
HEARINGS OFFICER DECISION

October 30, 1996

This Decision Consists of Findings of Fact and Conclusions

CU 11-96	Conditional Use Permit for a "Template Dwelling"
HV 14-96	Major variance to the yard (setback) requirements
SEC 21-96	Significant Environmental Concern Permit

The applicant has requested a Conditional Use Permit for a "template Dwelling", a Major Variance from the Code's requirement of a 200 foot setback from side lot lines for 100 foot and 38 foot setbacks and a Significant Environmental Concern Permit for this tract which is in the Commercial Forest District.

Site Address	1111 NW 53rd Drive
Tax Roll Description	Tax Lot 4, of lots 23 and 24 <i>Mountain View Park</i> located in Section 31, T1N R1E, W.M., Multnomah County, Oregon
Site Size	3.88 acres
Applicant	Byron L. and Susan I. March 8610 NW Hazeltine St. Portland, OR 97229
Property Owner	J. Jerry Longaker and Chris Copley 732 NE 190th Ave. Portland, OR 97230
Comprehensive Plan Designation	Commercial Forest
Zoning Designation	Commercial Forest (CFU)

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I. SUMMARY OF THE REQUEST

The application involves two adjoining pieces of property, Tax Lot 4 and Tax Lot 69. These two lots are in contiguous ownership and constitute a "tract." Tax Lot 69 contains .18 acres and is located within the City of Portland. Tax Lot 4 is the site of the proposed dwelling. Tax Lot 4 is located in unincorporated Multnomah County and is designated and zoned as Commercial Forest land. According to a geotechnical report submitted by the applicant (Exhibit A5), the north portion of the property is relatively steep and slopes easterly. There have been recent slides in this area. There is undulating topography over the southwest portion of the property which indicates historical landsliding and/or soil creep movements.

II. PUBLIC HEARING

A. Hearing.

Hearings Officer Deniece Won held a duly noticed public hearing regarding the application on October 16, 1996.

B. Summary of Testimony and Evidence Presented.

1. Susan Muir, County Planner, summarized the staff report and conditions of approval.

2. Byron March, the applicant, testified in favor of the proposal. He supported the staff report and recommended conditions. He testified that he and his wife first wanted to build on Tax Lot 69 of the tract. Tax Lot 69 is within the City of Portland and within the regional Urban Growth Boundary. The City of Portland determined that the City tax lot was unbuildable.

3. Susan March, the applicant, testified that they are required to have an alternate drainfield available and it is located on Tax Lot 69, the parcel within Portland.

4. Rick Gilmore, a neighboring property owner at 1114 NW 53rd Drive, testified that he had considered purchasing and building on the subject site. Because he owns an adjacent lot containing under 19 acres the County would not permit him to build on the lot because under the tract provisions of the Multnomah County Zoning Code (Code), the subject lot would be combined with his ownership making it unavailable for development. He appeared at the hearing to protest what he sees as unfair results of the Code's requirement to combine contiguous parcels in the same ownership.

III. STANDARDS AND CRITERIA, FINDINGS OF FACT AND EVALUATION OF REQUEST

A. Conditional Use Permit Request for Template Dwelling

1. A "template Dwelling" may be approved as a conditional use permit in a Commercial Forest zone when it is found to satisfy the standards of the Multnomah County Code. MCC 11.15.2050(B). The standards are in subsections .2052 and .2074. Under 11.15.2052 a dwelling may be located on a tract, subject to the following:

- (1) The lot or lots in the tract shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 15, 1990;

Findings. Under the Code a lot of record is a lot lawfully created and recorded before October 6, 1977. The uncontroverted evidence in the record is that the lot was legally created and recorded in 1936 before there were zoning regulations.

- (2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent County maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;

Findings. The site contains 3.88 acres, generally sufficient to site a dwelling. The lot width is 380 feet, which is not sufficient to provide a total of 400 foot in sideyard setbacks and site a dwelling. The applicant has applied for a variance from the setback standards. The setbacks proposed are 38 feet from the south side lot line and 100 feet from the east side lot line. See Section III B of this order.

- (3) The tract shall meet the following standards:

- (c) The tract shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and
 - (i) The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and
 - (ii) At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square.

