
NOTICE OF DECISION

Case File: T2-2019-12802

Permit: Lot of Record Verification

Applicants: Mark Martinez **Owners:** Jesus Martine Jr. Trust and Mary L. Martinez Living Trust

Location: 14445 NW Old Germantown Road, Portland
Tax Lot 1300, Section 09C, Township 1 North, Range 1 West, W.M.
Tax Account #R026701600 Property ID #R106141

Base Zone: Rural Residential

Overlays: Significant Environmental Concern for Streams (SEC-s)
Significant Environmental Concern for Wildlife Habitat (SEC-h)

Proposal Summary: The applicant requests a Lot of Record Verification for 14445 NW Old Germantown Road, also known as tax lot 1N1W09C - 01300. The SEC permits are not required given this proposal does not include any development request.

Determination: The subject property known as 1N1W09C-01300 is a Lot of Record in its current configuration.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, June 9, 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 case planner Lisa Estrin 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.

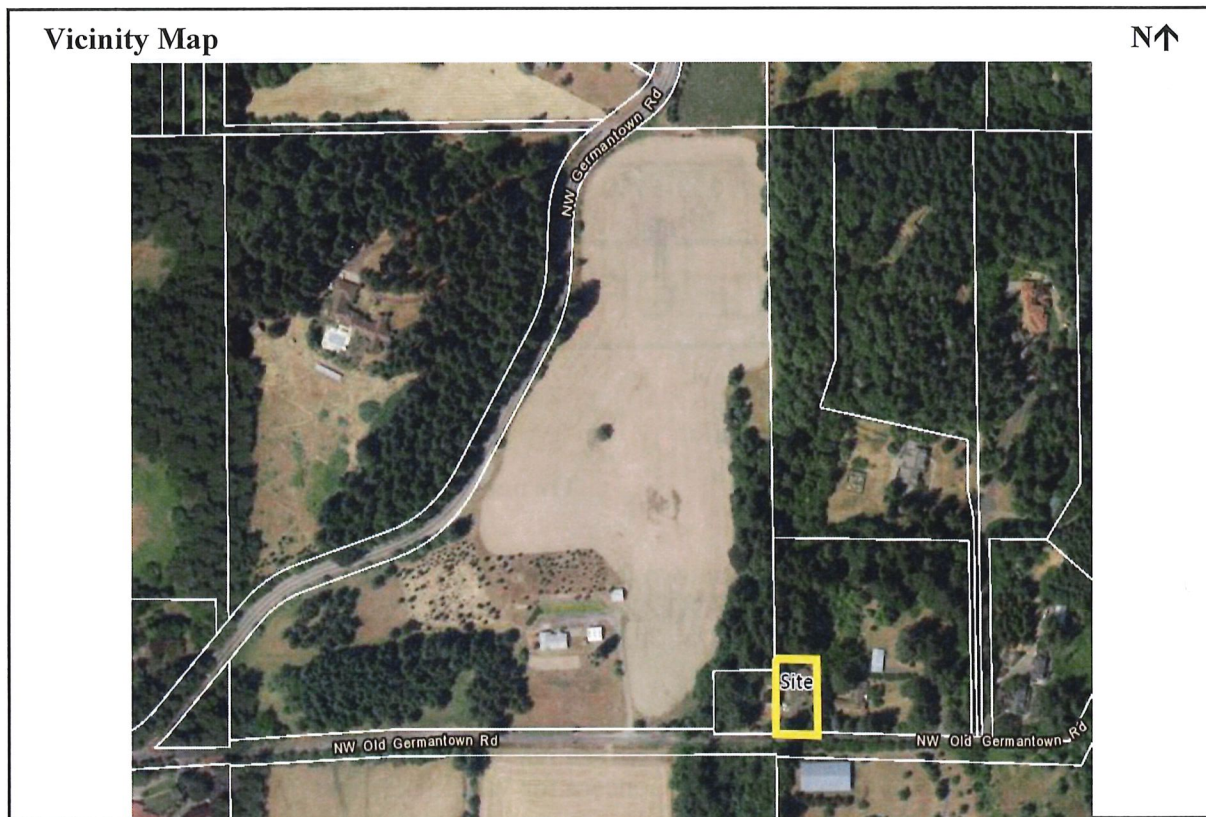
Issued by: Lisa Estrin

Digitally signed by Lisa Estrin
Date: 2020.05.20 11:22:03 -07'00'

