



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Approved with Conditions

Permit Type: Nonconforming Use Verification and Alteration

File No. Z0137-25

Applicant's Proposal: The applicant is proposing a Non-Conforming Use verification for a 1930 home built within the front setback area of the RRFF-5 Zoning District. The property is split-zoned and contains TBR zoning, but the home is not built within that portion of the property. The applicant is requesting approval for roof replacement and structural improvements as an alteration.

Decision Date: 7/14/25

Deadline for Filing Appeal: 7/28/25

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

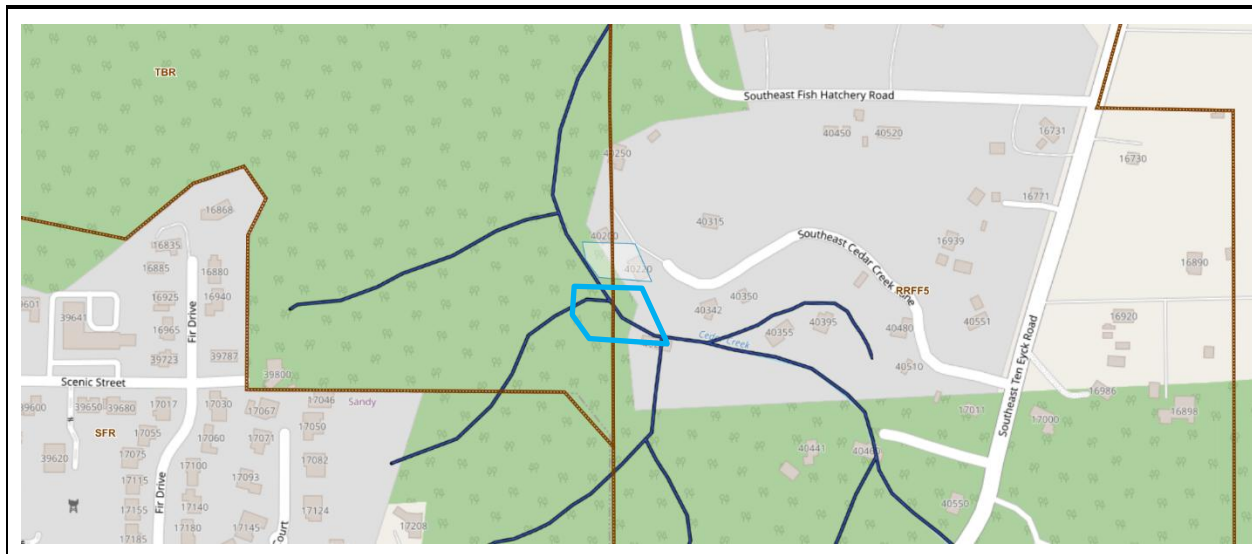
Applicant: Jennifer Kapnek

Owner of Property: Jennifer Kapnek and Terrance Eidsmoe

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

Assessor's Map & Tax Lot(s): 25E18BB01300

Site Address: 40220 SE Cedar Creek Ln. Sandy, 97055



Community Planning Organization (CPO) for Area:

FIRWOOD CPO

MARGE STEWART (503) 668-8797

MESDES2003@YAHOO.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? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통?*

Site Plan

NOTES:
1. BUILDING SIZE AND LOCATION IS APPROXIMATE.
2. DO NOT SCALE DRAWING.
3. CREEK NOT SHOWN.
4. SITE INFORMATION FROM ALL COUNTY SURVEYORS.

The site plan illustrates two adjacent lots, Lot 17 and Lot 18, situated along Cedar Creek Lane. Lot 18 is the upper portion of the site, and Lot 17 is the lower portion. A dashed line indicates the 'YARD SETBACKS' for both lots. A shaded area on Lot 17 represents the 'PROPOSED ROOF OVERHANG'. The plan includes various dimensions: Lot 18 has a width of 141'-1 1/8" and a depth of 30'-0". Lot 17 has a width of 153'-5 1/8" and a depth of 30'-0". The total width of the site is 144'-11 1/2". The total depth of the site is 116'-3 3/4". The site is bounded by Cedar Creek Lane to the east and R.O.W. (Right of Way) to the south. A blue arrow points upwards, indicating North.

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 4/10/25 with additional materials provided on 5/10/25, 5/11/25, and 5/16/25. 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. **Prior to Planning Approval of a building permit for the roof replacement, the applicant must record a Record of Survey showing the Right-of-Way encroachment distance with the County Surveyor and submit it to the Planning and Zoning Division to verify the encroachment distance.**

APPLICABLE APPROVAL CRITERIA

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 316*, 1206, and 1307.

