



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Approved with Conditions

Permit Type: Stream Conservation Area Review

File No. Z0326-22-RSCA

Proposal: Replace an existing detached structure with a new 6,000 square foot building in the same location, but with a much larger footprint, though not encroaching closer to the Stream Conservation Area (SCA).

Decision Date: September 14, 2022

Deadline for Filing Appeal: September 26, 2022, at 4:00 pm

Unless appealed, this decision is effective on September 14, 2022 at 4:00 pm.

Issued By: Ben Blessing, Sr. Planner, Bblessing@clackamas.us

Assessor's Map & Tax Lot(s): T 3S R 3E Section 06B Tax Lot 2801 (33E06B 02801)

Site Address: 18140 S Norman Road (Redland Unincorporated Community)

Applicant: Brainard Brauer

Owner of Property: Same as above

Zoning: RA-1

Community Planning Organization (CPO) for Area:

REDLAND-VIOLA-FISCHER'S CPO
WARD LANCE 503-631-2550
LANCECWARD@AOL.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: The submitted application is available for review online at <https://acela.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. The complete

application file is available for inspection at no cost by contacting the Planner listed on the first page of this decision. Copies of all documents may be purchased at the rate of \$2.00 per page for 8 1/2" x 11" or 11" x 14" documents, \$2.50 per page for 11" x 17" documents, \$3.50 per page for 18" x 24" documents and \$0.75 per sq ft with a \$5.00 minimum for large format documents.

APPEAL RIGHTS: Any party disagreeing with this decision, or the conditions of approval, may appeal this decision to the Clackamas County Land Use Hearings Officer. An appeal must include a completed County Appeal Form and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified on the first page of this decision.

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.

The County Appeal Form is available at www.clackamas.us/planning/supplemental.html. Any party or parties appealing this decision may withdraw their appeal at any time prior to the hearing or final decision by the Hearings Officer. A party wishing to maintain individual appeal rights may file an individual appeal and pay the \$250.00 fee, even if an appeal by another party or parties has been filed.

Please check <https://www.clackamas.us/planning> for our current hours of in-office operation. Appeals may be submitted in person during office hours. 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.

APPLICABLE APPROVAL CRITERIA: This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, and 1307.

PUBLIC AND AGENCY COMMENTS:

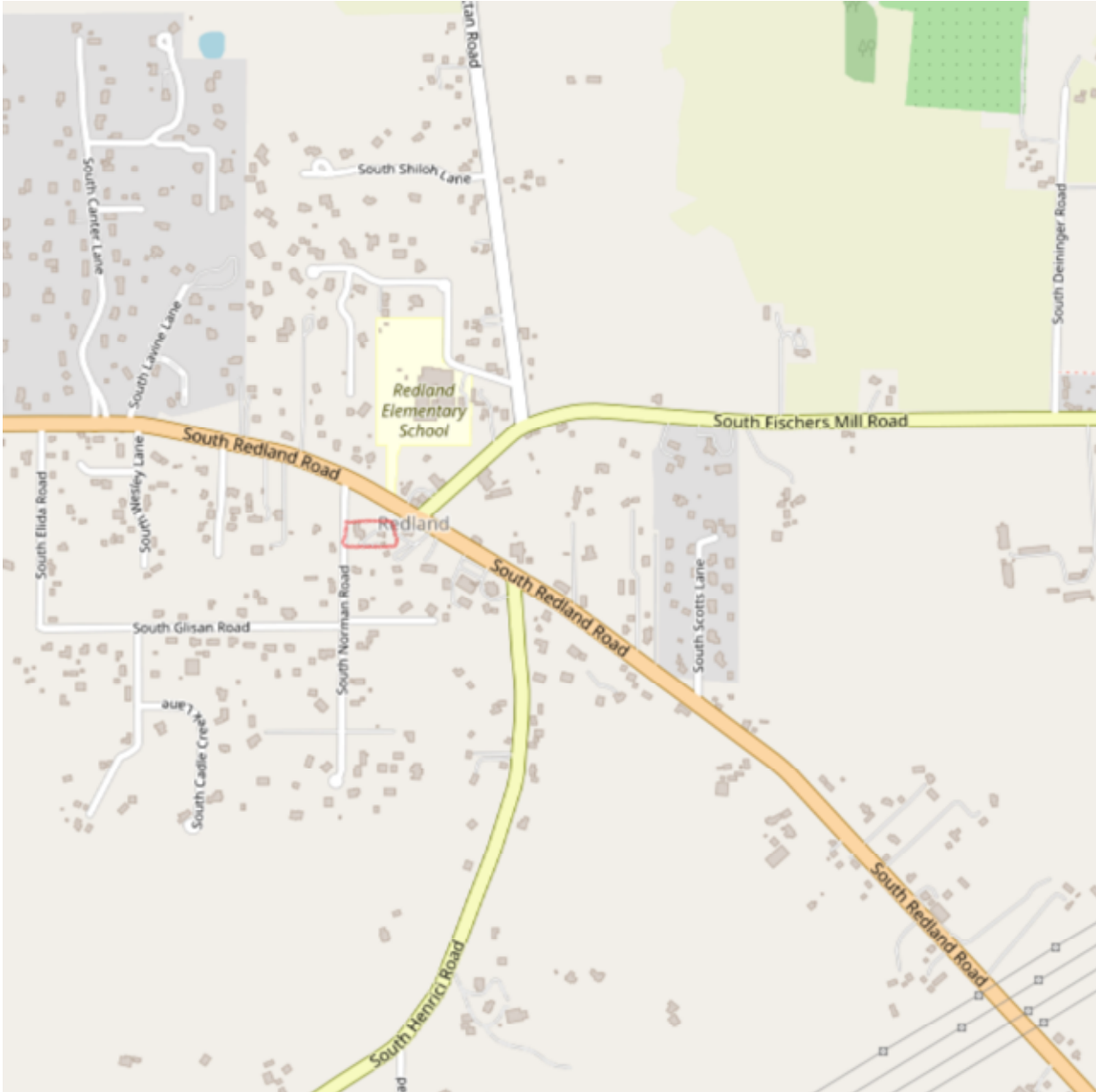
Notice was sent to applicable agencies and owners of property within 750 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. No Comments from agencies or nearby owners