- (d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.
- (e) There is no other dwelling on the tract;
- (f) No other dwellings are allowed on other lots (or parcels) that make up the tract;
- (g) Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and
- (h) No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;

Findings. Soils on the subject parcel have a Site Index of 157, which means that a fully stocked stand of 70 year old Douglas fir trees can produce 10,722 cubic feet of lumber per acre. The Soil Conservation Service survey says the soil is suited to Douglas Fir. Dividing the yield by 70 years produces the average growth rate of 153 cubic feet per year per acre.

The Multnomah County Assessment and Taxation records show that there are 12 lots that were lawfully created before January 1, 1993 within the template. The Multnomah County Assessment and Taxation records show that there are six dwellings that lawfully existed on January 1, 1993 within the template. None of the lots or dwellings within the template are located within the urban growth boundary. The parcel meets the requirement of 11 lots and 5 dwellings within the 160 acre template.

There is evidence that dwellings have existed on the subject property. However, none of the existing structures have been demonstrated to be habitable. The applicant proposes to locate the dwelling where one of the structures is located and will remove the uninhabitable structure before constructing the new dwelling.

The application involves two adjoining pieces of property, Tax Lot 4 and Tax Lot 69. Tax Lot 69 contains .18 acres and is located within the City of Portland. A condition of approval requires that a deed restriction be placed on Tax Lot 69 making it unbuildable.

- (4) The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable.

Finding. The tract and proposed dwelling are located outside any identified big game winter habitat area.

- (5) **Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, and the Bureau of Land Management, or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance;**

Finding. The applicant proposes access from NW 53rd Drive, a County-owned and maintained road. This criteria does not apply.

- (6) **A condition of approval requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:**

- (a) **The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;**

Finding. A condition of approval requires that the applicant submit a stocking survey, before a building permit is issued, showing compliance with this requirement .

- (b) **The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;**

Finding. A condition of approval requires the applicant to submit a stocking survey before the County issues a building permit.

- (c) **Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.**

Finding. Failure to meet stocking requirements will result in removal of the subject property from forest deferral.

- (7) **The dwelling meets the applicable development standards of MCC .2074;**

Finding. The proposed dwelling meets development standards except for the setback variances.

- (8) **A statement has been recorded with the Division of Records that the owner and successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;**

Finding. A condition of approval requires the applicant to record a deed restriction and to provide verification that the statement was recorded, before a building permit is issued.

- (9) **Evidence is provided, prior to issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the County Division of Records;**

Findings. A condition of approval requires a deed restriction be recorded that precludes any future sale or development of the attached .18 acres which shall specify that all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and no lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling. At the public hearing the hearings officer expressed some concern about this condition because the parcel that is subject to the restriction is within the urban growth boundary, eventually may have sanitary sewer service available and be developable. The Code expressly provides that such restrictions are irrevocable. However, the Code provides that they may be revoked by a statement of release signed by Multnomah County if the tract is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands.

2. Dimensional Requirements are set out in MCC 11.15.2058.

- (A) **Except as provided in MCC .2060, .2061, .2062, and .2064, the minimum lot size shall be 80 acres.**

Finding. The subject property is a legal nonconforming parcel to the minimum lot size of 80 acres.

- (C) **Minimum Yard Dimensions** - structures are required to be setback 60 feet from the centerline of the front lot line along the frontage of a county maintained road and 200 from side and rear lot lines. The minimum height of the structure is 35 feet and the minimum front lot line length is 50 feet. The Code requires variances from these standards to be approved under the Code's variance criteria.

Findings. The subject property has over 100 feet of frontage along a County maintained road. The proposed development meets the rear (north) setback with over 400 feet of rear yard. The applicant proposes that the east setback be 100 feet and the south setback be 38 feet. A variance has been requested for the two sideyard setbacks.

- (D) **To allow for clustering of dwellings and potential sharing of access, a minimum yard requirement may be decreased to 30 feet if there is a dwelling on an adjacent lot within a distance of 100 feet of the new dwelling.**

Finding. The closest dwelling is over 100 feet away. This criteria does not apply.

- (E) **The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.**

Findings. The subject site abuts NW 53rd Drive, a County owned and maintained road. The Multnomah County Right-of-Way Division has indicated that no additional deed dedication or restrictions will be required along 53rd Drive. However, the applicant will be required to receive a driveway approach permit before a building permit is issued which will require inspection and approval from the Multnomah County Right-of-way Division.