*While the property contains a portion of TBR Zoning, the subject area, the dwelling, is not within the TBR zoned portion of the property and hence the application is not subject to TBR standards.

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:

Individual Neighbors, Firwood Neighbors CPO, Department of State Lands

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: The applicant is proposing roof replacement and structural upgrades to an existing 1930s home built in RRFF-5 zoning district. The structure does not comply with the 30-foot front setback of the RRFF-5 30-foot. As a result, the applicant has applied for a NCU verification of lawful establishment of the dwelling which would allow the dwelling to continue to encroach into the front yard setback. The applicant has also requested an NCU alteration to replace the roof and provide needed structural upgrades to the dwelling. Section 202 of the ZDO defines an NCU as: A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but, due to a change in the zone or zoning regulations, is now prohibited in the zone.

The property became subject to restrictive zoning on December 14, 1967, when it was zoned RA-1 and became subject to the 30-foot front setback standard. The property has two front setbacks as defined by Section 202 of the Zoning and Development Ordinance (ZDO). The structure, which was built in 1930, extends past these property lines into the adjacent Right-of-Way (ROW) by approximately 5 feet to the south, and 2 to 3 feet to the east. The ROW encroachment is being addressed by the Clackamas County Engineering Department. This decision is two-part decision, addressing the verification of the structures non-compliance with the setback standards stated in Table 316-2 of the ZDO and if it meets the alteration standards of Section 1206.07.

The original plat for the First Addition of Cedar Creek Park shows Cedar Creek Lane not where it is "as-driven". The as-driven location can be seen on PS25450 and, at the survey date, encroached on 25E18BB00800, which is not the subject of this Land Use application. As shown in the survey below, the actual "as-driven" location of Cedar Creek Lane is not aligned with the mapped (platted) portion of the road, or the existing ROW shown on the tax map, also included below. This is contextual information and not necessarily applicable to this Land Use Decision. A neighbor who owns 25E18BB00800 has submitted public comment related to this ROW issue. The NCU will not address or resolve the neighbor's issue with the platted ROW vs the as-driven location as it is outside of the scope of the NCU which is related to the subject property's front setbacks. There are slopes on the platted area of the road, which is likely the reason for the location of "as driven" portion of the road (also shown below). The portion of the subject structure encroaches into the platted ROW along eastern front lot line, not the driven ROW. The southern front lot line is not developed ROW.

