



**NOTICE OF DECISION ON A TYPE II LAND USE PERMIT**

**Decision Approved.** The two detached single-family dwellings on the subject property are verified as a nonconforming use.

**Permit Type:** Nonconforming Use-Verification

**File No.** Z0467-24

**Applicant's Proposal:** The applicant seeks to verify the nonconforming use of two dwellings on a single RRFF-5 zoned lot of record.

**Decision Date:** March 17, 2025

**Deadline for Filing Appeal:** March 31, 2025, at 4:00 pm.

**Issued By :** Nick Hart, Planner I, [NHart@clackamas.us](mailto:NHart@clackamas.us)

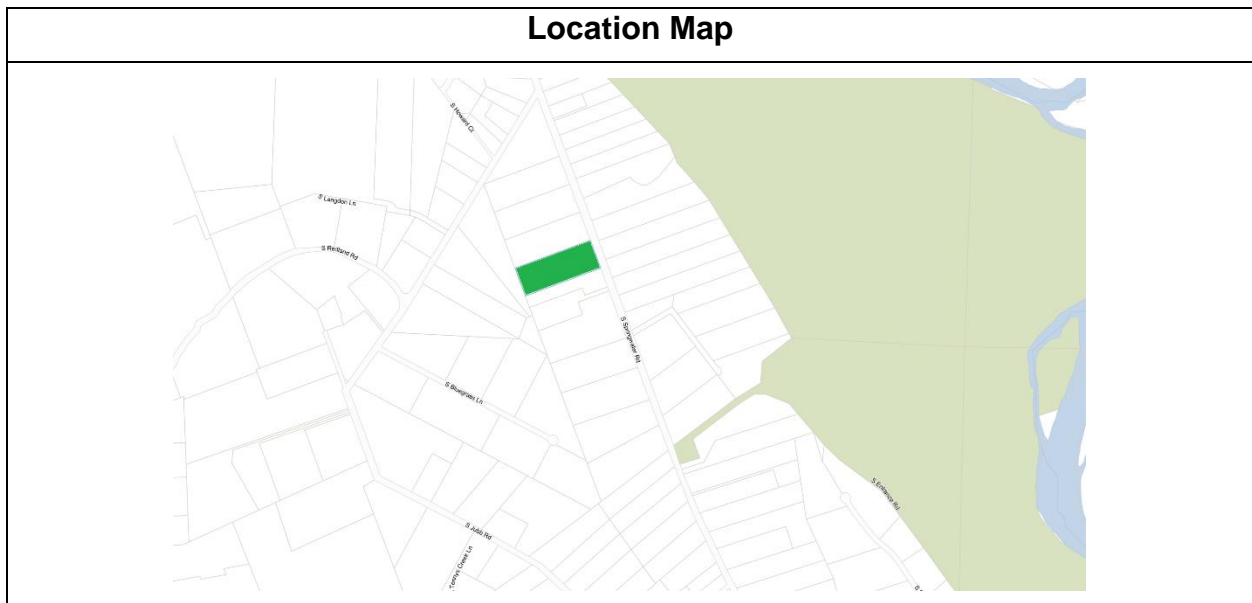
**Applicant:** Joe Rogal

**Owner of Property:** Norma Ann Pendleton, Nicki Graham, Pamela Herberich Peters, Joe Rogal, Sharry Graham

**Zoning:** RRFF-5

**Assessor's Map & Tax Lot(s):** T03S R03E Section 13C Tax Lot 01800

**Site Address:** 20879 S SPRINGWATER RD, Estacada, 97023



**Community Planning Organization (CPO) for Area:**

REDLAND-VIOLA-FISCHER'S CPO, LANCE WARD, 503-631-2550  
LANCEWARD@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 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](http://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.