- (F) **Structures such as barns, silos, windmills, antennae, chimneys, or other structures may exceed the height requirements.**

Finding. No accessory structures have been requested.

3. Access Requirements. MCC 11.15.2068

Any lot in this district shall abut a street, or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles.

Findings. The subject site abuts a county owned and maintained road, NW 53rd Drive. The applicant proposes the road for access. This criteria is met.

4. Development Standards for Dwellings and Structures. MCC 11.15.2074.

Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048(D), .2048(E) and .2049(B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

(A) The dwelling or structure shall be located such that:

- (1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G);

Findings. The applicant located the proposed dwelling at the maximum distance from surrounding forest and farm operations while taking into account the site's landslide hazard areas. The property owner submitted a geotechnical report stating that clearing of the site at alternate locations for the building would increase surface water percolation and almost certainly destabilize the existing steep slopes and result in additional landsliding over the steeper slopes. A letter from a neighbor states that the site is unstable and slide-prone. The site plan map shows the site's topography and shows that the proposed building location is the flattest area of the site. Future landslides have the potential of impacting adjoining lands if unstabilized. The south side setback is proposed to be 38 feet from the south property line of Tax Lot 4. The actual distance between the dwelling and adjoining ownership is greater than 38 feet because the applicant owns Tax Lot 69 to the south between the proposed dwelling and the public road. The selected building site will minimize impacts on surrounding farm and forest practices caused by erosion and will provide buffers from noise, dust and other impacts associated with farm and forest operations. The proposed location appears to have the least impact on surrounding forest or agricultural lands.

- (2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized,

Findings. The impact will be no greater than the impact of the dwelling that previously existed at the same location. The applicant proposes to locate the dwelling as close to the road as possible and away from major landslide formations on the subject property that could have effects on farm and forest operations, both on and off site, if disturbed. The effect on forest and farm operations will be minimized by limited land disturbance and maximizing, to the extent possible, the distance to the north, west and east property lines.

- (3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;

Findings. The amount of forest land used for the dwelling and the driveway is approximately 3,000 square feet. The land used has been minimized because of the

dwelling's closeness to the road, while taking into consideration the minimum setback requirements.

- (4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

Finding. The applicant proposes to use the existing 100 foot driveway. This criteria does not apply.

- (5) The risks associated with wildfire are minimized. Provisions of reducing such risk shall include:**

- (a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;**

Finding. The territory is within the Tualatin Valley Fire and Rescue District which has a mutual aid agreement with the City of Portland. Adequate service can be provided as indicated by a review by the Fire Bureau.

- (b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC .2074(D) with permanent signs posted along the access route to indicate the location of the emergency water source;**

Finding. There is no perennial water source on the subject property. Therefore this criteria is not applicable.

- (c) Maintenance of a primary and a secondary fire safety zone on the subject tract.**
 - (i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**

Finding. The applicant can meet the primary fire safety zone on the subject property.

- (ii) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	Not required
Less than 20	50
Less than 25	75
Less than 40	100

Finding. The building site has a slope of 5 degrees. The additional primary safety zone requirements do not apply.

- (iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.
- (iv) No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and
- (v) Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).

- (d) The building site must have slope less than 40 percent.

Findings. The secondary fire break will extend into the public right-of-way and across the road to Tax Lot 17. Because Tax Lot 69 is part of the tract it can be used to meet fire safety zone requirements. There is approximately 50 feet from the proposed dwelling to the road at the narrowest point for the secondary fire safety zone. Subsection (v) of this section states that the secondary fire safety zone is required only to the extent possible within the area of an approved yard. With approval of the variance this criteria is

met. A condition is placed on the approval to require maintenance of the primary and secondary fire safety zones.

- (C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules.

Findings. A condition of approval requires that the well report be submitted before a building permit is issued. The County will renotify applicable property owners of its proceedings concerning finding compliance with the condition.