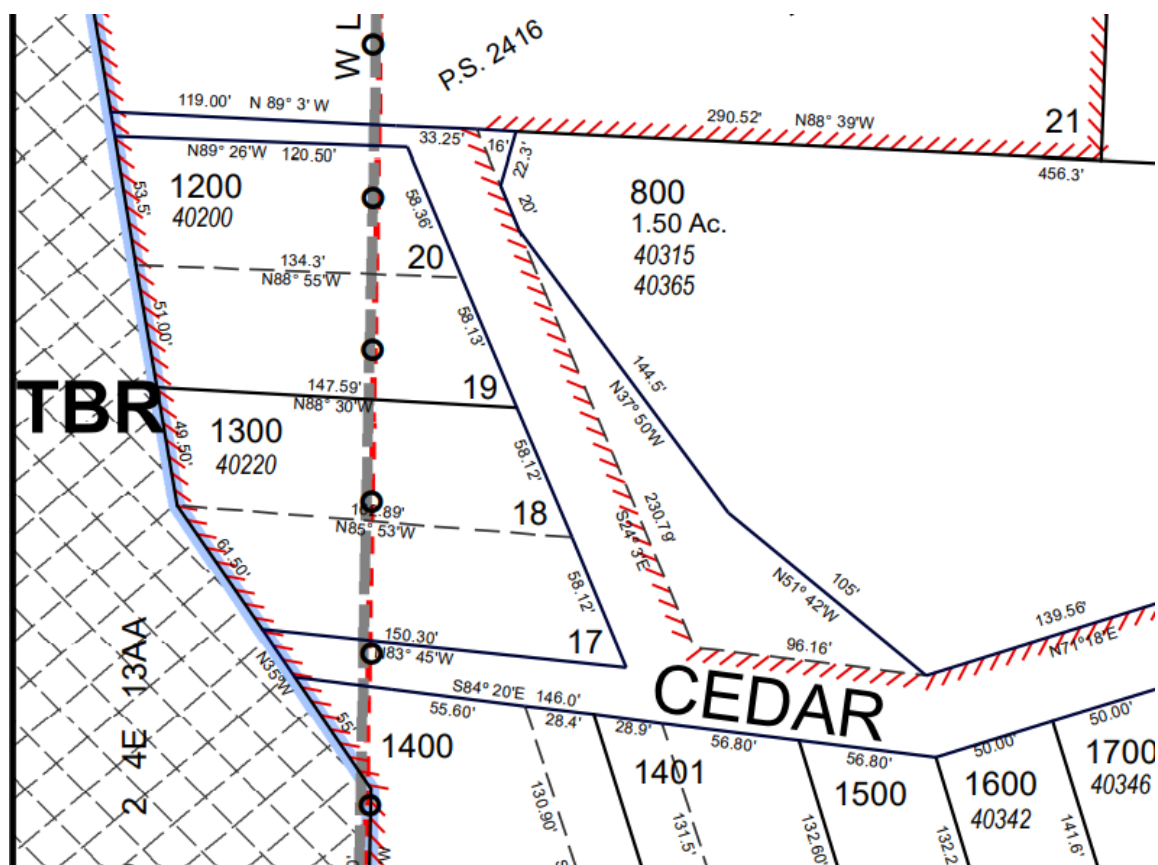
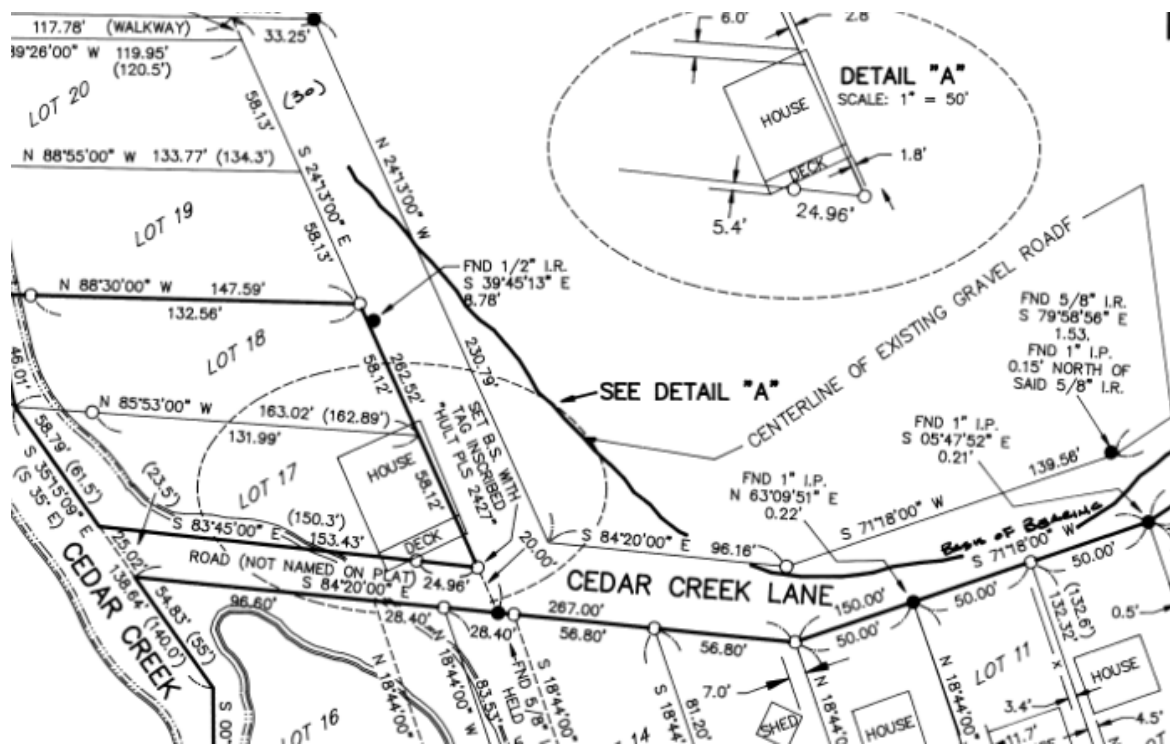




Figure 3 - Contours of SE Cedar Creek Ln (PlanMap)

The subject lot contains floodplain and a mapped River Stream Corridor Area (RSCA). The stream is classified as a Large stream and requires a 100-foot setback from the mean highwater line. The home appears to be beyond the 100-foot setback. If it was within the setback and was not encroaching closer to Cedar Creek, it would likely qualify for an exception under ZDO 704.05(2). Regarding the floodplain, the applicant provided an Elevation Certificate showing the subject structure is above the Base Flood Elevation and hence, not subject to Floodplain Development Standards in Section 703 of the ZDO. Additionally, the Department of State Lands provided comments stating the proposed development “appears[s] to avoid impacts to Cedar Creek and associated wetlands”.

