



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Approved with Conditions

Permit Type: Nonconforming Use Verification and Alteration

File No. Z0315-24

Applicant’s Proposal: The applicant is proposing a Non-Conforming Use verification for a detached garage built in 1962, that does not comply with the 10-foot side setback standard. In addition, they are retroactively proposing an alteration for a non-conforming use for an attic addition on top of the garage in 2019.

Decision Date: December 5, 2024

Deadline for Filing Appeal: December 17, 2024, at 4:00 pm.

Issued By: Mya Ganzer, Planner 1, mganzer@clackamas.us, 503-742-4520

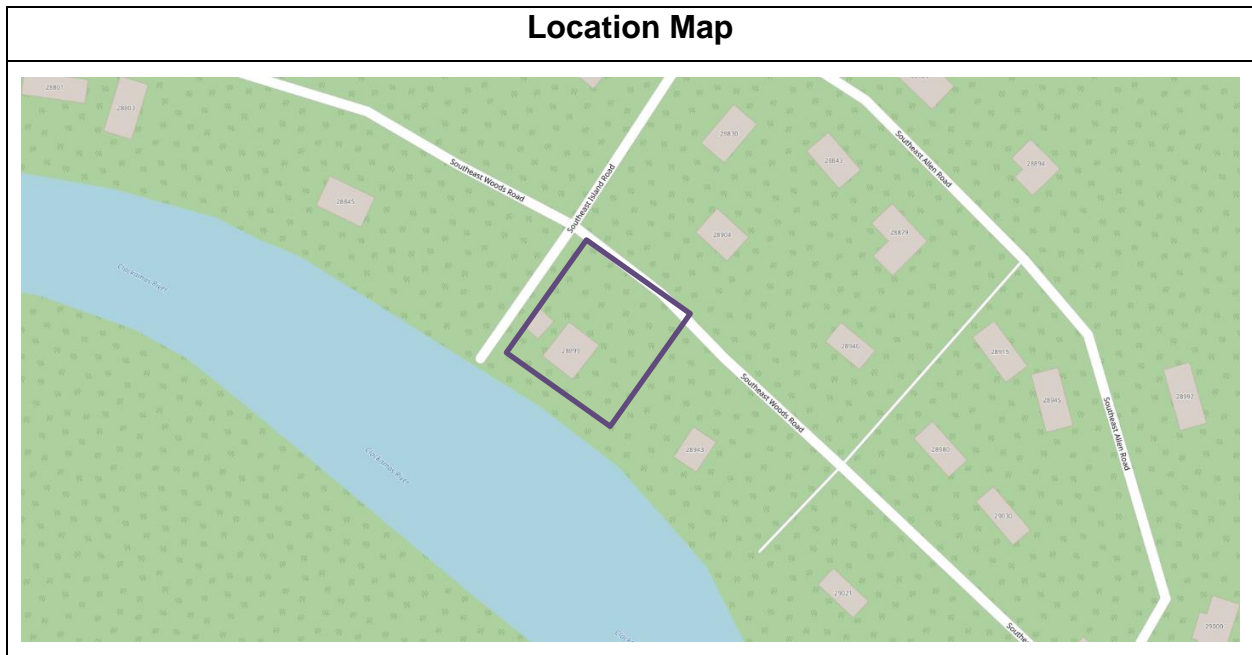
Applicant: Pamela Jewell

Owner of Property: Pamela Jewell

Zoning: Rural Residential Farm Forest 5-Acre (RRFF5)

Assessor’s Map & Tax Lot(s): 33E13AA05100

Site Address: 28899 SE Woods Rd, Eagle Creek, OR 97022



Community Planning Organization (CPO) for Area:

EAGLE CREEK-BARTON CPO

THOMAS GRISWOLD, 503-680-3824, EAGLECREEKCPO@GMAIL.COM

Community Planning Organizations (CPOs) are part of the county's community involvement program. They are advisory to the Board of County Commissioners, Planning Commission and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact Clackamas County Community Engagement at 503-655-8751.

Opportunity to Review the Record and Decision: The complete decision, including findings and conditions of approval, and the submitted application are available for review online at <https://accela.clackamas.us/citizenaccess/>. Select the **Planning** tab and enter the file number to search. Select **Record Info** and then select **Attachments** from the dropdown list, where you will find the submitted application. A copy of the decision, application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost by contacting the Planner listed above. Copies of all documents may be purchased at a cost established by the County fee schedule.