- (D) A . . . driveway accessing a single dwelling, shall be designed, built, and maintained to:
- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;
 - (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;
 - (3) Provide minimum curve radii of 48 feet or greater;
 - (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;

Findings. A condition of approval requires the applicant to submit, before a building permit is issued, written verification from an Oregon Professional Engineer proving compliance with the 52,000 lb. GVW standard for all bridges or culverts. A condition of approval requires the applicant to submit, before a building permit is issued, verification of an all-weather surface for the driveway of at least 12 feet in width.

- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:
- (b) The maximum grade map be exceeded upon written approval from the fire protection service provider having responsibility;

Findings. A condition of approval requires the applicant to submit, before a building permit is issued, construction drawings demonstrating that the grade of the driveway complies with the standards of MCC 11.15.2074(D).

- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;

Finding. No turnarounds are necessary because the driveway is 100 feet long.

B. Variance Request

The variance approval criteria are contained in MCC 11.15.8505. The Code's provisions and the hearings officer's findings follow.

- (A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall meet criteria (3) and (4).

Finding. A practical difficulty exists for this parcel because the total lot width of 380 feet is less than the combined sideyard requirements of 400 feet, leaving no buildable area on the lot if the requirements of the Code are fully enforced. A major variance is one that is more than 25 percent deviation from the Code's requirements. The applicant proposes two variances to the 200 foot side yard setback to allow the dwelling to be located 38 feet from the south side lot line and 100 feet from the east side lot line. Both of these variances are greater than 25 percent.

- (1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.

Findings. This property has conditions that do not generally apply to other properties in the vicinity because of its small size, its steep slope and the presence of areas prone to landslide and slumping. The applicant has provided documentation to demonstrate the instability of the property outside the desired building area.

- (2) The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.

Findings. The applicant has demonstrated that the subject property is 380 feet in width on the site plan. There is no opportunity to meet the minimum 200 foot setbacks from both side property lines on this property. Therefore, this property would not be able to be developed with a single family dwelling without approval of the variance. From County records, there appear to be at least 4 nearby CFU zoned lots with existing dwellings closer than 200 feet to side property lines.

- (3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.

Findings. The geotechnical report submitted by the applicant indicates that the proposed location will provide the least amount of erosion potential which could affect this and surrounding properties. The geotechnical report states that "proposed shallow ridge is considered to be best location for residential construction since the area is not prone to landsliding. Basement construction will effectively locate residence into shallow slope and below existing fills." Anthony Wright AW Geotechnical Services, Inc., June 4, 1996. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located nor will it adversely affect appropriate development of adjoining properties, because the proposed dwelling site is overall, the most suitable building site.

- (4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.

Finding. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use that is not listed in the underlying zone as long as all the criteria in the zoning code and any applicable state laws are met.

C. Significant Environmental Concern Permit

1. Criteria for Approval of SEC Permit. MCC 11.15.6420

The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

- (A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.

Finding. No rivers, streams or lakes exist on the property.

- (B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Finding. The forest land will be preserved for any possible future forestry operations. Only the footprint area of an existing building and driveway access of approximately 3000 square feet will be developed, approximately 2 percent of the lot.

- (C) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

Finding. The building site will utilize an existing developed site and will not significantly encroach on any forested lands.

- (D) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.

Finding. The proposed use is a single family residence. This criteria is inapplicable.

- (E) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.

Finding. Public safety will be enhanced because the existing uninhabitable dwellings are at times inhabited by transients. The new residence will reduce the possibility of transient behavior in the immediate area.

- (F) Significant fish and wildlife habitats shall be protected.

Finding. There are no fish habitats on the tract. Wildlife habitats will be protected and enhanced because the applicants intend to reforest the previously logged segments of the tract with trees indigenous to the area.

- (G) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.

Finding. There are no rivers, lakes, wetlands or streams on this property and therefore this criteria is not applicable.

- (H) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism and unauthorized entry.

Finding. There are no known archaeological sites on the property.

- (I) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.

Finding. No floodplains or wetlands are on the tract.

- (J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

Finding. The applicant will plant areas of potential erosion with indigenous vegetation. During construction proper erosion control is required by the Code.

- (K) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.

Finding. The proposed use of the 3.88 acre site is a single family dwelling which should not adversely affect air, water and land quality, or noise levels in the SEC designated area.

- (L) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.

Finding. The applicant submitted a picture and floor plan of the proposed residence. Its northwest architecture and wood construction is compatible with the character and quality of the area. Approval of a conditional use for a new dwelling requires an applicant to apply for and obtain approval through the Design Review process. The process looks at design issues. This criteria will be ensured through the design review process.