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 통역?

Location Map



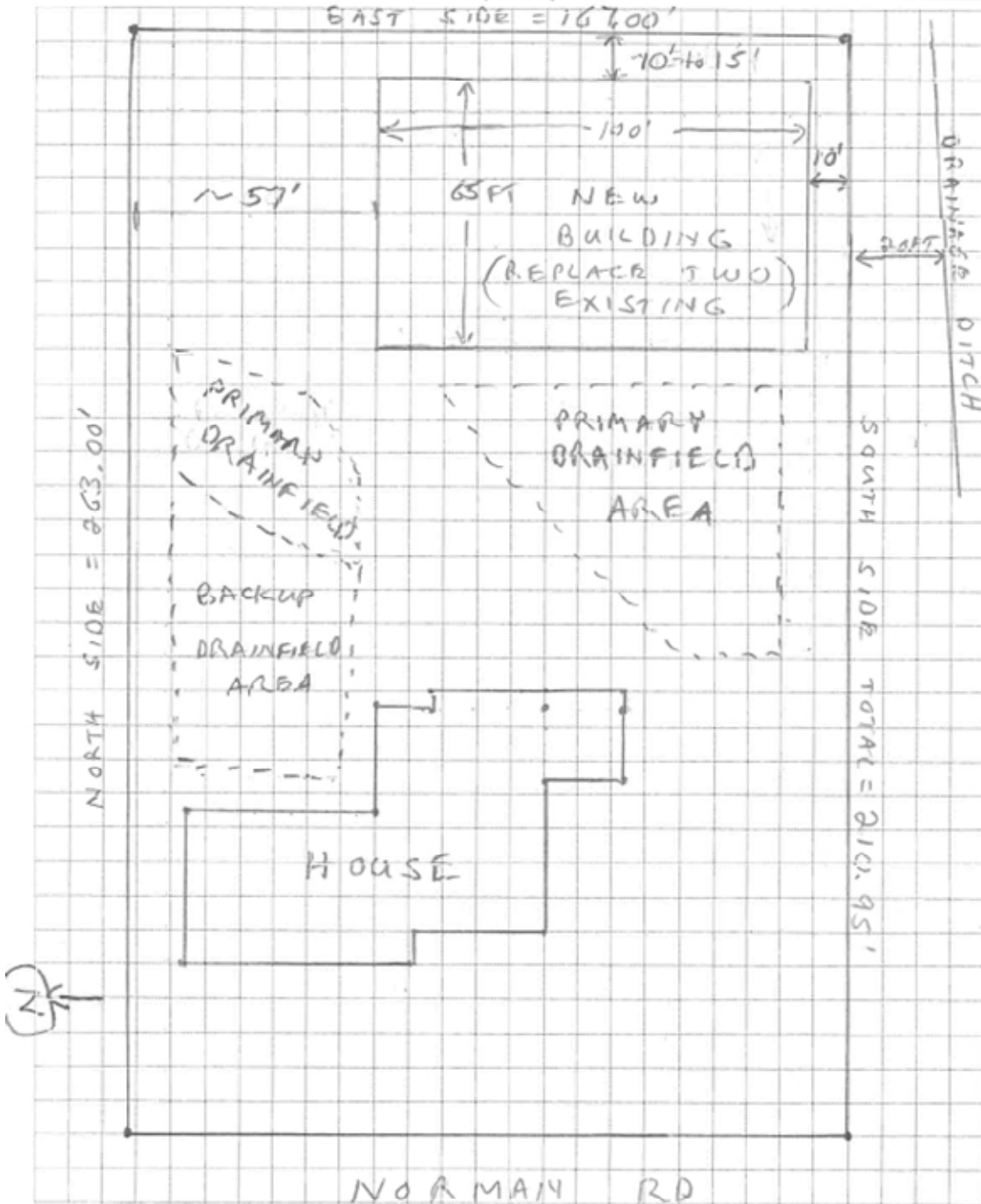
Site Plan

SITE PLAN

Address: 18140 S. NORMAN RD, OC, OR 97045

Township: 3 Section: 3E Range: 06B Tax Lot: 02801

For Permit Number (if known): _____



PROJECT OVERVIEW

The applicant proposes to replace an existing 400-square foot shed, with a much larger 6,000-6,500 square foot shop. The applicant will use the entire footprint of the small shed, and will expand the footprint on either side, but will not encroach closer to the ordinary high water line (OHWL) of an adjacent creek. The adjacent creek is an unnamed tributary of Clear Creek, and the applicant notes that the existing shed is roughly 10 feet away from the OHWL. The County's River and Stream Conservation Area (RSCA) Maps and adopted Water Protection Rule Classification (WPRC) Maps delineate this tributary as a "Small, Type F Stream". Therefore, a 50-foot vegetated corridor shall be maintained from the OHWL of the unnamed creek, as required per ZDO Sec. 704.03(D).

The applicant is seeking a Setback Exception under ZDO Sec. 704.05(A)(2), and must demonstrate that the existing shed and associated gravel driveway pre-date the Stream Conservation Area (SCA) rules and regulations that were adopted in December 1997 and currently set forth in ZDO Sec. 704. The proposed structure shall not encroach any closer to the creek than areas that have already been lawfully developed.

Staff has not identified any floodplains, and there does not appear to be any indications of associated wetlands.

ZDO SECTION 704 — STREAM CONSERVATION AREA (SCA)

SCA CONDITIONS OF APPROVAL

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied.

1. **General Conditions:**

- A) Approval of this land use permit is based on the submitted written narrative and plan(s) dated June 30 and August 15, 2022. No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- B) The approval of this Stream Conservation Area (SCA) permit is valid for four (4) years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
 - i. "Implemented" means all major development permits shall be obtained and maintained, or if no major development permits are required to complete the development contemplated by the approved SCA permit, "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 SCA permit approval; or