Appeal Rights: **This decision will not become final or effective until the period for filing an appeal with the County has expired without the filing of an appeal.** Any person who is adversely affected or aggrieved or who is entitled to written notice of the decision pursuant to Subsection 1307.09(C) of the Clackamas County Zoning and Development Ordinance may appeal this decision to the Clackamas County Land Use Hearings Officer by filing a written appeal. An appeal must include a completed Appeal Form available at www.clackamas.us/planning/supplemental.html and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified above.

Appeals may be submitted in person during office hours (8:00 am to 4:00 pm Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

503-742-4545: ¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cán Biên dịch hoặc Phiên dịch? | 번역 또는 통?

ALTERATION APPROVAL PERIOD AND TIME EXTENSION ZDO SECTION 1206.08

This is the only notice you will receive of this deadline.

- A. Approval Period: Approval of an alteration of a nonconforming use, pursuant to Subsection 1206.07(B) or (C), is valid for a period of two years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this two-year period, the approval shall be implemented, or the approval will become void.
1. Implemented means all major development permits shall be obtained and maintained for the approved alteration of a nonconforming use, or if no major development permits are required to complete the development contemplated by the approved alteration of a nonconforming use, implemented means all other necessary County development permits (e.g., grading permit, building permit for an accessory structure) shall be obtained and maintained.
 - a. A major development permit is:
 - i. A building or manufactured dwelling placement permit for a new primary structure that was part of the alteration of a nonconforming use approval; or
 - ii. A permit issued by the County for parking lot or road improvements required by the alteration of a nonconforming use approval.
 2. Notwithstanding Subsection 1206.04(A), the allowed discontinuance period for a nonconforming use approved for an alteration pursuant to Subsection 1206.07(B) is extended to 24 consecutive months from the date of implementation of the alteration pursuant to Subsection 1206.08(A)(1). In no event shall the total period of discontinuance exceed 48 consecutive months (i.e., any discontinuance period preceding the filing of an application for an alteration, plus the period during which the alteration application is under review, plus the approval period allowed by Subsection 1206.08(A), plus the 24 consecutive months from the date of implementation).
- B. Time Extension: If the approval of an alteration of a nonconforming use is not implemented within the initial approval period established by Subsection 1206.08(A), a two-year time extension may be approved pursuant to Section 1310, *Time Extension*. However, in no event may the total period of discontinuance exceed 48 months, inclusive of those discontinuance periods identified in Subsection 1206.08(A)(2).

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 parentheses.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on 7/31/24 with additional narrative, site plan and reservation materials provided. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with these documents and the limitation of any approval resulting from the decision described herein.
2. The *verification* of a nonconforming use approved in this application (i.e., the verification that the following are lawfully nonconforming to ZDO Section 316: an existing home with reduced setbacks) is **valid for 24 months from the date of the County's final written decision on this application pursuant to ZDO 1206.04.**
3. **The applicant shall obtain a building permit from Clackamas County Building Codes Department and shall complete any associated work for the attic addition.**

APPLICABLE APPROVAL CRITERIA

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 406, 1206 and 1307.

PUBLIC AND AGENCY COMMENTS

Notice was sent to applicable agencies and owners of property within feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. Comments from the following were received:

Estacada Rural Fire District #69

FINDINGS

The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

Property History and Proposal:

1. ZDO SECTION 316, RRFF-5, Rural Residential Farm and Forest 5-acre

316.03 - USES PERMITTED

- A. *Uses permitted in each rural residential and future urban residential zoning district are listed in Table 316-1, Permitted Uses in the Rural Residential and Future Urban Residential Zoning Districts. Uses not listed are prohibited.*

Finding: Garages and storage spaces are permitted by Table 316-1 in the RRFF-5 Zoning District. **This criterion is met.**

316.04 - DIMENSIONAL STANDARDS

- A. *General: Dimensional standards applicable in the rural and future urban residential zoning districts are listed in Table 316-2, Dimensional Standards in the Rural Residential and Future Urban Residential Zoning Districts. As used in Table 316-2, numbers in superscript correspond to the notes that follow the table*

Finding: This criterion is met pursuant to the ZDO Section 1206 included below.

2. ZDO SECTION 1206, NONCONFORMING USES AND VESTED RIGHTS

Section 1206 is adopted to provide standards, criteria, and procedures under which a nonconforming use may be continued, maintained, verified, restored, replaced, and altered and under which a vested right may be determined.

