



COMMUNITY DEVELOPMENT

HEARINGS OFFICER HEARING - LAND USE: ROGERS ACCESSORY DWELLING UNIT

1:00 PM, THURSDAY, DECEMBER 11, 2025

Barnes Sawyer Rooms - Deschutes Services Bldg - 1300 NW Wall St – Bend

(541) 388-6575 | www.deschutes.org

AGENDA

MEETING FORMAT

This meeting will be conducted electronically, by phone, in person, and using Zoom.

Members of the public may view the meeting in real time via the Public Meeting Portal at www.deschutes.org/meetings.

Members of the public may listen, view, and/or participate in this meeting using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link:

<https://us02web.zoom.us/j/86898578219>

Using this option may require you to download the Zoom app to your device.

Members of the public can access the meeting via telephone, dial: 1-253-215-8782. When prompted, enter the following Webinar ID: 868-9857-8219. Written comments can also be provided for the public comment section to caroline.house@deschutes.org until the record is closed by the Hearings Officer.

PUBLIC HEARING

FILE NUMBER: 247-25-000553-PADU

SUBJECT PROPERTY: 65720 MARIPOSA LN, BEND, OR 97703

PROPERTY OWNER: ROGERS, RICHARD L & PAMELA N

HEARINGS OFFICER: TOMMY BROOKS

STAFF CONTACT: CAROLINE HOUSE (CAROLINE.HOUSE@DESCHUTES.ORG / 541-388-6667)

1. The applicant requests approval of an Accessory Dwelling Unit (ADU).



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please call (541) 617-4747.



COMMUNITY DEVELOPMENT

NOTICE OF CONTINUED PUBLIC HEARING

HEARING FORMAT

The Deschutes County Hearings Officer will conduct the public hearing as described below by video, telephone, and in person. Options for participating in the public hearing are detailed in the Public Hearing Participation section.

PROJECT DESCRIPTION

FILE NUMBER: 247-25-000553-PADU

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: ROGERS, RICHARD L & PAMELA N
Map and Taxlot: 1611140000512
Account: 201052
Situs Address: 65720 MARIPOSA LN, BEND, OR 97703

APPLICANT: Radius Design (John Olson)

REQUEST: The applicant requests approval of an Accessory Dwelling Unit (ADU) in the Multiple Use Agricultural (MUA10) Zone.

HEARINGS OFFICER: Tommy Brooks

HEARING LOCATION: Deschutes Services Building – First Floor – Barnes & Sawyer Rooms (1300 NW Wall Street, Bend, OR 97703) & Zoom

HEARING DATE & TIME: Thursday, December 11, 2025, at 1:00pm.

STAFF PLANNER: Caroline House, Senior Planner
Caroline.House@deschutes.org / 541-388-6667

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-25-000553-padu-accessory-dwelling-unit-mariposa-lane>

STANDARDS AND APPLICABLE CRITERIA:

Deschutes County Code (DCC)

- Title 18, Deschutes County Zoning Ordinance
 - Chapter 18.32, Multiple Use Agricultural Zone (MUA10)
 - Chapter 18.116, Supplementary Provisions
- Title 22, Deschutes County Development Procedures Ordinance

Oregon Revised Statute (ORS)

- Chapter 197A — Land Use Planning: Housing and Urbanization
 - 197A.400, Clear and objective approval criteria required; alternative approval process
- Chapter 215 — County Land Use Planning; Resource Lands
 - 215.010, Definitions
 - 215.495, Accessory dwelling units

TIME LIMITS

The Deschutes County Planning Division has set the following time limits for testimony at the hearing:

- Applicant: 30 minutes
- Public Agencies: 10 minutes
- General Public: 3 minutes
- Applicant Rebuttal: 10 minutes

Please note, the above time limits can be modified or eliminated by the Hearings Officer at their discretion.

PUBLIC HEARING PARTICIPATION

- If you wish to provide testimony during the public hearing, please contact the staff planner by 4:00 pm on December 10, 2025. Testimony can be provided as described below.
- Members of the public may listen, view, and/or participate in this hearing using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link: <https://us02web.zoom.us/j/86898578219> Using this option may require you to download the Zoom app to your device.
- Members of the public can access the meeting via telephone, dial 1-253-215-8782. When prompted, enter the following Webinar ID: 868-9857-8219.
- Written comments can also be submitted to the record. Please see the Document Submission section below for details regarding written submittals.

- The public can provide testimony in person at 1:00 pm in the Barnes and Sawyer Rooms of the Deschutes Services Center, 1300 NW Wall Street, Bend.

All documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost at the Deschutes County Community Development Department (CDD) at 117 NW Lafayette Avenue. Seven (7) days prior to the public hearing, a copy of the staff report will be available for inspection at no cost at CDD and on the websites listed above. Copies of all documents, evidence and the staff report can be purchased at CDD for (25) cents a page.