The portion of the property with the dwelling is zoned RRFF-5 and single-family dwellings are allowed outright uses in this zone, therefore the NCU verification is only needed for the nonconforming front setbacks. Staff is only considering if the structure’s location meets the standards in ZDO Section 1206. The alteration approval is required for the roof replacement and structural improvements, as it is outside of the scope of what is allowed by 1206.03. If the location of the building is verifiable, the roof replacement must meet the standards of Section 1206.07.

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: Detached single family dwellings are an allowed primary use in the RRFF-5 Zoning District. This property contains two lots of record, the platted lots 17 and 18 of the First Addition to Cedar Creek Park subdivision, but has been developed as a single unit of land. The home is built across both lots of record, and the tax lot functions as one unit of land, similar to a Zoning Lot as defined in ZDO Section 202. The back of the property is zoned TBR, along the section line, which is approximately 100 feet back from the southern property line. The dwelling lies entirely within the RRFF-5 portion of the property. The use of the structure as a detached single-family home is an outright allowed use by ZDO Table 316-1 and not subject to verification under Section 1206 of the ZDO as it is an outright allowed use. **Therefore, 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 property has two front lot lines, as defined in ZDO Section 202. ZDO Table 316-2 of ZDO Section 316 states the front setback in the RRFF-5 zone is 30-feet. The existing dwelling does not conform to this dimensional standard for either of the two front property lines which is the subject of this NCU Verification. **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 expanding a nonconforming use onto another lot of record. The structure extends into the setback area and partly into the ROW. The structure cannot extend further into the setback and the ROW and this is not proposed. **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 alteration includes major structural improvements, which are outside of the scope of 1206.03. The requested alteration is for a roof replacement and structural improvements needed to renovate the dwelling. **This criterion is met.**

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 an existing structure. Staff confirmed with aerial photographs that the structure has remained on the property, and as the structure still exists today along with additional evidence discussed below, staff finds that the structure has not been discontinued for a period exceeding 24 months. Additionally, the applicant provided assessment data, dated 11/01/1996, showing the property was assessed for a 2371 sq foot dwelling at that time. Staff reviewed property tax information and found that between 2024 and 1993, property taxes increased (as is typical) which does not indicate that the structure was somehow “discontinued” and then recontinued. Staff is able to determine that this 1930 structure has been a continual and in the same nonconforming location on the property and has not been discontinued for any period.

Neighbors provided comment stating the use had been discontinued for a period exceeding 12 months, as the dwelling is currently unoccupied. However, the use as a dwelling is not subject to the NCU standards as it is allowed outright, and occupancy is not a criterion for if a structure is considered a dwelling. As discussed previously, the

nonconformity of the site is the front yard setback and as described above, the structure has remained in its current location since establishment in the 1930's.

Based on the evidence discussed above, staff finds that the structure located within the front yard setback was not 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

