





**Applicable Approval Criteria:**

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

**Multnomah County Code (MCC):** Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record – (MUA-20)

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 the property identified as 29302 SE Lusted Rd, Gresham (subject property). The application does not propose any new development at this time.

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 parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration.

### **2.0 Property Description & History:**

**Staff:** The subject property is located in unincorporated east Multnomah County in the area known as West of Sandy River. The property is zoned Multiple Use Agriculture – 20 (MUA-20) and is located outside of Metro’s Urban Growth Boundary (UGB). Taxation records indicate that the subject property has an existing single family dwelling with an attached garage and a shed.

### **3.0 Public Comment:**

**Staff:** Pursuant to MCC 39.1105 (Exhibit C.2), planning staff mailed a notice of application and invitation to comment on the proposed application to the required parties. Staff did not receive any public comments during the 14-day comment period.

### **4.0 Code Compliance and Applications Criteria:**

#### **§ 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:** This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

As noted in Section 1.0 above, this application is a request 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 at this time.*

## **5.0 Lot of Record Criteria:**

### **5.1 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.)**

**(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:** To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the MUA-20 zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

The applicant provided five deed(s) (Exhibit A.2 through A.6) to support the Lot of Record request. The earliest deed provided was recorded in March 1964 and contains a legal description matching the current configuration of the subject property (Exhibit A.6). In 1964, the subject property was zoned Suburban Residential (SR) per historical County zoning maps (Exhibit B.2 & B.3).

The SR zone had a minimum lot size requirement ranging from 10,000 to 40,000 square feet depending on the services in the area. It also required a minimum average lot width of 70 feet, a minimum average lot depth of 100 feet, and a requirement of public road frontage or other access deemed safe and convenient (Exhibit B.4). To establish a lot that is (a) 40,000 sq ft. or more, (b) between 40,000 to 20,000 sq. ft., or (c) between 20,000 sq. ft. to 10,000 sq. ft., the property would need to have the following characteristics:

Lot Area	Minimum Standards
40,000 sq. ft.	<ul style="list-style-type: none"> <li>• Approved public or private water supply</li> <li>• Approved individual sewage disposal system</li> <li>• Approved public access</li> </ul>
20,000 sq. ft.	<ul style="list-style-type: none"> <li>• Approved public water supply</li> <li>• Approved individual sewage disposal system</li> <li>• Approved public access</li> </ul>
10,000 sq. ft.	<ul style="list-style-type: none"> <li>• Approved public water supply</li> <li>• Approved public sewer or State approved cesspool</li> <li>• Approved public access</li> </ul>

The subject property is 2 acres, abuts SE Lusted Road (a public road), and has a front lot line length of 128+ feet (Exhibit A.6). The property has an average width of 128.42 feet and an average depth of 678.40 feet. The Lusted Water District serves the subject property and the site has an on-site sewage disposal system for the dwelling. The applicant provided a current deed for the subject property (Exhibit A.6) that contains a legal description that matches the recorded 1964 legal description (Exhibit A.2).

*The subject property complied with all applicable zoning laws at the time of its creation or reconfiguration.*

In 1964, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the March 1964 deed (Exhibit A.2), the applicable land division laws were satisfied.

*Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1964.*

**5.2 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.**

**(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:** Section (A) is for information purposes. The subject property has less than the minimum lot size for new parcels or lots in this zone and is subject to (B) above. It may be occupied by any allowed, review or conditional use when in compliance with the other requirements of this district provided it remains a Lot of Record. *Criteria met.*

**(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:** Subsection (C) is for informational purposes. The property owner is not proposing to convey any portion of the lot at this time. *Criterion met*

**(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 discussed above under section 5.1, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject tracts are not an area of land created by the foreclosure of a security interest or created by court decree. *Criteria met.*

*Based on the findings in 5.1 & 5.2, the subject property is a single Lot of Record.*

## **6.0 Exhibits**

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits

All other exhibits are available for review in Case File T2-2021-14626 at the Land Use Planning office. Please contact staff planner, Lisa Estrin at 503.988.0167 or via email at [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@multco.us)

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	05/06/21
A.2	1	Warranty Deed recorded in Book 2211, Page 2291 on March 10, 1964	05/06/21
A.3	1	Warranty Deed recorded in Book 102, Page 287 on August 7, 1964	05/06/21
A.4	2	Contract recorded in Book 1380, Pages 1898 & 1899 on September 7, 1979	05/06/21

A.5	2	Warranty Deed recorded in Book 1993, Pages 899 & 900 on April 7, 1987	05/06/21
A.6	3	Warranty Deed recorded at 2021-009065 on January 1, 2021	05/06/21
<b>'B'</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	3	Assessment and Taxation Property Information for 1S4E18AC-00800 (Alt Acct#R994180920)	05/05/21
B.2	1	1962 Zoning Map	8.20.21
B.3	1	1977 Zoning Map	8.20.21
B.4	5	1964 Suburban Residential (SR) Zoning Code	8.20.21
<b>'C'</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	1	Complete letter (Day 1 – June 4, 2021)	06/22/21
C.2	2	Opportunity to Comment	06/25/21
C.3	8	Administrative Decision	08/27/21