ALL INTERESTED PERSONS MAY APPEAR, BE HEARD, BE REPRESENTED BY COUNSEL, OR SEND WRITTEN SIGNED TESTIMONY. ANY PARTY TO THE APPLICATION IS ENTITLED TO A CONTINUANCE OF THE INITIAL EVIDENTIARY HEARING OR TO HAVE THE RECORD LEFT OPEN IN ACCORDANCE WITH SECTION 22.24.140 OF THE DESCHUTES COUNTY CODE.

Failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please contact the staff planner identified above.

DOCUMENT SUBMISSION

Any person may submit written comments on a proposed land use action. Documents may be submitted to our office in person, U.S. mail, or email.

In Person

We accept all printed documents.

U.S. Mail

Deschutes County Community Development
Planning Division, Caroline House
P.O. Box 6005
Bend, OR 97708-6005

Email

Email submittals should be directed to Caroline.House@deschutes.org

Limitations

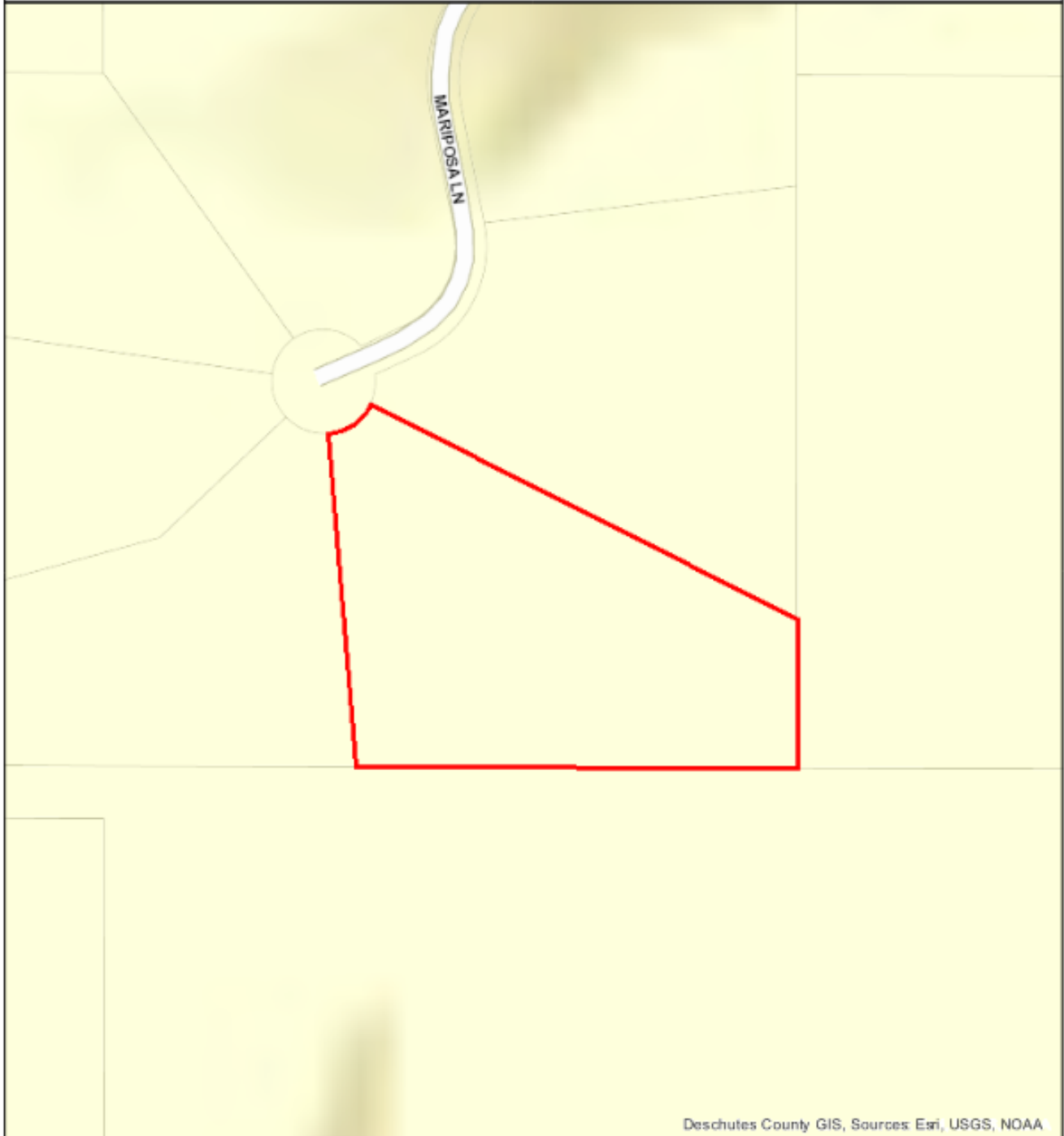
- Deschutes County does not take responsibility for retrieving information from a website link or a personal cloud storage service. It is the submitter's responsibility to provide the specific information they wish to enter into the record. We will print the email which includes the link(s), however, we will not retrieve any information on behalf of the submitter.
- Deschutes County makes an effort to scan all submittals as soon as possible. Recognizing staff availability and workload, there is often a delay between the submittal of a document to the record, and when it is scanned and uploaded to Accela Citizen Access (ACA) and Deschutes County Property Information (DIAL).
- To ensure your submission is entered into the correct land use record, please specify the land use file number(s).
- For the open record period after a public hearing, electronic submittals are valid **if received by the County's server** by the deadline established for the land use action.