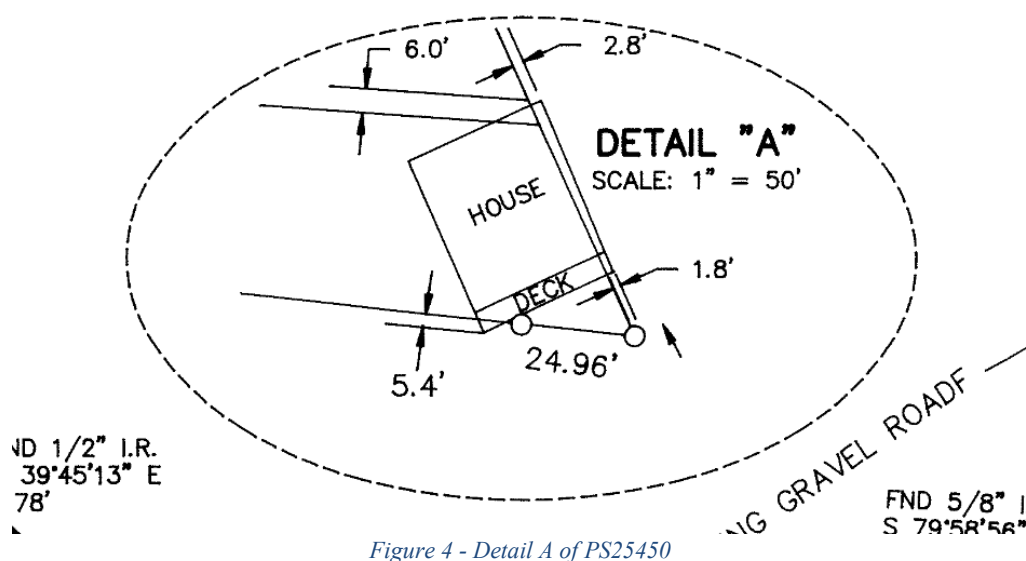
B. The existence, continuity, nature, and extent of the nonconforming use for the 10- year period immediately preceding the date of the application is proven. Such evidence shall create a rebuttable presumption that the nonconforming use, as proven, lawfully existed at the time of, and has continued 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 existing structure is not compliant with the 30-foot front setback of the underlying zone, RRFF-5. This lot is considered a "corner lot" as the south and east property lines abut the ROW as defined in Section 202 of the ZDO. The structure was built around 2 to 3 feet over the front property line to the east and

about 5 feet over the property line to the south. These setbacks do not conform to the current RRFF-5 dimensional standards in Section 316 of the ZDO. This finding is to establish that the existing structure was constructed before the adoption of the underlying zone that established front setback requirements.

The property became subject to zoning regulations on December 14, 1967, when it was first zoned RA-1. At the time, this zoning district had the same 30-foot front setback which is also the current dimensional standard of the RRFF-5 zone. The subject lot is Lots 17 and 18 of the First Addition to Cedar Creek Park, a platted subdivision recorded in 1927. According to assessment and taxation documentation, the structure, which is the subject of nonconforming setback verification, was constructed in 1930, prior to adoption of any restrictive zoning on the property.

County assessment records confirmed that home was built in 1930. The assessors sketch of the structures deck is not oriented correctly so it is not reliable in determining the deck's size and orientation. The assessment packet included a photo which showed approximately the same deck size and shape as photos publicly available online from real estate websites and submitted floor and site plans. The deck and front of the home is the portion of the house encroaching into the southern and eastern ROW. The Record of Survey, PS25450, shows the structures encroachment distances into the front setbacks and ROW. These encroachment distances, as surveyed in 1993, closely match the approximate site plan provided by the applicant's architect. There is a slight difference between the architects site plans east encroachment and the surveys, however, the survey includes a rough sketch of the house's shape, and the architects site plan includes a disclaimer that the building location is approximate. Staff will require a new Record of Survey as a condition of approval to verify the encroachment distances.



A neighbor provided public comment stating the structure was originally a 600 square foot structure. It is unclear if, or when, the alleged expansion occurred and what portions of the structure were expanded. Staff was not provided with any evidence of this expansion, and due to the structure's location on a slope, with multiple crawl spaces, staff is unclear how feasible the alleged expansion would have been. Assessment records from 1996 state the structure is 2371 square feet, with a 1551 square foot upper floor area, an 820 square foot lower floor area. The Tax Jacket from assessment and taxation records references a potential remodel in 1965, which would have occurred prior to adoption of initial zoning. There is no relevant building permit history on the property besides a 1979 building permit for roof repairs after tree damage. The building area and plot plan were not included with the 1979 permit, but planning did approve the permit. Hence, it is unclear if the alleged expansion did occur, and there is nothing in the record verifying it. The applicant provided evidence addressing the 20-year continuity, so staff is not able to seriously consider this claim, without evidence to counter the information provided by the applicant.

Regarding the size of the structure, the assessment data from 1996 states that the structure is 2371 square feet and built in 1930. This establishes that the structure lawfully existed at the time of the adoption of zoning regulations. Therefore, the 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, 4/10/2025. As the assessment data comes from a 1996 assessment, this precedes the 20-year requirement to prove the existence, and importantly extent and nature of the NCU. This property tax data verifies a 20+ year history of the structure in its 2371 square foot configuration.

