and setbacks in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.

Staff: The applicant requests an adjustment to the dimensional standards; specifically, the minimum required 30 feet rear setback for a garage in the SRC zone. Approving this adjustment allows the garage to stay in its current location 25 +/- feet from the rear property line, which is within the 40% reduction limit allowed by this section. The application does not request a reduction or modification listed in (A)(1) – (A)(4) above. *Criteria met.*

4.2 MCC 39.8210 Adjustment Approval Criteria

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (F) are met:

(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

(B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

Staff: As noted above, the garage was approved by the County in 1999 and has remained on the property since that time. Detached garages are an allowed use in the SRC zone and many of the neighboring properties have similar structures. Some of the adjacent properties along the rear property line have trees and other vegetation that provide privacy. No neighboring property owners voiced concerns regarding negative effects to the livability of the neighborhood from the proposed adjustment. Therefore, no negative impacts from the proposed adjustment are known and no mitigation measures appear necessary. *Criteria met.*

4.3 (C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the base zone; and

(D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and

Staff: Only a single adjustment to the minimum required rear setback is proposed by the applicant. The property is within the SRC zone; it is not zoned EFU or CFU. *Criteria met.*

4.4 (E) If in the Rural Residential (RR), Rural Center (RC), Burlington Rural Center (BRC), Orient Residential (OR), Orient Commercial Industrial, Pleasant Hill Rural Center, or Springdale Rural Center base zone, the proposal will not significantly detract from the livability or appearance of the residential area.

(F) The adjustment must be in support of a lawfully established use or in support of the lawful establishment of a use

Staff: The adjustment allows the existing garage to remain in its current location 25 +/- feet from the rear property line. When the County approved the garage in 1999, the site plan showed the garage would be built 30 feet from the rear property line. Because it was placed in the wrong location, approval of an adjustment will resolve that issue and allow the garage to remain 25 +/- feet from the rear property line. Provided building permits were obtained following the County's authorization of the garage in 1999, no additional permits would be necessary to bring the building into compliance.

As noted above, the garage was approved by the County in 1999 and has remained on the property since that time. Detached garages are an allowed use in the SRC zone and many of the neighboring properties have similar structures. Some of the adjacent properties along the rear property line have trees and other vegetation that provide privacy. No neighboring property owners voiced concerns regarding negative effects to the livability or residential nature of the neighborhood from the proposed adjustment. *Criteria met.*

5.0 CONCLUSION:

Based on the findings and other information provided above, the applicant has carried the burden necessary for an Adjustment to the minimum required setback for the existing garage in the SRC zone. Approval of this Adjustment allows the garage to remain in its current location, 25 +/- feet from the rear property line. This approval is subject to the conditions of approval established in this report.

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. All other exhibits are available for review in Case File T2-2020-13142 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	03.31.2020
A.2	1	Project Narrative	03.31.2020
A.3	1	Copy of Partition Plat Map	03.31.2020
A.4	1	Site Plan	03.31.2020
A.5	1	Elevation Drawings for existing garage	03.31.2020
A.6	1	Court Document RE: Name Change of Owner	04.10.2020
'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1S4E04BB -01700	03.31.2020
B.2	1	Department of Assessment, Records and Taxation (DART): Map for 1S4E04BB -01700	03.31.2020
B.3	7	Copy of County building plan approval for the existing garage.	04.16.2020
B.4	2	Copy of Partition Plat No. 1993-2	04.16.2020

'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	04.02.2020
C.2	3	Opportunity to Comment	04.16.2020
C.3	9	Administrative Decision	05.06.2020