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.

This Notice was mailed pursuant to Deschutes County Code Chapters 22.20 and 22.24.

Address: 65720 MARIPOSA LN, BEND, OR 97703

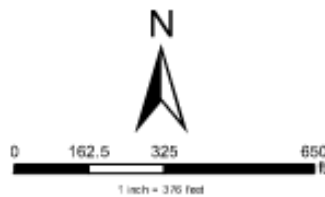
FILE NUMBER: 247-25-000553-PADU



Deschutes County GIS, Sources: Esri, USGS, NOAA



Date: 11/11/2025



owner	agent	inCareOf	address	cityStZip	type	cdd id	email
Radius Design	John Olson		835 NW Bond STE 3A	Bend, OR 97703	NOPH	25-553-PADU	radiusdesign.bend@gmail.com
Rogers, Richard and Pamela			15488 S Morel Dr.	Oregon City 97045	NOPH	25-553-PADU	p67r32rogers@msn.com
BEND FIRE DEPT.	Jeff Bond / Jason Bolen		ELECTRONIC		NOPH	25-553-PADU	jbond@bendoregon.gov; jbolen@bendoregon.gov
DESCHUTES CO. ASSESSOR			ELECTRONIC		NOPH	25-553-PADU	
DESCHUTES CO. BUILDING SAFETY	Randy Scheid		ELECTRONIC		NOPH	25-553-PADU	Randy.Scheid@deschutes.org
DESCHUTES CO. ONSITE WASTEWATER	Todd Cleveland		ELECTRONIC		NOPH	25-553-PADU	Todd.Cleveland@deschutes.org
NASH-BRAUER, ELIZABETH ET AL			65870 WALDRON TRL	BEND, OR 97703	NOPH	25-553-PADU	
LAURA ERICKSON METZGER REV LIV TR ET AL	METZGER, DAVID M & LAURA ERICKSON TTEES		65710 MARIPOSA LN	BEND, OR 97703	NOPH	25-553-PADU	
WARTA FAMILY TRUST	WARTA, JOHN M & GEORGIANA L TTEES		PO BOX 1088	CAMAS, WA 98607	NOPH	25-553-PADU	
WALTON PROPERTIES LLC			95 SW SCALEHOUSE LOOP #STE 100	BEND, OR 97702	NOPH	25-553-PADU	
SCHILLING, JAMES & BILLIE K			65725 MARIPOSA LN	BEND, OR 97703	NOPH	25-553-PADU	
ERIC & MELINDA SCHUUR REV LIVING TRUST	SCHUUR, ERIC R & MELINDA S TTEES		65785 MARIPOSA LN	BEND, OR 97703	NOPH	25-553-PADU	
ROGERS, RICHARD L & PAMELA N			15488 S MOREL DR	OREGON CITY, OR 97045-8233	NOPH	25-553-PADU	
JASON PATTEE & KATHARINE MILLER TRUST	PATTEE, JASON M TTEE ET AL		65715 MARIPOSA LN	BEND, OR 97703	NOPH	25-553-PADU	



COMMUNITY DEVELOPMENT

STAFF REPORT

FILE NUMBER(S): 247-25-000553-PADU

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: ROGERS, RICHARD L & PAMELA N
Map and Taxlot: 1611140000512
Account: 201052
Situs Address: 65720 MARIPOSA LN, BEND, OR 97703

APPLICANT: Pamela and Richard Rogers / Radius Design (John Olson)

REQUEST: The applicant requests approval of an Accessory Dwelling Unit (ADU) in the Multiple Use Agricultural (MUA10) Zone.

HEARING LOCATION: Deschutes Services Building – First Floor – Barnes & Sawyer Rooms (1300 NW Wall Street, Bend, OR 97703) & Zoom

HEARING DATE & TIME: Thursday, October 30th, 2025, at 1:00pm.

STAFF PLANNER: Jacob Ripper, AICP, Principal Planner
Jacob.Ripper@deschutes.org 541-385-1759

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-25-000553-padu-accessory-dwelling-unit-mariposa-lane>

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

- Title 18, Deschutes County Zoning Ordinance
 - Chapter 18.32, Multiple Use Agricultural Zone (MUA10)
 - Chapter 18.116, Supplementary Provisions
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197A.400, Clear and objective approval criteria required; alternative approval process
 Chapter 215 — County Land Use Planning; Resource Lands
 215.010, Definitions
 215.495, Accessory dwelling units

II. **BASIC FINDINGS**

LOT OF RECORD: The subject property is one (1) legal lot of record as it was platted as lot 7 of the Grandridge subdivision.

SITE DESCRIPTION: The subject 9.75-acre property is developed with a single-family dwelling and is within the Multiple Use Agriculture (MUA10) Zone. The property is irregularly shaped and fronts Mariposa Lane. The grade is relatively even across the property.