Additionally, staff reviewed property tax valuation history which showed relatively standard increases in property taxes since 1993, with a slight decrease in 1996, after the property was assessed in the same year. This 32-year property tax record indicates no major changes occurred to the property, supporting staff's finding that the 1930 dwelling was neither removed nor increased in nature or extent within the 20-year period preceding the date of this application. Staff was able to verify existence of the structure in 2004 aerial photographs from Google Earth, and the structure is additionally visible in years after the 2004 date leading up to the most current image.



Figure 5 - Property in 2023 (PlanMap)



Figure 6 - Property in 2004 (Google Earth)

The assessment data verifies that the dwelling was lawfully established prior to restrictive zone in 1930 and property tax information and aerial images confirm that the non-conforming use, that being the structure within the front yard setback, has not been discontinued for a period exceeding 24 months within the 20-year period standard in ZDO Section 1206.05(A). Therefore, staff finds that this dwelling 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 applicant is proposing replacing the dwellings roof, which would increase its height by about 5 feet, to a total height of 31 feet. The ZDO does not set a height restriction for this structure. The existing and proposed roof extend over an existing deck so the alteration would also include structural improvements to the whole structure in order to support the new roof and renovate the dwelling. This alteration is not extending further into the front setbacks or the ROW, and therefore does not create greater adverse impacts in relation to the nonconforming front setback

The neighbors expressed significant concerns regarding the structural integrity of the dwelling. This alteration will address said structural concerns and not create greater structural issues. Additionally, for the roof work, the applicant will have to

obtain an approved Building Permit from the Clackamas County Building Codes Division which will bring the structure into compliance with the Building Code.

Neighbors also raised concerns about fire safety. Staff did not receive comment from the Fire Department. The relevant Fire Department will review the building permit for compliance, once applied for. Staff has determined that the issues raised by neighbors are not subject to the standards in ZDO Section 1206.07. Staff included this analysis for clarity for those who provided public comment.

Neighbors raised additional concerns regarding the septic tank. Septic staff confirmed that there was a violation in 1986, but no permits were applied for, Septic staff hypothesized that this likely meant none was needed. There was a complaint filed last year but Septic staff was not provided with evidence and could not see if the violation was occurring from the ROW when a site visit was conducted. The applicant will be required to work with septic staff as part of permit review process and any issues identified through the building permit review will be required to be resolved.

Neighbors raised concerns regarding access during construction; however, this is not included within the scope of what is considered a 'greater adverse impact' as it does not relate to the nonconforming setbacks. Additionally, this would be a temporary impact on the neighborhood, that would be allowed outright for any other property within the neighborhood. If staff considered construction a greater adverse impact, no improvements could ever be made to the dwelling, which would allow it to fall further into disrepair and increase structural concerns. The applicant will still be subject to any parking regulations and noise regulations in place in the area. These will not be conditioned as is compliance is required outright.

Staff has determined that the roof and structural improvements will not create greater adverse impacts as they are not pushing the structure any further past the front setback standards. Additionally, the applicant must have a professional survey done to verify the encroachment distances of the structure and have it recorded with the County Surveyors office. While not an applicable standards, this allowed alteration will improve the structural integrity of the dwelling which is a primary concern of neighbors.

With acknowledgement of neighbors' concerns, staff has determined that the concerns related to access during construction, structural integrity, and the septic system, are not applicable to the nonconforming application regarding the noncompliant front yard setback for the structure.

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 dwelling 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 record a Record of Survey with the County showing the encroachment distance to enter this in the record and not allow for further encroachment. Building, engineering, and septic permits have not been conditioned as they are required outright for new construction. **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. The County Septic and Onsite Wastewater Program has reviewed the proposal and has provided the following advisory notes:
 - a. A Septic Authorization Notice is required to connect the existing system to the dwelling. For details, contact them at septicInfo@clackamas.us or (503) 742-4740.
2. The applicant shall comply with Clackamas County's Engineering requirements regarding the Right-of-Way encroachment.
 - a. All access improvements in, or adjacent, to Clackamas County ROW, and all on-site improvements, shall be in compliance with the Clackamas County Roadway Standards. Contact County Development Engineering at engineering@clackamas.us or 503-742-4691 for permitting requirements that may apply to your development.
3. The applicant shall obtain a building permit from Clackamas County Building Codes Department and shall complete any associated work for the roof and structural improvements.
 - a. Contact County Building Codes for details on permitting requirements for a new dwelling (building, manufactured dwelling placement, mechanical, electrical, plumbing) at bldservice@clackamas.us or 503-742-4240.
4. The Department of State Lands provided comments after County Staff submitted a Wetland Land Use Notice. They are attached.