



DEPARTMENT OF ENVIRONMENTAL SERVICES  
TRANSPORTATION AND LAND USE PLANNING DIVISION  
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## DECISION OF HEARINGS OFFICER

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**Case File:** Conditional Use CU 12-96  
Significant Environmental Concern SEC 27-96  
Major Variance HV 18-96

**Hearing Date:** July 16, 1997

**Hearings Officer:** Liz Fancher

**Proposed Action and Use:** Conditional Use approval for a template dwelling in the Commercial Forest Use zone, Significant Environmental Concern for development in the Sandy River Scenic Waterway, and a Major Variance to reduce the minimum front yard setback of 200' down to 45' and the minimum side yard setback of 200' to 35' to authorize current home location. The approvals are requested in order to legalize the existing dwelling which was constructed without permits.

**Location:** 32152 SE Stevens Road

**Property Description:** TL '44' of Section 8, T1S, R4E

**Zoning:** CFU, Commercial Forest Use  
SEC, Significant Environmental Concern

**Applicant/Owner:** Andre Protassy  
12120 SW Boones Ferry Rd.  
Portland, OR 97219

**Applicant's Attorney:** Paul Norr  
1020 SW Taylor Street, Suite 530  
Portland, OR 97205-2550

**Status of 120-day Clock:** Waived by Applicant

**Decision:** Approval, subject to strict compliance with conditions of approval.

## **Overview:**

CU 12-96 is a request for a new dwelling in the CFU (Commercial Forest Use) district. The parcel qualifies under the Template Test provisions, however the applicant has not shown that the dwelling location within 35' of adjacent forest land is a location which has the least impact on forest land. The 200' setback requirement is presumed to meet the least impact standard, anything less must be justified. A variance, therefore, is required to the setback and "least impact" standards.

SEC 27-96 is an application to evaluate the proposed dwelling location against general siting criteria intended to protect environmental resources. The applicant has not shown that all SEC approval criteria are satisfied but the Hearings Officer has determined that the criteria can be satisfied by the imposition of conditions of approval.

HV 18-96 is a request to reduce the 200' front and side yard setbacks to 60' and 35' respectively.

## **Conditions of Approval:**

As the land use authorized by this decision has been commenced without proof of compliance with various approval standards and without building permits, it is necessary that certain requirements of the ordinance be strictly complied with, within the time frames imposed by this decision, in order to assure the health, safety and welfare of neighbors and dwelling residents. If the time frames and conditions of approval of this decision are not strictly complied with, this permit shall expire and be of no further legal validity and the residence shall be removed from the subject property by the applicant. The conditions of this approval are:

1. Approval is granted for the application as submitted by the applicant and as modified by the conditions of approval of this decision. Any substantial change to the approved use shall require a new conditional use, SEC and variance approval.
2. Approval is granted upon the understanding that the approved dwelling is and will continue to be the only dwelling on the subject property and will be a single family dwelling only.
3. Approval is granted based upon verification of compliance with the following approval standards by the Land Use Planning Division and continued compliance with those standards:
  - A. Private road construction and maintenance per MCC.2074 (D); and
  - B. Use of a spark arrester on all chimneys; and
  - C. Maintenance of a primary (30') and secondary fire safety zone (100') per MCC .2074 (A) to the extent possible given the size of the approved yards; and