REVIEW PROCEDURE: Under DCC 22.16.010, the Planning Director has determined that for the purposes of DCC Title 22, this development action application should be treated as if it were a land use action application.

REVIEW PERIOD: The subject application was submitted on September 4, 2025, and deemed complete by the Planning Division on September 23, 2025. The applicant requested a 30-day extension, making the 150th day on which the County must take final action on this application is March 22, 2025.

NOTICE REQUIREMENTS: The Planning Division mailed notice of the public hearing on September 30, 2025, and posted notice in The Bulletin newspaper on October 5, 2025. No public comments were received.

III. **FINDINGS & CONCLUSIONS**

Title 22, Deschutes County Development Procedures Ordinance

Chapter 22.16, Development Action Procedures

Section 22.16.010. Review of Development Action Applications

- A. *A development action application may be handled administratively by the Planning Director without public notice or hearing.***
- B. *The Planning Director has the discretion to determine that for the purposes of DCC Title 22 a development action application should be treated as if it were a land use action application.***

FINDING: The Planning Director has determined that for the purposes of DCC Title 22, this development action application should be treated as if it were a land use action application.

Title 18, Deschutes County Zoning Ordinance

Chapter 18.32, Multiple Use Agricultural Zone (MUA-10)

Section 18.32.020. Uses Permitted Outright.

The following uses and their accessory uses are permitted outright:

...

- K. A residential accessory dwelling unit, subject to DCC 18.116.355.**

FINDING: The Applicant proposes to establish a residential Accessory Dwelling Unit (ADU) on the subject property. The proposed use is permitted outright, subject to DCC 18.116.355. Compliance with the requirements of DCC 18.116.355 is addressed later in this decision.

In the same structure, the Applicant is proposing to establish two garages, a large carport, a large shop, shop storage, and a half bathroom on the ground floor, with a storage area upstairs with a full bathroom, dormer windows, and balcony on the storage floor. The Applicant later informed the County that the proposed structure would house the Applicant's car collection. For the purposes of this report, the construction that is not identified in the application materials as the ADU will be referred to as "additional structural elements".

Section 18.32.040. Dimensional Standards.

In an MUA Zone, the following dimensional standards shall apply:

...

- C. No structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.**

FINDING: The elevation drawings submitted with the application indicate the overall height of the structure containing the ADU will be 30 feet or less in height. As a condition of approval, no building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.

Section 18.32.050. Yards.

- A. The front yard setback from the property line shall be a minimum of 20 feet for property fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way, and 80 feet from an arterial right of way unless other provisions for combining accesses are provided and approved by the County.**
- B. Each side yard shall be a minimum of 20 feet. For parcels or lots created before November 1, 1979, which are one-half acre or less in size, the side yard setback may be reduced to a minimum of 10 feet. For parcels or lots adjacent to property receiving special assessment for farm use, the adjacent side yard for a dwelling shall be a minimum of 100 feet.**
- C. Rear yards shall be a minimum of 25 feet. Parcels or lots with rear yards adjacent to**

- property receiving special assessment for farm use, the rear yards for a dwelling shall be a minimum of 100 feet.*
- D.** *The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.*
 - E.** *In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.*

FINDING: The proposal does include a dwelling with side and/or rear yards adjacent to property receiving special assessment for farm use. The proposed structure containing the ADU complies with setbacks in sections (A) through (C). As a condition of approval, structural setbacks from any north lot line shall meet the solar setback requirements in DCC 18.116.180. As a condition of approval, in addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

Section 18.32.060. Stream Setbacks.

To permit better light, air, vision, stream pollution control, fish and wildlife areas, and to preserve the natural scenic amenities and vistas along rivers, streams, and lakes, the following ordinary high water mark setbacks shall apply:

- A.** *All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all rivers, streams, or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Onsite Wastewater Division finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.*
- B.** *All structures, buildings, or similar permanent fixtures shall be set back from the ordinary high water mark along all rivers, streams, or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.*

FINDING: There are no rivers, streams, or lakes in the project vicinity.

Section 18.32.070. Rimrock Setback.

Setbacks from rimrock shall be as provided in DCC 18.116.160.

FINDING: There is no rimrock in the project vicinity.

Chapter 18.116, Supplementary Provisions

Section 18.116.040, Accessory Uses.

An accessory use shall comply with all requirements for a primary use, except as DCC Title 18 specifically allows to the contrary, and shall comply with the following limitations:

FINDING: Pursuant to DCC 18.32.020(K), a residential ADU is a standalone use, subject to the requirements of DCC 18.116.355. It is unclear to staff if the proposed structure is also defined as a DCC 18.04.030 “accessory use” and/or “accessory structure” and subject to the requirements of DCC 18.116.040.

DCC 18.04.030, establishes the following definitions for these terms:

“Accessory structure” means a structure that is incidental and subordinate to another lawfully established structure or lawfully established use on the same lot or parcel.

“Accessory use” means a use that is incidental and subordinate to another lawfully established use on the same lot or parcel. [...]

