

To the Multnomah County Land Use Planning Division

Application for Lot of Record Verification and Declaration of Legally Established  
Habitable Dwelling

**T2-2021-15041**

by Dan and Jennifer Prince

(Applicants' Supplemental Narrative, March 7, 2022)

MCC 39.2000 defines a Lawfully Established Dwelling as follows:

A dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include zoning, land division and building code requirements. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a dwelling unit were obtained and all qualifying permitted work completed.

The Applicants' Aug. 27 narrative asserted that the subject dwelling falls within this definition, as follows:

[A]s noted above, applicant cannot produce evidence that "all permits necessary to qualify the structure as a dwelling unit were obtained..." Applicant has provided evidence of the septic system permit application and the electrical permit. According to the City of Gresham, records of permits have been discarded over the years. As also noted above, the Applicant will submit to current inspections of the dwelling to confirm that "all qualifying permitted work (was) completed."

In its Oct. 6 completeness letter, County staff requested additional information of compliance with MCC 39.2000. The balance of this Supplemental Narrative replies to that request.

Zoning Code criteria – The Applicants submit herewith a Feb. 27, 2022 memo from Peter Finley Fry, AICP, opining that the subject dwelling was constructed in compliance with the zoning laws in effect at the time of its establishment (Exhibit 23). Mr. Fry, who spent well over a decade on the Planning Commission, determines from public records that a dwelling was first established at this location

in 1984. As such, he concludes that the County's 1982 zoning code constitutes the relevant regulatory framework.

Mr. Fry notes that:

- the dwelling is located on Lot 100 (immediately north of the Applicants' property, Tax Lot 700), which was then 80 acres in size and zoned MUF-38; and
- as such, the dwelling was allowed outright.

He proceeds to list then-applicable zoning code standards, with which he finds it in compliance.

Land Division criteria – As detailed in the Original Narrative, the County approved in 1988 and 2005 applications to relocate lines bordering each involved parcel. As such, the County has already deemed the land division criteria met and each involved lot (Nos. 100 and 700) to be lawfully established.

Building Code criteria – The County's zoning code applies, but the State of Oregon has long maintained the building code applicable to the subject dwelling. As such, all building permits for residential construction are issued under a document now called the Oregon Residential Specialty Code.

Like those issued pursuant to any zoning code, authority to issue building permits rests (in almost all locations) with Oregon municipalities. The Original Narrative described work we undertook with agency staff to recover permit records that pertain to the subject dwelling. County staff reported that it (a) possesses no such records and (b) has long contracted with other municipal agencies to issue such permits. Specifically:

- since the early 1980's, the County has contracted with the City of Gresham to handle building permits for the Corbett area; and
- since the 1989, it contracted with the City of Portland for inspection and permitting services for approval of subsurface septic systems.

The Original Narrative goes on to describe exhaustive efforts to recover permits issued for the subject dwelling. Each agency reported to us that it has not retained records dating to the 1980's.

Notwithstanding the lack of extant permit paperwork, considerable circumstantial evidence shows that the subject dwelling was constructed in compliance with the building code requirements. For example, the Applicants recovered and submitted, as Exhibit 12 to the Original Narrative, a Site Evaluation Report. That report, part of the land feasibility study process for the installation of a subsurface septic system, was issued on June 19, 1989 and shows that the soils recovered in the test pits at the site were Suitable for a “Drop Box Serial distribution system.”

We also recovered and submitted a “Report of Subsurface Sewage System” from the files of Portland’s Bureau of Environmental Services. This document bears the notation, “Permit No 11562” and shows that a 1,000 gallon septic tank and 265 lineal feet of drainfield absorption trenching were installed. The system was inspected on Sept. 21, 1989. Exhibit 14 to the Original Narrative. According to these records, the subject dwelling is supported by a valid septic system permit.

The Applicant also submitted:

- evidence of an electrical permit and a septic system permit application; and
- current photographs of the interior of the home showing the kitchen and bathroom fixtures, the electrical panel, the electric meter, and parts of the heating system.

This evidence demonstrates that the characteristic features of a habitable dwelling are present, as well as permitting history demonstrating a likelihood of permit approval.

The Applicants also submit the March 7, 2022 declaration of John Chamberlin, who attests that agency staff fully permitted the subject dwelling for occupancy circa 1989 (Exhibit 19). Mr. Chamberlin substantiates the upshot of the written records described above, *i.e.*, that the prior owners of the Prince parcel (the Steensons) obtained all necessary building permits. Because the subject dwelling is located on Lot 100, Mr. Chamberlin also signals his consent to this application.

As final additional evidence that the subject dwelling was constructed in compliance with the building codes in effect at the time of its establishment, the Applicants submit herewith:

- a March 3, 2022 email from PGE attesting that it installed on Oct. 28, 1987 the transformer servicing the subject dwelling (Exhibit 20);

- a Permit document from City of Gresham Electrical Safety Section dated August 3, 1990, and showing two inspections dated November 30, 1990 and April 4, 1991 (Exhibit 21); and
- permits and final inspection supporting the 2016 installation of electrical service for an outbuilding accessory to the subject dwelling (Exhibit 22).

In conclusion, the Applicants submit evidence demonstrating that the subject dwelling was at the time of establishment in compliance with zoning, land division, and building code requirements, and should therefore be deemed under the Multnomah County Code to be a “lawfully established dwelling.”