- D. Design, construction and maintenance of the private easement access road to the standards required by MCC .2074 (D), including, but not limited to, the required vehicle turnout (maximum spacing of 500' on the private road) and a turnaround for the Protassy driveway; and
  - E. Protection of developed areas of the subject property from erosion using the Best Management Practices included in the erosion management plan required by MCC .6420 (J) and Condition #5 of this decision.
- 4. The owner of the subject property shall plant a sufficient number of trees on the subject property to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified by Department Rules. The owner shall also submit a stocking survey report to the county assessor so that the assessor shall verify that the minimum stocking requirements will be met by the time required by the Department. The only consequence of a failure to comply with this condition of approval or stocking requirements upon this approval, however, shall be to subject the subject property and its owner to the tax penalty described in MCC .2052 (A)(6).
  - 5. The applicant shall submit and obtain approval from the Multnomah County Land Use Planning Division of an erosion and potential erosion plan that meets the requirements of MCC 11.15.6420 (J) and (K). The plan shall, at a minimum, address stormwater management, drainage and disposal. This plan shall not, however, apply to activities which are exempt from SEC review and approval, as outlined in .6406. The applicant shall obtain an erosion control permit, if required by County code, to implement the erosion plan. The measures to be used to protect the property must be shown by the applicant to be based on current Best Management Practices. Review and approval of this plan shall be subject to formal review as a land use decision by the County (notice and opportunity for a hearing required).
  - 6. The applicant shall provide written confirmation, from the appropriate building official, that the dwelling approved by this application complies with all standards of the Uniform Building Code, is attached to a foundation for which a building permit has been obtained, has a fire retardant roof and installed, functional and code compliant spark arrester(s). This condition shall be satisfied no later than six months from the date that approval of this application is final.
  - 7. The applicant shall provide proof to the County Planning Division that he has obtained all required septic disposal permits for the dwelling and that the septic facility provided on the subject property meets all applicable DEQ sanitary disposal requirements. The applicant shall comply with this condition no later than six months after this decision becomes final.
  - 8. The applicant shall apply for and obtain County Design Review approval of the dwelling and shall comply with all conditions of approval of the design review decision within the time frames specified in that decision. The applicant shall file an application for design review approval, with required filing fee, no later than 2 months following the

9. Approval of this permit shall expire two years from the date this decision becomes final unless all conditions of approval have been completely met by the applicant.

## **Decision Format**

This decision addresses three requested actions: approval of a Conditional Use Permit, a Significant Environmental Concern Permit, and a Major Variance. The Applicant's response to an approval criterion is indicated by the notation "Applicant." Planning staff comments and analysis, prepared one week prior to the land use hearing, follow the Applicant's responses to the criteria. These findings do not reflect the volumes of new evidence received after preparation of the staff report, including information related to the recurrent flooding of the property. Hearings officer comments follow staff comments, if any, and Applicant's responses. The hearings officer's comments are indicated by the notation "HO." Planning staff comments and hearings officer findings are added where supplemental information is needed, where new evidence was received or where staff may not concur with the applicant's statements. If no staff remarks are indicated, staff and the hearings officer concur with the applicant and adopt those remarks as findings in support of this decision. Staff comments are adopted by the hearings officer if no findings to the contrary are provided.

## **Background**

**Case History:** This case results from a zoning violation that entails construction of the dwelling by the applicant without a building permit. Documents submitted by the applicant's attorney, Mr. Norr show that the subject property was developed with a dwelling in July of 1987 when the property was recognized as one of two lots of exception pursuant to Multnomah County Ordinance No. 100. The County's decision authorized the filing of a land division upon the condition that the residences on the parent parcel each meet applicable setbacks. An "exempt minor partition" plat was filed in October of 1987. The map shows that an "existing residence" was located in approximately the same location of the current dwelling.

The Applicant's evidence shows that Mr. Protassy acquired the subject property in November of 1987. In October of 1988, a fire occurred in the residence on the property which caused a "partial" fire loss. Mr. Protassy received a settlement of \$7451.88 from his fire insurance carrier to compensate him for the fire damage. The dwelling, prior to the date it was damaged by fire, was a one-story dwelling that was approximately 43' long by 19 feet wide, including a large attached storage area. Tax records indicate that the residence was 693 square feet in size. Rather than repair the existing dwelling, Mr. Protassy chose to build a new two-story home on the subject property in the same location as the fire-damaged residence. This reconstruction was accomplished without the benefit of building permits or land use review and approval.

County Tax Assessor's records beginning in 1991 indicate an exempt farm structure (winery) under construction on the property at that time with no apparent permit record. The On-Site Sewage Disposal service provider form (Exhibit A6) indicates that the septic system was also constructed without the necessary permit. The zoning violation would be resolved if the necessary permits for construction of a new single family dwelling are approved. The Notice of Violation and current Assessor's property descriptions are included as Exhibit C2 of this case.