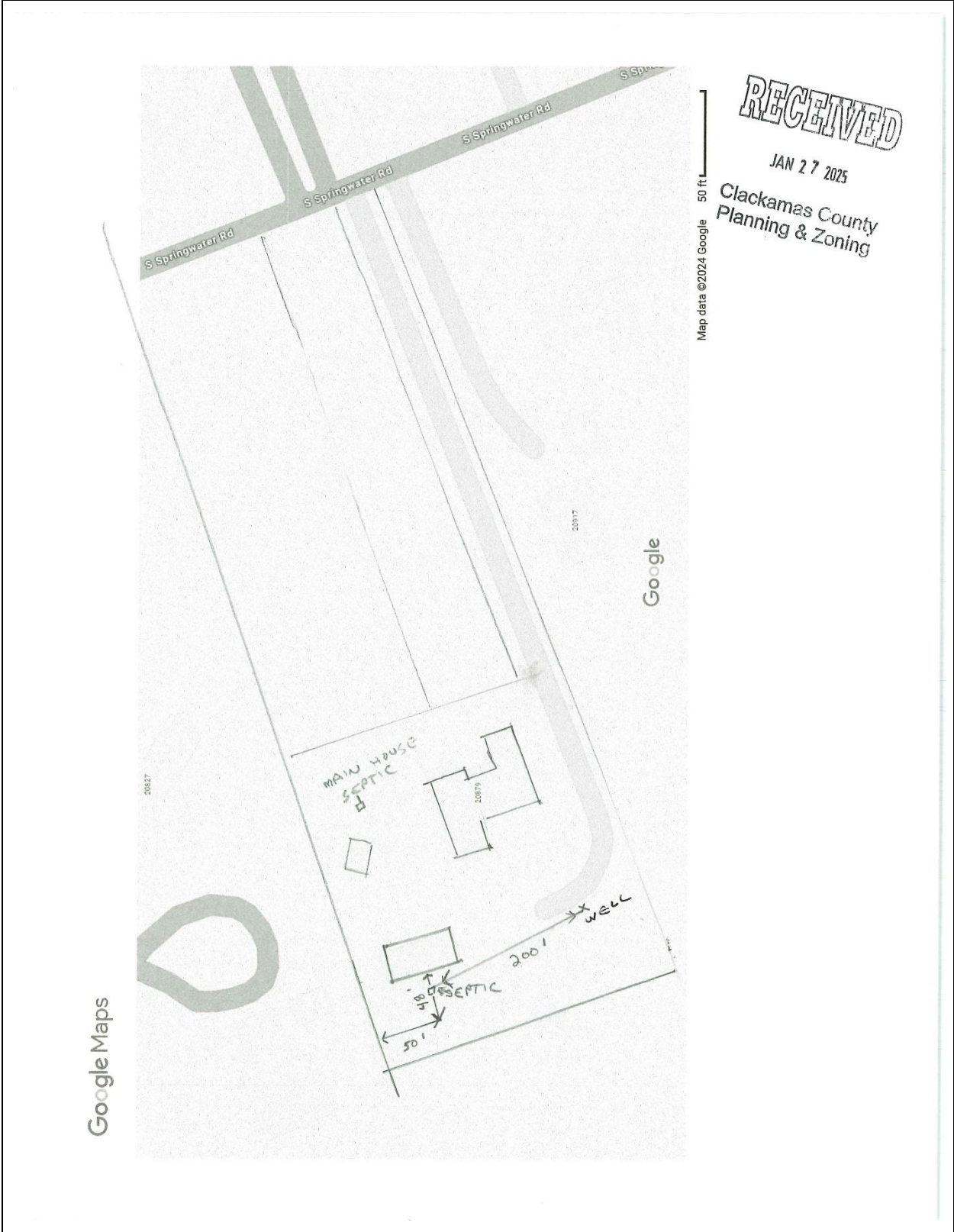
A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

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](mailto: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?

# Site Plan



## APPLICABLE APPROVAL CRITERIA

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

## PUBLIC AND AGENCY COMMENTS

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Notice was sent to applicable agencies and owners of property within 2,640 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. Comments from the following were received:

Several neighbors called to inquire about the application. None relayed concern about the proposed use.

## FINDINGS

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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.

1. **Background/Overview of Applicant's Proposal:** The subject property is an approximately five-acre lot presently zoned RRFF-5. As the RRFF-5 zone only allows for one detached single-family dwelling per lot of record, the applicant seeks to verify that the two dwellings on the subject property are lawfully established so that septic system repairs for the second dwelling on the property can be authorized. No alterations to the nonconforming use are proposed with this application.

2. **ZDO Section 202, Definitions**

Section 202 defines 'nonconforming use' 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.*

Current zoning regulations do not allow two detached single-family dwellings on the same lot of record in the RRFF-5 zone. Therefore, for the two dwellings on the subject property to be verified as a nonconforming use, it is necessary to demonstrate that they were either allowed by right when established or that they obtained a required land use approval when established. Based on the findings

below for ZDO Subsection 1206.05, the two dwellings were allowed by right when established.