By: Lisa Estrin, Senior Planner

For: Carol Johnson, AICP
Planning Director

Date: Tuesday, May 26, 2020



Applicable Approval Criteria:

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

Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, and MCC 39.3090 Lot of Record – Rural Residential (RR)

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

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

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

Findings of Fact

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

1.0 Project Description

Staff: The applicant requests a Lot of Record Verification for tax lot 1N1W09C – 01300 (the subject property). The subject property is located adjacent to NW Old Germantown Road and is identified as 14445 NW Old Germantown Road. The subject property is located in the West Hills in unincorporated Multnomah County in the Rural Residential (RR) zone. The subject property is 0.37 of an acre (16,117.2 sq. ft.) and is outside of the urban growth boundary in the rural reserves.

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 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.

Staff: As noted in Section 1.0 above, this application is for a Lot of Record Verification, which does not require the County to approve development, a land division, a property line adjustment, or a building permit. Therefore, this standard is not applicable.

3.0 Lot of Record Criteria

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 has provided a chain of title (Exhibit A.3), a Statutory Warranty Deed recorded in 2015 transferring the property to the current owners (Exhibit A.4), and recording information from a deed transaction dated July 11, 1927 in Book 312 & 313 (Exhibit A.5) which describes the subject parcel. The applicant identifies that the 1927 description (Exhibit A.5) matches the current description contained in the 2015 deed (Exhibit A.4). Both of these legal descriptions describe the area contained in tax lot 1N1W09C-01300 as shown in Graphic #1.



Graphic #1

Planning staff reviewed the chain of title (Exhibit A.3) and noted that there are additional deeds with legal descriptions that need to be considered other than just Exhibit A.4 and A.5. Looking at the various deeds listed in Exhibit A.3, the subject property was a separate unit of land in 1927. The legal description contained in the deeds from 1943/1944 up until 1997 describes two areas of land – the subject property (1N1W09C-01300) and the area contained in tax lot 1N1W08D – 00200 (see Graphic 2). These two units of land are described as two separate areas but are then connected by the word “also” in these deeds (Exhibit B.7 through B.13).



Graphic #2

Planning staff has considered whether there is any evidence of an intent to combine these two separate units of land into a single parcel from 1943/1944 to 1997. There is limited zoning activity during this 50+ year time period. The County commenced interim zoning in 1953 and applied permanent zoning to the subject property on July 10, 1958. The subject property was zoned F-2 (Exhibit B.4.a). In November 1958, the property owner, Mr. Messer and his builder obtained a building permit to construct a new single family dwelling. The drawings in the building plans and on the building permit do not clarify the intent of the legal description (Exhibit B.18). Planning staff found no other permits in the County records to consider. Since the intent of the legal description is unclear, the County finds that the intent of the word “also” in the legal description was to transfer two separate units of land and not combine them into a single parcel. Based on this finding of intent, the creation of the subject property in 1927 was before zoning and so it satisfied all applicable zoning laws at the time. *Criterion MCC 39.3005(B)(a) has been met.*

The creation of the subject property in 1927 occurred before the County regulated the creation of individual units of land outside of a subdivision plat (four or more lots created at one time). At the time of its creation it satisfied all applicable land division laws in effect at the time. *Criterion MCC 39.3005(B)(b) has been met.*

The subject property known as 1N1W09C-01300 is a Lot of Record.

- 3.2 (c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.**

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**
- 2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

Staff: The subject property is zoned Rural Residential (RR). The RR zone is not an acknowledged unincorporated community designation. *This criterion is not applicable.*

- 3.3 MCC 39.3090 LOT OF RECORD – RURAL RESIDENTIAL (RR).**

(A) In addition to the standards in MCC 39.3005, for the purposes of the RR 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.**

Staff: The above section is informational only and is not an approval criterion.

- 3.4 (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 39.4395, 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 16117 sq. ft. in size and is below the minimum lot size in the RR zone (5 acres). It meets the minimum front lot line length with 100 feet and it is adjacent to NW Old Germantown Road. The subject property was found in Finding 3.1 to be a Lot of Record. If a new use was to be proposed under the Allowed Use, Review Use or Conditional Use provisions, the County could authorize the use if it met all other zoning requirements.