A hearing was held on this matter on July 16, 1997. The applicant requested that the record of this matter be held open through September 24, 1997 to allow the applicant to submit new evidence in support of his application. The hearings officer gave all other parties until October 2, 1997 to submit evidence responding to the applicant's new evidence. The applicant waived the 120 day time period for processing land use applications in order to induce the county to grant his request for additional time.

**Applicant's Proposal:** The applicant is requesting approval of a single family dwelling in the CFU zone in order to legalize the existing structure which consists of an unfinished two story dwelling. The dwelling is located within approximately 60' of the north property line which is also the center line of a 30' access easement which serves the property adjacent to the north and a recreation camp northwest of the subject parcel. The dwelling location is approximately 35' east of the rim of the Sandy River gorge and the approximate west property line. The structure location does not comply with the 200' front and side yard setbacks of the CFU zone nor the least impact standard, therefore approval of a Major Variance is required to retain the current structure location. The structure is also within the SEC overlay zone of the Sandy River Scenic Area. As a result, SEC approval is required.

#### **Description of Site and Vicinity:**

**Applicant:** The subject parcel is located on the end of Stevens Road. The northern side of the property is 660 feet. The western side property line dimension is 990 feet. The southern property line dimension is 660 ft. The eastern side property line dimension is 900 ft. The proposed building site is relatively level in comparison of the remainder of the site with an estimated slope of less than 5%. The location of the proposed dwelling is indicated on the site plan. Existing vegetation site includes a mix of both deciduous and evergreen trees as well as shrubbery. The dwelling is located in the northwest portion of the site. This area, an estimated 8000 square feet, is cleared of trees. The property is surrounded by other properties located in the CFU zone. Parcels in the immediate vicinity vary in size, ranging from 1.13 acres to over 20 acres. At least six parcels within the 160 acre "template area" surrounding the subject site have dwellings located on them. On-site soils are classified as 17D and 17E. (Goble Silt Loam).

**Staff:** The subject property is situated on a bench above the Sandy River canyon, with the west property line adjacent to the dwelling approximately on the canyon rim. The side slopes of the canyon are forested with deciduous and coniferous tree species, and the majority of the parcel a grass field. Several rows of grape vines are adjacent to the

dwelling on the east side. Staff has confirmed 5 dwellings within the template area, and found the soil types to be mapped as primarily 27B Mershon silt loam. The dwelling count and soils are addressed under the Template Dwelling approval criteria in section 1. of this report.

**Notification and Public Participation:** Notice of the hearing Scheduled for July 16, 1997 and applicable criteria was sent to 16 neighboring property owners, interested parties, and applicable agencies on June 25, 1997. A copy of the notice is included as Exhibit "B1" of this report.

## **Approval Criteria**

The Hearings Officer must find that the proposal meets the following Multnomah County Zoning Code approval criteria and Comprehensive Plan Policies.

### **1. Criteria for Approval of a Dwelling in the CFU Zone:**

**MCC 11.15.2052 (A):** A template dwelling may be sited on a *tract*, subject to the following:

**MCC 11.15.2052 (A)(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 25, 1990;

**Applicant:** The subject lot meets the lot of record standards and was lawfully created prior to January 25, 1990. The lot was created in 1987.

**Staff:** The subject parcel was created through approval of Lot of Exception application LE 6-87, approved 10/29/87. Staff agrees that the parcel meets the lot of record requirements.

**MCC 11.15.2052 (A)(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;

**Applicant:** The lot is sufficient size to accommodate the siting of a dwelling in accordance with MCC .2074. A variance and SEC Permits have been applied.

**HO:** A setback of 200' applies to all property lines of the subject property as the subject property is accessed by a private access and does not adjoin a county maintained road.

**MCC 11.15.2052 (A)(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**

**Applicant:** The subject property is composed primarily of soils which are capable of producing 49 cf/ac/yr of Douglas Fir timber. [The parcel is comprised of two soils series: the Goble Silt Loam (17D and 17E). The highest potential yield is 145 cf/ac/yr.]

**Staff:** Staff identifies the property on Soil Survey Map 22, a portion of which is included as Exhibit "C4" of this report. The approximate dwelling location on the map shows the upland portion and substantial majority of the parcel area in soil series 27B, Mershon silt loam. The canyon side slopes are mapped as series 20F. The primary Mershon soils have a listed site index of 130, and are capable of producing 100-125 cf/ac/yr. of Douglas Fir.