Below are the DCC 18.04.030, DCC 18.116.355(A), ORS 215.495, and ORS 215.501 definitions for “accessory dwelling unit”:

DCC 18.04.030: “Dwelling unit, accessory” shall have the meaning set forth in DCC 18.116.355(A).

DCC 18.116.355(A): “Accessory dwelling unit” means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, “auxiliary” means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot or parcel as the single-family dwelling.

ORS 215.495(1)(a): “Accessory dwelling unit” has the meaning given that term in ORS 215.501.

ORS 215.501(1)(a): “Accessory dwelling unit” means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling.

Staff believes the proposed ADU is definitionally distinct from the DCC 18.04.030 “accessory structure” definition but may fall under the DCC 18.04.030 “accessory use” definition. For this reason, staff believes the requirements of DCC 18.116.040(B-D) do not apply to the proposed ADU.

Staff requests the Hearings Officer to clearly identify the use category for the Applicant’s proposal.

Based on the floor plan, it is unclear if the additional structural elements are designed to be accessory to the existing dwelling on the property; accessory to the to the proposed ADU; accessory to both uses; a *de facto* portion of the ADU; or a guest house.

Staff also requests the Hearing Officer specifically address the following questions:

- 1) Can the additional structural elements be approved as an “accessory structure”, accessory to the use of the existing dwelling on the property?
- 2) Can the additional structural elements be approved as an “accessory structure”, accessory to the use of the proposed ADU on the property?
- 3) Are the additional structural elements a *de facto* portion of the ADU?
- 4) Are the additional structural elements a guest house, which is a conditional use under DCC 18.32.030 which may be precluded by DCC 18.116.355(B)(2)?
- 5) Can any potential use requirement limitations be adequately addressed with conditions of approval?

Staff notes that if the additional structural elements were constructed as a third detached¹ structure from both the existing dwelling and ADU, staff believes that such third structure would be approvable as an accessory structure to either the existing dwelling or the proposed ADU use pursuant to DCC 18.116.040. Staff also notes that the requirements of DCC 18.116.355 and ORS 215.495 may impact this analysis.

If the Hearings Officer finds the Applicant’s proposal is defined as an “accessory structure”, staff has provided the following alternative findings to address the requirements of DCC 18.116.040 applicable to accessory structures:

- B. *A property owner is prohibited from installing any one of the following facilities described in (B)(1-3) within an accessory structure, unless the property owner signs and records a Deschutes County restrictive covenant prohibiting use of the structure as a dwelling unit. If a property owner signs and records a Deschutes County restrictive covenant prohibiting use of the structure as a dwelling unit, one of the following facilities may be installed within an accessory structure in accordance with this subsection (B):***
- 1. *A full bath; or***
 - 2. *A sink outside a bath and one or more of the following:***
 - a. *A dishwashing machine; a refrigerator; or***
 - 3. *A sink outside a bath and:***
 - b. *Laundry appliances***
- C. *Notwithstanding (B), more than one of the facilities identified in (B)(1-3) may be installed within any accessory structure, if an approved land use permit includes a finding that the proposed use is allowed on the subject lot or parcel.***
- D. *A kitchen may not be installed within any accessory structure, unless an approved land use permit includes a finding that the proposed use is allowed on the subject lot or parcel.***

FINDING: The Applicant has applied to construct a two-story structure comprised of an ADU and additional structural elements. Outside of the area identified on the floor plans as “Total ADU Area”, none of the following improvements are proposed in the structure: a dishwashing machine,

¹ DCC 18.04.030 defines “Detached”, with respect to structures, means a structure on an individual lot or parcel that is freestanding and structurally separated from other structures.

refrigerator, laundry appliances, stove, range, oven, microwave, any food heating appliance, a range hood and/or exhaust vent, or rough-ins for any of these appliances.

Staff believes there are at least two plausible interpretations under these criteria:

- 1) The additional structural elements are an “accessory structure” and are approvable subject to 18.116.040(B), or
- 2) The entire structure is an “accessory structure” and is potentially approvable subject to 18.116.040(C-D).

To the extent the Hearings Officer finds that the proposal is approvable subject to 18.116.040(B), staff recommends that implementing conditions of approval be included in any approval.

Section 18.116.355. Accessory Dwelling Units In The RR-10 And MUA Zones.

FINDING: DCC 18.116.355 implements, elaborates, and includes additional local limitations on accessory dwelling units, which are allowed under ORS 215.495. Staff believes the Hearings Officer may need to conduct a separate analysis of ORS 215.495 to ensure that any approval of this proposal meets the limiting requirements of ORS 215.495 and, in addition, complies with the DCC 18.116.355 implementation, elaboration, and local limitations on ADUs. Staff notes that this analysis may be impacted by ORS 215.495 definitions for some key terms.

B. *One accessory dwelling unit is permitted outright on a lot or parcel zoned RR-10 or MUA-10, provided all of the following standards are met.*

- 1. *One single-family dwelling is sited on the lot or parcel:***
 - a. *As used in this section, "sited" means established onsite or applied for prior to issuance of any building or land use permits for an accessory dwelling unit.***
 - b. *An existing single-family dwelling meeting all other criteria in this section may be converted to an accessory dwelling unit during construction of a new primary single-family dwelling.***

FINDING: There is an existing single-family dwelling established onsite. Therefore, staff finds there is one single-family dwelling sited on the subject property.