1206.02 - STATUS

A nonconforming use may be continued although not in conformity with the regulations for the zoning district in which the use is located. Nonconforming use status applies to the lot(s) of record on which the nonconforming use is located and may not be expanded onto another lot of record, except as provided under Subsection 1206.07(B)(3)(a) and (b) or, in the case of nonconforming premises for marijuana production, with an alteration approved pursuant to Subsection 1206.07(C). A change in ownership or operator of a nonconforming use is permitted

Finding: The applicant does not propose to expand a nonconforming use onto another lot of record. The proposed site plan shows that the detached garage, and attic expansion will remain on tax lot, 33E13AA05100. **This criterion is met.**

1206.03 - MAINTENANCE

Normal maintenance of a nonconforming use necessary to maintain a nonconforming use in good repair is permitted provided there are not significant use or structural alterations. Normal maintenance may include painting; roofing;

siding; interior remodeling; re-paving of access roads, parking areas, or loading areas; replacement of landscaping elements; and similar actions.

Finding: This proposal does not involve normal maintenance necessary to maintain an existing nonconforming use in good repair. **This criterion is not applicable.**

1206.04 - DISCONTINUATION OF USE

A. If a nonconforming use is discontinued for a period of more than 24 consecutive months, the use shall not be resumed unless the resumed use conforms to the requirements of this Ordinance and other regulations applicable at the time of the proposed resumption.

Finding: The non-conforming use is a built structure. Staff confirmed with aerial photographs that the structure has remained on the property, and it is unlikely the use, that being the existence of a built structures, was ever discontinued for a period exceeding 24 months. **This criterion is met.**

B. Notwithstanding Subsection 1206.04(A) and pursuant to Oregon Revised Statutes (ORS) 215.130(7)(b), a nonconforming surface mining use shall not be deemed to be discontinued for any period after July 1, 1972, provided:

- 1. The owner or operator was issued and continuously renewed a state or local surface mining operating permit, or received and maintained a state or local exemption from surface mining regulation; and*
- 2. The surface mining use was not inactive for a period of 12 consecutive years or more. Inactive means no aggregate materials were excavated, crushed, removed, stockpiled, or sold by the owner or operator of the surface mine.*

Finding: This proposal does not involve the surface mining. **This criterion is not applicable.**

1206.05 VERIFICATION

Verification of nonconforming use status requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

A. The nonconforming use lawfully existed at the time of the adoption of zoning regulations, or a change in zoning regulations, which prohibited or restricted the use, and the nonconforming use has not been subsequently abandoned or discontinued. Once an applicant has verified that a nonconforming use was lawfully established, an applicant need not prove the existence, continuity, nature, and extent of the nonconforming use for a period exceeding 20 years immediately preceding the date of application for verification; or

B. The existence, continuity, nature, and extent of the nonconforming use for the 10- year period immediately preceding the date of the application is proven. Such evidence shall create a rebuttable presumption that the nonconforming use, as proven, lawfully existed at the time of, and has continued uninterrupted since, the adoption of restrictive zoning regulations, or a change in the zoning or zoning regulations, that have the effect of prohibiting the nonconforming use under the current provisions of this Ordinance.

Finding: The subject lot became subject to zoning regulations on December 14, 1967, and it is a part of platted subdivision recorded in 1948. According to Improvement Data, the detached garage, which is the subject of verification, was constructed in 1962, prior to adoption of zoning of the property. The extent of the nonconforming use that has taken place on tax lot 5100 has been continued uninterrupted since it began prior to zoning. Therefore, staff finds that this detached garage structures is nonconforming pursuant to Subsection 1206.05. **These criteria are met.**

1206.06 - RESTORATION OR REPLACEMENT FOLLOWING DAMAGE OR DESTRUCTION

If a nonconforming use is damaged or destroyed by fire, other casualty, or natural disaster, such use may be restored or replaced consistent with the nature and extent of the use or structure lawfully established at the time of loss, subject to the following ZDO 1206.06 A through C.

Finding: The Applicant does not propose the restoration or replacement of a nonconforming use that was damaged or destroyed by fire, other casualty, or natural disaster. **Subsection 1206.06 is not applicable.**

1206.07 - ALTERATION

A. *Alterations Required by Law:*

Finding: The applicant is not proposing an alteration to a nonconforming use as required by law. **Subsection 1206.07(A) is not applicable.**

B. *Alterations Not Required by Law:*

Except as provided in Subsection 1206.07(C), an alteration of a nonconforming structure or other physical improvements, or a change in the use, requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

- 1. The alteration or change will, after the imposition of conditions pursuant to Subsection 1206.07(B)(4), have no greater adverse impact to the neighborhood than the existing structure, other*

physical improvements, or use.