**This criterion is met.**

3. **ZDO Section 316, Rural Residential**

**ZDO 316.02** - *Section 316 applies to land in the Rural Area Residential 1-Acre (RA-1), Rural Area Residential 2-Acre (RA-2), Recreational Residential (RR), Rural Residential Farm Forest 5-Acre (RRFF-5), Farm Forest 10-Acre (FF-10), and Future Urban 10-Acre (FU-10) Districts, hereinafter collectively referred to as the rural residential and future urban residential zoning districts.*

**FINDING** The subject property is zoned RRFF-5. Therefore, the standards of ZDO Section 316 apply.

**ZDO 316.03(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** – One single family residence per Lot of Record is an allowed use per Table 316-1. This application seeks to verify that the two detached single-family dwellings located on the subject property are lawfully established nonconforming uses.

**ZDO 316.04(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** – The dimensional standards of Table 316-2 apply to the subject property. For a detached single-family dwelling, these are: Front setback – 30', Side Setback – 10', Rear Setback – 30'. The applicant has submitted a drawn site plan and aerial imagery that supports that the structures subject to this application meet the setback standards of the RRFF-5 zone. Staff have verified the setbacks of the subject structures using the PlanMap GIS program and find that the structures meet the RRFF-5 setbacks as-built.

4. **ZDO Section 1206, Nonconforming Uses and Vested Rights**

**ZDO 1206.05** *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:*

**ZDO 1206.05(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*

**FINDING** The applicant seeks to verify this use through the provisions of 1206.05(B). As the applicant is only required to address one of 1206.05(A) and 1206.05(B), **this criterion is not applicable.**

**ZDO 1206.05(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 applicant submits in the application narrative that when they purchased the subject property on 10/29/2015, it was developed with two dwellings. To substantiate this assertion, the applicant provides an undated screenshot of the real estate listing for the subject property, which identifies that a second residence existed on the subject property. Additionally, the applicant provides data from the Clackamas County Assessor's office that shows the property being assessed for two dwelling units, with the most recent record included in the submitted information showing a 1992 assessment. Finally, the applicant submits an undated aerial photograph from Google Earth showing the two dwelling structures.

Staff have reviewed the available archive of aerial photographs from Google Earth and believe that the submitted aerial photographs are those dated for 4/19/2024. Staff review of older aerial images from this archive supports the applicant's assertion that the two dwellings have remained on the subject property since at least 2015. Additional images available in this archive clearly show the two dwelling structures since 2002. Staff have additionally reviewed the records of the County Assessor's office and found evidence that the subject property was assessed as having two dwellings in 2014.

To support the ongoing use of the two dwellings on the subject property, the applicant states that upon purchasing the property, their mother moved into the second dwelling on the property until her passing in the spring of 2022. After that, the applicant's son lived in the second dwelling for a period ending in the summer of 2024. The applicant states that their sister-in-law then moved into the property that same summer. To substantiate this continued use, the applicant has submitted records from PGE, the electric utility for the property, that indicate that the meters serving the two dwellings had been in place since 1969. The applicant also submits

records of electrical bills dating back to 2016 showing consistent use of electricity at both meters.

The date this application was submitted was 11/25/2024. The applicant has provided narrative identifying use of both dwellings on the subject property since 2015, and records since 2016. Staff have additionally found records of the County Assessor that show the property was assessed as having two dwellings in 2014. Therefore, the 10-year standard established in ZDO Subsection 1206.05(B) is satisfied by available evidence.

Therefore, the applicant has established the rebuttable presumption that as the two dwellings on the subject property have been in use since 2014, with supporting evidence from the provided real estate listing, aerial imagery archives, tax assessor's archives, and electrical utility records, 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. The establishment of the rebuttable presumption means that the burden shifts to the County to disprove this.