- 2. *There is no guesthouse, temporary dwelling unit as identified in DCC 18.116.090, or additional dwelling units except the primary single-family dwelling established on the subject property.***
 - a. *An existing lawfully established guesthouse, temporary dwelling unit as identified in DCC 18.116.090, or an additional dwelling unit meeting all other criteria in this section may be converted to an accessory dwelling unit.***

FINDING: Based on the submitted materials, staff finds there is approved no guesthouse, temporary dwelling unit for a medical condition, or additional dwelling unit on the subject property.

3. ***The lot or parcel is not located within an Urban Reserve Area, consistent with ORS 195.137.***

FINDING: The subject property is not located within an Urban Reserve Area.

4. ***No portion of the lot or parcel is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.***

FINDING: No portion of the subject property is within the Metolius Area of Critical State Concern, as defined in ORS 197.416.

5. ***The lot area is at least two acres, with the exception of those unsewered areas between Sunriver and the Klamath County border, defined as those unincorporated portions of Deschutes County contained in Townships 19S, 20S, 21S, and 22S and Ranges 9E, 10E and 11E. Within these exception areas, the lot area is at least five acres.***

FINDING: The subject property is not located in an unsewered area between Sunriver and the Klamath County border, defined as those unincorporated portions of Deschutes County contained in Townships 19S, 20S, 21S, and 22S and Ranges 9E, 10E and 11E. Therefore, staff finds the minimum lot area is two (2) acres.

Lot area is defined in the DCC 18.04.030 as:

“Lot area” means the total horizontal area contained within the lot lines. Said area shall be computed as gross area for lots or parcels larger than 2.5 acres and net area for lots or parcels 2.5 acres and smaller.

- A. ***“Lot area, gross” means the total horizontal net area within lot lines including all streets, roads, and easement of access to other property that would accrue to that lot or parcel if the road, street, right of way, or easement were vacated. The gross area of lots or parcels that have never been previously described of record as other than fractions of a section shall be calculated as if the section contained 640 acres, in cases where a lot or parcel is sought to be partitioned.***
- B. ***“Lot area, net” shall be used for lots or parcels smaller than 2.5 acres and means the total horizontal area contained within the lot lines that is free from roads, streets, rights of way, or easements of access to other property.***
- C. ***As used in DCC Title 18, “lot size” shall be synonymous with “lot area”.***

Based on this definition, staff finds the lot area for the subject property is measured based on the gross area. Therefore, staff finds the subject property is 9.72 acres in size and complies with the minimum lot area standard under this criterion.

6. ***The accessory dwelling unit structure will have a minimum setback of 100 feet from all lot lines abutting properties zoned F-1, F-2, or EFU and meet any***

other minimum setback requirements of the underlying zone(s) and combining zones.

FINDING: There is an abutting property zoned EFU to the south of the subject property and the proposed ADU structure will have at least a 100-foot setback from these properties. Compliance with the minimum setback requirements of the underlying zone is addressed in the findings above.

7. The accessory dwelling unit will not include more than 900 square feet of useable floor area.

FINDING: At the outset, staff notes that DCC 18.116.355(A) provides the following definitions:

- 1. "Accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling. For the purposes of this section, "auxiliary" means a use or structure incidental and subordinate to the single-family dwelling on the property, and located on the same lot or parcel as the single-family dwelling.***
- 2. "Accessory dwelling unit structure" means all areas of an accessory dwelling unit inclusive of garages, carports, decks, and porch covers.***
- ...***
- 5. "Useable floor area" means all areas of an accessory dwelling unit defined as floor area in DCC 18.04.030, exclusive of garages, carports, decks, and porch covers.***

In addition to the definitions cited previously, DCC 18.04.030 provides the following definition:

"Floor area" means the area measured in square feet of horizontal space intended to be a floored surface contained within a building or portion thereof, measured inside of the external walls, including slab-on-grade and exclusive of vent shafts, courts, and basements. When calculating floor area, stairs are counted once unless the area under the stairs is part of the dwelling unit's floor plan, in which case the stairs are counted twice. Portions of the floor area with a sloped ceiling measuring less than five feet from the finished floor to the finished ceiling are not considered as contributing to the floor area.

This criterion establishes the "accessory dwelling unit" must not exceed 900 square feet of "usable floor area". The distinction between "accessory dwelling unit structure" and "usable floor area" is notable. The 900 square foot limit pertains solely to usable floor area, not the entire ADU structure. The DCC 18.116.355(A) definition excludes certain features (garages, carports, decks, and porch covers) from usable floor area measurement.

Staff finds that the cited definitions and criteria make it clear that the "accessory dwelling unit" may contain:

- 1) Up to 900 square feet of "useable floor area", and
- 2) An unlimited additional square footage that is part of the "residential structure" that is limited to garages, carports, decks, and porch covers – as well as square footage that is

definitionally excluded from “floor area”.