 - ii. A permit issued by the County Engineering Division for parking lot or road improvements that were part of the SCA permit approval.
 - ii. If the approval of this PRCA permit is not implemented within the initial approval period established by Subsection 704.09(C), a two-year time extension may be approved pursuant to Section 1310.

2. **Required Submittal Materials (If Not Submitted With Original Application):**

- C) **Stream Buffer Restoration Plan:** If any native vegetation is removed please replace like for like and provide a restoration plan prior to building permit approval.

3. **Standards for Buffers / Setbacks from Rivers & Streams**

- A) Pursuant to Subsection 704.04(D), the proposed building shall be located closer than the existing shed, roughly 10 feet, from the mean high water line of the unnamed creek. At least one (1) clearly visible and readable marker shall be placed at the t setback line from the mean high water line, outside of the construction area, that shall remain until construction is finished.
- A) Exceptions to Buffers / Setbacks:
 - iii. Pre-Existing Development: Pursuant to Subsection 704.05(A)(2), the proposed shop shall not encroach closer to the creek than the stream (approximately 10 feet)

SCA 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.

704.02 DEFINITIONS

The criteria, requirements, standards and text of ZDO Section 704 are subject to the definitions outlined in Subsection 704.02.

704.03 AREA OF APPLICATION

- C. Section 704 also applies to land that is located within 50 feet of the mean high water line of small Type F streams, identified on the WPRC Maps. The location of these streams may vary from these maps if more specific information is provided. Classified as SCAs, these small streams are designated in the Comprehensive Plan as those that generally have annual average flows of less than two cubic feet per second.

The WPRC maps show this unnamed stream segment as a “Small, Type F Stream” This section applies to lands within the mean high water line of the identified creek.

- F. Notwithstanding Subsections 704.03(A) through (E), Section 704 does not apply to land that is inside the Metropolitan Service District Boundary (MSDB) or the Portland Metropolitan Urban Growth Boundary (UGB), nor does it apply to Oregon Department of Fish and Wildlife, or other state or federally approved, fish enhancement projects.