Staff review of the records available to the County provides the following:

- The subject property is a lot of record, created by deed on August 1, 1972. In 1972 the subject property was zoned RA 1-5, which had a minimum lot size of 5 acres, which the subject property met. In 1972 no partitioning ordinance had yet been adopted by the County, and records support that Tax Lot 1800 was the only lot created out of its parent parcel (Tax Lot 1900) in that calendar year, satisfying the 1955 subdivision ordinance.
- The property was first zoned R-30 by Order 15690, effective 12/14/1967.
  - The property was then rezoned RA 1-5 by order 70-426, effective 06/09/1970.
  - The property was rezoned RRFF-5 on 08/13/1979 by Order 79-1394.
- Records from the County Assessor's office find that the two dwellings were established on the subject property in 1971.
  - The given dimensional layout for the smaller of the two dwellings has remained consistent through time and reflects the dimensions of the structure as visible through aerial image archives.
  - The given dimensional layout for the larger dwelling has changed slightly over time. It is believed that these changes are accounted for with the approved building permit B0139910.
- Records from the County Building Department contained two relevant permits. Building permits were not required in the unincorporated area of the county before July 1<sup>st</sup>, 1974.
  - Permit B0001170 authorized the in-ground pool on the subject property. The submitted site plan for this permit includes the larger

dwelling, but does not show the smaller dwelling. This permit was received by the County on 12/29/1969.

- Permit B0139910 authorized an expansion to the primary bedroom on the larger dwelling. On the approved site plan, the second dwelling is shown, and given the label 'Guest House'.
  - No available record can confirm that the second dwelling was at any point permitted as a 'Guest House' under the provisions of ZDO 833 and so this label is taken to be a plain language expression rather than a reference to specific approval criteria within the ZDO. Further, the floor area of the second dwelling exceeds the allowable floor area established by ZDO 833, providing further evidence that the structure was not approved as a 'Guest House' as the term is defined in Section 833 of the Zoning and Development Ordinance.
- Records from the Zoning Ordinance archives from 1970 find that the text of the Zoning Ordinance for Section 4.6, which governed the RA-1 and RA 1-5 zones, identified "*Single-family dwelling units*" as a Principal Use permitted in the zone in Subsection 4.62(C). Subsection 4.66(A) identifies an off-street parking requirement of "*One (1) off-street parking space located to the rear of the front yard setback line shall be provided for each dwelling unit.*" The text of ZO Section 4.6 does not identify a limit on the number of dwelling units allowed on a single lot of record, but the text of Subsection 4.66(A) seems to contemplate that more than one detached single-family dwelling on a single lot in the RA-1 or RA 1-5 zone could have been possible.
- An amendment to the Zoning Ordinance (effective 09/03/1970, Board Order 756-70) updated the definition of 'Lot' to the following: "*Lot: Any lot, parcel, tract, or combination thereof, shown on a plat of record or recorded by metes and bounds shall have the required road frontage within the Zoning District in which it is located and shall furthermore have only one principle [sic] occupancy.*" With this definition likely having been in effect at the time the two dwellings were constructed on the subject property, its impact on the ability to develop two single family dwellings on a single lot in 1970 should be considered. The definition of Lot clearly restricts a lot to a single principal occupancy but does not identify a limit for the extent to which a principal occupancy could be developed (i.e., one could have more than one single-family dwelling unit, or more than one kennel, but not a kennel and a single-family dwelling unit). Therefore, this revised definition of Lot does not conclusively establish that only one single-family dwelling could have been established on a lot in the RA 1-5 zone in 1970-1971.
- Clackamas County's first Comprehensive Plan was adopted on August 1, 1971, and may or may not have been in effect at the time the dwellings were erected on the subject property. The area of the subject property (Rural, within the Estacada Community Study Area) does not appear to have had any



- density restrictions placed upon it by the Comprehensive Plan that would have precluded an effective density of one dwelling unit per 2.5 acres.
- In 1980 the Zoning Ordinance was replaced by the Zoning and Development Ordinance. In the 1980 text of the Zoning and Development Ordinance, the RRF-5 zone established “*A single-family dwelling unit*” as a primary use in the zoning district, per ZDO 309.03(A). Based on available records, it is this amendment that most likely rendered the use of the subject property for two single family dwellings nonconforming.

Therefore, as the applicant has proven the existence, continuity, nature, and extent of the nonconforming use for the 10- year period immediately preceding the date of the application, and as staff has reviewed the records available to Clackamas County and has not found any evidence sufficient to rebut the presumption that these two dwellings were lawfully established and have continued in their existence and nature 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, **this criterion is met.**