Finding: The applicants husband added an attic to the flat roof structure in 2019, an alteration to the existing non-conforming structure, that has been verified earlier in this decision. The submitted Land Use Applications intent is to retroactively permit this addition, as an alteration to an existing NCU. However, Sarah Poet, a fire marshal for Estacada Rural Fire District 69, sent photos and raised concerns regarding the adverse impacts of the attic addition. By adding an awning that extends towards the dwelling on the property, the extended awning, poses significantly more fire risk to the dwelling, as opposed to the flat roof detached garage, creating a greater adverse impact. In addition to the dwelling on the property, the fire marshal raised concerns about the risk posed to the neighboring properties accessory structure as well, again creating adverse impacts on the neighborhood.



Figure 1 - Subject structures and attic addition (to the left), shows eaves proximity to subject parcels dwelling



Figure 2 - Subject structure and its proximity to neighboring buildings

Due to the attic increasing the fire risk for both the subject lots dwelling, staff is requiring a condition of approval to come in compliance with Building Codes, which would include a reduction the footprint to maintain a 3-foot setback from the existing dwelling or provide a listed one-hour firewall and protected eave for the nonconforming structure. They will also need to have the building evaluated by a structural engineer. While the current state of the attic addition, as identified by the Estacada Fire Marshal, does create additional adverse impacts, staff is conditioning compliance with the Clackamas County Building Codes to reverse the impact to that that is equal to the original structure. While the structure may still create fire risk, these conditions will limit the additional adverse impacts created by the alteration and reduce it to the original risk posed by the 1962 detached garage, which was verified pursuant to Section 1206.05 of this Land Use Decision.

As conditioned, this criterion is met.

2. *The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.05.*
3. *The alteration or change will not expand the nonconforming use from one lot of record to another unless:*
 - a. *The lot of record on which expansion is proposed and the lot of record on which the nonconforming use currently is established have been part of the same tract continuously*

- since the date the nonconforming use became nonconforming; or*
- b. The expansion would allow only for facilities necessary to support the nonconforming use, such as driveways, storm water management facilities, and on-site wastewater treatment systems.*

Finding: The nonconforming use status was confirmed above in this decision and staff verified the nonconforming use through this decision pursuant to Subsection 1206.05. The alteration is not expanding from one lot of record to another. The detached garage has always been on the subject lot and there is no record of a property line adjustment moving it from one lot to another, nor that the structure has ever been moved. **This criterion is met.**

- 4. Conditions of approval may be imposed on any alteration of a nonconforming structure or other physical improvements, or a change in the use, permitted under Subsection 1206.07(B), when deemed necessary to ensure the mitigation of any adverse impacts.*

Finding: A condition of approval has been imposed requiring the applicant to obtain a building permit from Clackamas County Building Codes Department and shall complete any associated work for the attic addition. Specific requirements may include what is listed in the advisory notes below. **As conditioned, this criterion is met.**

- C. *Alterations To Nonconforming Marijuana Production Premises Not Required by Law*

Finding: The Applicant does not propose an alteration to a nonconforming marijuana production premises. **This criterion is not applicable.**

3. ZDO Section 1307, Procedures:

This section provides standards and criteria for processing land use applications according to their type; this application is being processed as a **Type II Permit**, pursuant to Section 1307. No further written findings regarding Section 1307 are warranted.

ADVISORY NOTES

Advisory notes are not a part of the decision on this land use permit. The items listed below are not conditions of land use approval and are not subject to appeal. They are advisory and informational only but may represent requirements of other

agencies/departments. As such, they may be required by these other agencies/departments to complete your proposed development.

1. Estacada Rural Fire District provided the following comments: finds the change in roof line creates more risk and falls under “work without permits” which would be an automatic referral to the Clackamas County Building Department. They cite the following Oregon Fire Code Section:
 - a. 102.4 Application of building code. The design and construction of new structures shall comply with the International Building Code, and any alterations, additions, changes in use or changes in structures required by this code, which are within the scope of the International Building Code, shall be made in accordance therewith.
 - b. 102.5 Application of residential code. Where structures are designed and constructed in accordance with the International Residential Code, the provisions of this code shall apply as follows:
 - i. Construction and design provisions of this code pertaining to the exterior of the structure shall apply including, but not limited to, premises identification fire apparatus access and water supplies. Where interior or exterior systems or devices are installed, construction permits required by Section 105.6 shall apply.
 - ii. Administrative, operational and maintenance provisions of this code shall apply.
2. As conditioned, the structure is required to get the approval of Clackamas County Building Codes. Building Codes provided the following statement on what that may entail:
 - a. Reduce the footprint to maintain a 3-foot setback or provide a listed one-hour firewall and protected eave.
 - b. Building must be evaluated by a structural engineer.