During the County’s legislative review process for the adoption of this criterion, the Board of County Commissioners (BOCC) were presented with multiple options on how to calculate the usable floor area and, ultimately, adopted language intended to keep the calculation very simple². Based on a plain reading of the code and the legislative history, staff understands the proposed ADU would not comply with this requirement due to the attached additional structural elements, unless the Hearings Officer finds the Applicant’s proposal is an “accessory structure”.

Staff requests the Hearings Officer determine the relationship between the proposed ADU and proposed additional structural elements, such as storage areas, a half-bathroom, and workshops downstairs, as well as a full bathroom, balcony, and dormer windows on the same floor as a storage area upstairs. Staff notes the analysis here will potentially impact on how staff apply the regulations in DCC 18.116.040 and 18.116.355 to future proposals, unless further appealed.

8. ***The accessory dwelling unit will be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.***
 - a. ***An existing structure converted to an accessory dwelling unit must be located no farther than 100 feet from the existing single-family dwelling, measured from the existing single-family dwelling to the nearest part of the accessory dwelling unit structure. For the purposes of this section, "existing" means the structure was lawfully established on or before November 1, 2023.***

FINDING: The Applicant proposes to construct a new ADU structure. Based on the submitted site plan and floor plan, staff finds the proposed ADU structure will be located 100 feet from the existing single-family dwelling, measured from a wall of the existing single-family dwelling to the nearest part of the useable floor area of the accessory dwelling unit.

9. ***Prior to application, the accessory dwelling unit receives approval from a sewer authority or the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment.***

FINDING: The subject property is served by an onsite septic system. The submitted application materials do not include approval from the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment, which was intended to be a requirement prior to application for land use approval of an ADU, as outlined in this criterion. Should the Hearings Officer find the proposal approvable, staff has included a recommended condition of approval to correct this situation.

² Reference Deschutes County BOCC deliberations on this code provision held on August 09, 2023 (ref. Video recording starting at minute 2:42:40). <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-118>

10. *The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410.*

FINDING: The submitted application materials demonstrate the subject property is served by Deschutes County Rural Fire Protection District #2.

11. *The accessory dwelling unit provides for all of the following:*
- a. *Adequate access connecting an accessory dwelling unit with a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. Adequate access is met by demonstrating compliance with section 11(a)(i) and 11(a)(ii), or section 11(a)(iii):*
 - i. *A continuous, minimum 20-foot width right(s)-of-way with an unobstructed vertical clearance of not less than 13.5 feet. For the purposes of this section, right(s)-of-way are defined as:*
 - 1. *Public roads with maintenance responsibility accepted by a unit of local or state government or assigned to landowners or homeowners association by covenant or agreement; or*
 - 2. *Private roads, as permitted by DCC Title 18, with maintenance responsibility assigned to landowners or homeowners associations by covenant or agreement pursuant to ORS 105; and*
 - ii. *A continuous, minimum 12-foot width onsite driveway with an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, designed and maintained as follows:*
 - A. *Composed of an all-weather surface including asphalt or concrete; or*
 - B. *Designed and maintained to support a minimum gross vehicle weight (GVW) of 75,000 lbs as certified by a Professional Engineer, registered in Oregon;*
 - iii. *Written confirmation from a fire protection service provider with professionals who have received training or certification described in ORS 181A.410, on a form prepared by Deschutes County, that access to the property meets minimum fire district requirements to provide emergency services to the property;*

FINDING: Based on the submitted materials, the subject property is accessed via public roads. The submitted materials indicate compliance with the road dimension and maintenance standards above will be met. Additionally, the applicant indicates the proposed onsite driveway complies with the dimensional standards above and includes an all-weather surface. If the proposal is approved,

to ensure ongoing compliance with the onsite driveway maintenance requirements, staff has included a recommended condition of approval.

- 12. *The existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.***

FINDING: Based on the Community Development Department records, staff finds the existing single-family dwelling property on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.

- 13. *A lot or parcel with an accessory dwelling unit approved under this section is ineligible for:***
- a. *A subdivision, partition, other division of the lot or parcel, or a property line adjustment where the result of such application would be to situate the existing single-family dwelling on a different lot or parcel than the accessory dwelling unit; and***
 - b. *Placement or construction of any additional dwelling unit, guesthouse, or any other temporary dwelling unit as identified in DCC 18.116.090.***

FINDING: Conditions of approval have been added to ensure compliance.

- 14. *If the accessory dwelling unit is served by a well, the construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.***

FINDING: The proposed ADU and bathrooms will be served by a well. A condition of approval has been added to ensure compliance.

- 15. *At the time of application, a letter confirming that the supplier of water is "Willing and Able to Serve" the accessory dwelling unit shall be provided if the accessory dwelling unit is to be served by any water source other than an onsite domestic well.***

FINDING: The submitted application materials state the proposed ADU and bathrooms will be served by an onsite domestic well. This criterion does not apply.

- 16. *An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating ground water right exemptions under ORS 537.545(1).***
- 17. *If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (l)(b) or (d) no portion of the lot or parcel is within an area in which new or existing ground water***

uses under ORS 537.545 (l)(b) or (d) have been restricted by the Water Resources Commission.