- (M) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

Finding. The building site is utilizing an area already occupied by a structure and generally devoid of vegetation. No endangered plant habitat is known to exist on the tract.

- (N) The applicable policies of the Comprehensive Plan shall be satisfied.

Finding. The approvals required for the proposed uses and other provisions within the Code that will continue to apply should assure the policies of the Comprehensive Plan will be satisfied. The Comprehensive Plan policies are not themselves approval criteria.

2. Criteria of Approval of SEC-h Permit - Wildlife Habitat. MCC 11.15.6426.

(B) Development Standards:

- (1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Finding. The proposed dwelling is to be located in an existing cleared area. This standard is met.

- (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Finding. The developed site will be within 65 feet from a County road. The County Right-of-Way Division has determined that reasonable access can be provided to the dwelling by NW 53rd Ave.

- (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Finding. The driveway will be 65 feet long. This standard is complied with.

- (4) The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary.

Finding. The access driveway is within 200 feet of the property boundary. This standard is complied with.

IV. CONCLUSION AND DECISION

A. Conclusions for Conditional Use Request for Template Dwelling

The application for the template dwelling demonstrates compliance with the Multnomah County Code and Multnomah County Comprehensive Framework Plan.

B. Conclusions for Variance Request

1. The subject parcel includes circumstances of size, steep slopes, and landslide potential that do not generally apply to other property in the same district.

2. The zoning requirement would restrict the use of this property from development since it cannot meet the 200 foot setback requirements anywhere on the property.

3. Granting the variance will not be detrimental to the public welfare or injurious to property in the vicinity because the proposed dwelling site is overall the most suitable site.

4. Granting the variance, with the conditions of approval, will not adversely affect the realization of the Comprehensive Plan.

C. Conclusions for significant Environmental Concern Permit

The application for development of this property with a single family dwelling not related to forest management demonstrates compliance with the Multnomah County Code standards for development within an identified wildlife habitat area.


V. Final Order and Conditions of Approval

Based on the findings of fact and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the Hearings Officer hereby approves CU 11-96, HV 14-96, and SEC 21-96 subject to the following conditions:

1. The applicant shall preclude Tax Lot 69 from all future rights to site a dwelling by a deed restriction which shall be recorded and evidence of recordation shall be submitted to the Multnomah County Transportation and Land Use Planning Division before approval of the building permit.
2. The applicant shall provide verification that a deed restriction has been recorded stating that successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices shall be submitted to the Multnomah County Transportation and Land Use Planning Division before approval of the building permit.
3. The applicant shall submit a stocking survey, before issuance of a building permit, in accordance with the procedures and provisions of MCC 11.15.2052(A)(6).
4. The roofing material and chimney design shall be reviewed and approved, before issuance of the building permit, in accordance with MCC 11.15.2074(B)(4) and (5).
5. The applicant shall submit well reports, before issuance of a building permit, that demonstrate compliance with MCC 11.15.2074(!)(c) and at that time, persons entitled to notice will again be notified that the water service portion of the approval criteria is being reviewed and there is the opportunity for comment and appeal of those particular findings.

6. The applicant shall provide verification from an Oregon Professional Engineer, prior to issuance of a building permit, that the driveway surface can support 52,000 lbs GVW along with construction drawings demonstrating that the width and grade of the existing driveway comply with the standards of MCC 11.15.2074(D).
7. Approval of this Conditional Use shall expire two years from the date of the Order unless substantial construction has take place in accordance with MCC 11.15.7110(C).
8. The applicant shall, before the issuance of a building permit, apply for and obtain approval of a Hillside Development Permit.
9. The applicant shall, before the issuance of a building permit, apply for and obtain approval of Design Review for all structures and site development.
10. The applicant shall, before the issuance of a building permit, complete required improvements to NW 53rd Drive as determined by County Engineering Services.
11. The applicant shall, before the issuance of a building permit and as long as the property is under forest resource zoning, maintain primary and secondary fire safety zones around all new structures, in accordance with MCC 11.15.2074(A)(5).

Dated this 30th day of October, 1996



Deniece B. Won, Attorney at Law
Hearings Officer