The subject land is not located inside the MSDB or the Portland Metropolitan UGB. The proposed project is not a state or federally approved fish enhancement projects. Therefore, Section 704 applies.

704.04 RIVER AND STREAM SETBACKS

The following minimum setbacks shall apply to structures exceeding 120 square feet or 10 feet in height:

- C. Structures shall be located a minimum of 50 feet from the mean high water line of a small stream.

The existing shed is roughly 10 feet from the street and the proposed structure is also proposed in the same spot. Since this standard cannot be met, a Setback Exception below must be demonstrated.

704.05 SETBACK EXCEPTIONS

- A. The following uses are exempt from the minimum setback standards of Subsection 704.04:

- 1. Repairs, additions, alterations to, or replacement of structures, roadways, driveways, or other development, which is located closer to a river or stream than permitted by the setback requirements of Subsection 704.04, provided that such development does not encroach into the setback any more than the existing structures, roadways, driveways, or other development;

As discussed above, the SCA regulations were implemented in December of 1997. Aerial photos provided by the applicant show the shed and driveway clearly in existence by summer of 1998. Given the vegetation growth around the driveway and since the structure appears fully established, it's likely the shed was already in existence. Furthermore, County Assessor records show at least two sheds in existence going back to 1958. Aerial photos from 1964 appear inconclusive as the resolution is too large for such a small structure. But, 1989 photos do show a driveway and what appears to be the shed. In summary, given all the information at hand, staff finds that the shed was lawfully established as was the gravel driveway. The new development shall not encroach any closer than the existing shed. A condition is warranted to ensure this is observed, including before and after photos, as well as staked corners where the shop will be located.

- B. In addition to the exemptions listed in Subsection 704.05(A), the minimum setback standards of Section 704 may be modified for purposes consistent with the adopted Economic, Social, Environmental, and Energy analyses for the applicable watershed.

The applicant has not made a request to this standard. This section does not apply.

704.06 DEVELOPMENT STANDARDS

- A. Commercial or industrial facilities, such as structures, parking areas, and storage areas shall comply with Subsection 704.04, and signs shall be screened from view of the Principal River or Stream Conservation Area by an opaque vegetation buffer. These facilities shall be subject to design review, pursuant to Section 1102.

This is a residential and/or agriculture structure. This criteria des not apply.

- B. Subdivisions and partitions shall be designed, where possible, to allow compliance with Section 704.

This application is not a subdivision or partition. This standard does not apply.

704.07 VEGETATION PRESERVATION REQUIREMENTS

- A. A minimum of 75 percent of the setback area (distance) shall be preserved with native vegetation.

Vegetation is already removed, and the majority of the buffer is already lawfully developed. Still any vegetation removal shall be replaced like for like, and a buffer and mitigation plan shall be submitted prior to building permit approval. this standard can be met.

- B. Tree cutting and grading shall be prohibited within the buffer or filter strip, with the following exceptions:

1. Trees that endanger life or structures may be removed.
2. Tree cutting and grading may be permitted in conjunction with those uses listed in Subsections 704.05 and 704.06, to the extent necessary to accommodate those uses. Disturbed areas that are outside the footprint of structures and other improvements shall be restored with native vegetation.
3. Vegetation removal may occur when approved by the Oregon Department of Fish and Wildlife, upon written notification that such removal is required as part of a river or stream enhancement project.

Tree cuttings is not proposed, and this section is not applicable.

- C. Commercial forest activities and harvesting practices outside an urban growth boundary (UGB) shall be subject to the Oregon Forest Practices Act. Commercial forest harvesting activities inside an urban growth boundary (UGB) shall be reviewed pursuant to the Forest Policies of the Comprehensive Plan.

This section is not applicable as this development is not a commercial forestry o.

704.08 SUBMITTAL REQUIREMENTS

The applicant has provided the necessary submittal materials to proceed with the application. Additional requirements for submittal materials may be listed in the Conditions of Approval.

704.09 ADMINISTRATION OF SECTION 704

The Standards of this Subsection that pertain to the Approval Period of this Permit and Time Extensions (not permitted for an SCA Permit) are outlined in the Conditions of Approval above.

- B. Development and grading permits in a Stream Conservation Area (SCA) shall be reviewed through a Type II application pursuant to Section 1307.

The proposed accessory structure is located within a Stream Conservation Area. Thus, this proposal is being reviewed pursuant to the process outlined in Subsection 104.01(C).

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 in order to complete your proposed development. (Note: This is where requirements from other agencies will be listed that are not supported by the code, delete this note in your final document. It has been added to the end of the decision so that it is not embedded in the decision, because, as stated above, it is not part of the decision)