FINDING: The proposed ADU and bathrooms will be served by a well. Conditions of approval have been added to ensure compliance.

- 18. *Prior to issuance of building permits, the applicant shall sign and record with the County Clerk, a restrictive covenant stating an accessory dwelling unit allowed under this section and the primary single-family dwelling cannot be used for vacation occupancy, as defined in DCC 18.116.355(A)(8)³ and consistent with ORS 90.100.***

FINDING: Vacation occupancy is defined in DCC 18.116.355(A)(6) as:

“Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

- a. The occupant rents the unit for vacation purposes only, not as a principal residence; and***
- b. The occupant has a principal residence other than at the unit; and***
- c. The period of authorized occupancy does not exceed 45 days.***

Staff notes this restriction applies to the primary single-family dwelling on the property and the ADU. A condition of approval has been added to ensure compliance.

Oregon Revised Statute

Chapter 197A — Land Use Planning: Housing and Urbanization

197A.400 Clear and objective approval criteria required; alternative approval process.

- 1) Except as provided in subsection (3) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, on land within an urban growth boundary. The standards, conditions and procedures:***
 - a) May include, but are not limited to, one or more provisions regulating the density or height of a development.***
 - b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.***

FINDING: To the extent ORS 197A.400 applies to this proposal, staff believes:

³ The correct reference is DCC 18.116.355(A)(6)

- 1) Deschutes County rules pertaining to the development of housing adopt and apply only clear and objective conditions and procedures regulating the development of ADUs.
- 2) Any interpretational ambiguity resulting directly from statute or the application of statute to this proposal is not subject to ORS 197A.400.
- 3) To the extent that this proposal is cumulatively not subject to clear and objective standards, it is the additional structural elements that require discretionary review, not the ADU. The additional structural elements are not “the development of housing”.

Staff believes it may be possible and optional for the Hearings Officer to resolve any concerns under ORS 197A.400 by issuing two separate decisions: one approving or denying the ADU as a stand-alone project and a second approving or denying the additional structural elements.

IV. CONCLUSION AND RECOMMENDED CONDITIONS OF APPROVAL

Should the Hearings Officer find the proposed use can comply with the applicable standards and criteria of the Deschutes County Code, staff recommends the following conditions be included with any approval.

1. This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
2. The property owner shall obtain any necessary permits from the Deschutes County Building Division and Onsite Wastewater Division.
3. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.
4. Structural setbacks from any north lot line shall meet the solar setback requirements in DCC 18.116.180.
5. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
6. **Prior to issuance of building permits**, the applicant shall sign and record with the County Clerk, a restrictive covenant prohibiting the use of the additional structural elements as a dwelling unit.
7. Once the proposed ADU is established, the subject property is ineligible for:
 - a. A subdivision, partition, other division of the lot or parcel, or a property line adjustment where the result of such application would be to situate the existing single-family dwelling on a different lot or parcel than the ADU; and

- b. Placement or construction of any additional dwelling unit, guest house, or any other temporary residence as identified in DCC 18.116.090.
- 8. **Prior to issuance of building permits**, the applicant shall sign and record with the County Clerk, a restrictive covenant stating an ADU allowed under this section and the primary single-family dwelling cannot be used for vacation occupancy, as defined in DCC 18.116.355(A)(6) and consistent with ORS 90.100.
- 9. The property owner must maintain the onsite driveway(s) pursuant to DCC 18.116.355(11)(a)(i) and (ii).
- 10. The construction of the accessory dwelling unit shall maintain all setbacks from the well required by the Water Resources Commission or Water Resources Department.
- 11. An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating ground water right exemptions under ORS 537.545(1).
- 12. If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545 (l)(b) or (d). no portion of the lot or parcel is within an area in which new or existing ground water uses under ORS 537.545 (l)(b) or (d) have been restricted by the Water Resources Commission.

SYSTEM DEVELOPMENT CHARGE

If the application is approved, Board Resolution 2024-038 sets a transportation system development charge (SDC) rate of \$5,856 per p.m. peak hour trip. County staff has determined a local trip rate of 0.405 p.m. peak hour trips per residential Accessory Dwelling Unit (ADU); therefore the applicable SDC is \$2,371 (\$5,856 X 0.405). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final. This SDC applies to residential ADUs.

THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30TH. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1ST. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS ISSUED.

V. DURATION OF APPROVAL, NOTICE, AND APPEALS

If the application is approved, the property owner shall apply for building permit(s) for the proposed development within two (2) years of the date this decision becomes final or obtain approval of an extension under Title 22 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest pursuant to DCC 22.32.050. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee, and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body (the Board of County Commissioners) an adequate opportunity to respond to and resolve each issue.

DESCHUTES COUNTY PLANNING DIVISION

A handwritten signature in black ink, reading "Jacob Ripper". The signature is written in a cursive, flowing style.

Written by: Jacob Ripper, AICP, Principal Planner

owner	agent	inCareOf	address	cityStZip	type	cdd id	email
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