- 3.5 (C) Except as otherwise provided by MCC 39.4380, 39.4385, 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: The applicant is not proposing to transfer or convey any portion of the subject property as part of this request. *Criterion not applicable at this time.*

3.6 (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 a unit of land described in a legal description. It was created in 1927. It is not just a tax lot for taxation purposes. It was not created by the foreclosure of a security interest and was not created by court decree. *The subject property is a Lot of Record.*

4.0 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 T2-2019-12802 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	12/26/2019
A.2	1	Cover Page	12/26/2019
A.3	3	Fidelity National Title: Title Plant Records Report	12/26/2019
A.4	3	Statutory Warranty Deed recorded as Instrument #2015-028494 on March 18, 2015	12/26/2019
A.5	2	Bargain and Sale Deed recorded on Page 312-313 on July 26, 1927	12/26/2019
‘B’	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1N1W09C -01300 (#R026701600)	12/26/2019
B.2	1	Department of Assessment, Records and Taxation (DART): Map with 1N1W09C -01300 (#R026701600)	12/26/2019
B.3	1	Survey 27455 (1968)	4/10/2020

B.4	10	Various Maps a. 1962 Zoning Map for 1N1W08 b. 10.5.1977 Zoning Map for 1N1W08 c. 10.6.1977 Zoning Map for 1N1W08 d. 8.14.1980 Zoning Map for 1N1W08 e. 01.07.1993 Zoning Map for 1N1W08 f. 10.7.1995 Zoning Map for 1N1W08 g. 6.08.1999 Zoning Map for 1N1W08 h. 1962 Zoning Map for 1N1W09C i. 10.5.1977 Zoning Map for 1N1W09C j. 10.6.1977 Zoning Map for 1N1W09C k. 8.14.1980 Zoning Map for 1N1W09C l. 10.13.1983 Zoning Map for 1N1W09C m. 10.7.1995 Zoning Map for 1N1W09C n. 6.08.1999 Zoning Map for 1N1W09	4/10/2020
B.5	1	Andrews Acres Subdivision Plat (reduced to 11" x 17")	4/10/2020
B.6	2	Warranty Deed recorded in Book 561, Page 516-517 on August 8, 1940	4/10/2020
B.7	2	Warranty Deed recorded in Book 830, Page 298-299 on April 21, 1944	4/10/2020
B.8	1	Warranty Deed recorded in Book 1781, Page 317 on April 30, 1956	4/10/2020
B.9	1	Warranty Deed recorded in Book 1930, Page 517 on December 2, 1958	4/10/2020
B.10	1	Warranty Deed recorded in Book 755, Page 1633 on October 16, 1970	4/10/2020
B.11	2	Warranty Deed recorded in Book 968, Page 1297-1298 on January 22, 1974	4/10/2020
B.12	1	Bargain and Sale Deed recorded in Book 1281, Page 1340 on July 21, 1978	4/10/2020
B.13	2	Deed Creating Estate by the Entirety recorded as Instrument #95-56048 on May 11, 1995	4/17/2020
B.14	1	Warranty Deed recorded as Instrument #97-129063 on August 25, 1997	4/17/2020
B.15	2	Bargain and Sale Deed recorded as Instrument #2003-137372 on June 16, 2003	4/17/2020

B.16	5	Warranty Deed recorded as Instrument #2005-028713 on February 18, 2005	4/17/2020
B.17	3	Conservator's Deed recorded as Instrument #2012-067370 on June 1, 2012	4/17/2020
B.18	4	Multnomah County Planning Commission Residential Building Permit application #15826 dated 11-20-1958 (a) Building Permit Drawings	4/21/2020
B.19	4	Rural Residential Code (1995 version)	4/22/2020
B.20		Commercial Forest Use Code (1995 version)	4/22/2020
B.21	24	Land Division Code (1996 version)	4/22/2020
'C'	#	Administration & Procedures	Date
C.1		Complete letter (Day 1 – 1/24/2020)	1/24/2020
C.2	2	Opportunity to Comment	4.08.2020
C.3	9	Administrative Decision	5.26.2020