- (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**

**Applicant:** At least 11 parcels are partly or wholly located within the 160-acre grid.

**Staff:** Review of Assessor's maps back to 1962, which is the approximate date of initial zoning, and of County approved partitions since that time, reveals 11 parcels which staff accepts as legally created prior to January 1, 1993. A list of the parcels and map are included in Exhibit "C3".

- (ii) **At least five dwellings lawfully existed on January 1, 1993 within the 160 acre square.**

**Applicant:** At least 5 dwellings are located within the 160-acre grid.

**Staff:** The Assessor's records indicate 5 dwellings within the template area. Two of the dwellings are listed as having been built in 1900 and 1939, prior to Building Permit requirements which became effective in about 1960. The other three dwellings have a building permit record on file with Multnomah County. The Assessor's printouts and Building Permit cards are included as Exhibit "C5" of this report. The location of the dwellings is indicated on the template map in Exhibit "C3".

**MCC 11.15.2052 (A)(3)(d): Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.**

**Applicant:** Not applicable.

**MCC 11.15.2052 (A)(3)(e):** There is no other dwelling on the *tract*;

**MCC 11.15.2052 (A)(3)(f):** No other dwellings are allowed on other lots (or parcels) that make up the *tract*;

**MCC 11.15.2052 (A)(3)(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

**MCC 11.15.2052 (A)(3)(h):** No lot (or parcel) that is part of the *tract* may be used to qualify another *tract* for the siting of a dwelling;

**Applicant:** There is no other dwelling on the tract.

**Staff:** Staff concurs that none of the lots or dwellings used to meet the template test requirements are within a UGB, that the property is not made up of more than one parcel and is therefore not a *tract*, and that no additional limitation on future dwelling rights is required to meet standards f., g., and h. above.

**MCC 11.15.2052 (A)(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.

**Applicant:** The subject property is located inside the big game winter habitat. Letter attached from the Fish and Wildlife Department.

**Staff:** The applicant has submitted a letter from ODFW indicating that due to previous development of the parcel, effects of the current project would be minimal. This response letter is included in Exhibit "A8". Further, the property is not designated as Sensitive Big Game Wintering Area on the County Goal 5 inventory map (see Exhibit "C6").

**MCC 11.15.2052 (A)(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, 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.

**Applicant:** The parcel has direct access to private road (easement) which was created and recorded in 1975 on the book of records (Book 1033/Pg 1900)- See Attached Deed.

**Staff:** The deed and easement description is included in Exhibit "A5".



**MCC 11.15.2052 (A)(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.
- (b) The property owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor shall 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.
- (c) Upon notification by the assessor the Department of Forestry shall 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 shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;

**Applicant:** The subject property has and is receiving farm deferrals. I am farming on the said property since 1987.

**Staff:** No stocking survey report has been submitted with the application, however the ordinance allows implementation of this requirement with a condition of approval. The ordinance does not appear to waive the reporting and stocking requirement for land in a forest zone which is in farm deferral. The southern portion of the parcel below the canyon rim is forested and should be required to meet the stocking requirements.

**HO:** The minimum stocking requirements apply to the entire property. Compliance with this code section has been required as a condition of approval as required by the quoted code language.

**MCC 11.15.2052 (A)(7):** The dwelling meets the applicable development standards of MCC.2074;

**Staff:** See analysis under the appropriate section below.

**MCC 11.15.2052 (A)(8):** A statement has been recorded with the Division of Records that the owner and the 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;

**Applicant:** Document attached.

**Staff:** A copy of the recorded statement is included in Exhibit "A2."

**MCC .2074 - Development Standards for Dwellings and Structures: Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993, shall comply with the following:**

**Staff:** The replacement dwelling provisions provide for outright replacement of "an existing lawfully established single family dwelling on the same lot." Replacement dwellings are subject to the siting criteria of the SEC overlay. The dwelling which is the subject of this application did not exist at the time the applicant requested a Building Permit in 1992 as indicated in Exhibit "C2." In addition, no documentation has been provided which demonstrates that the original dwelling was lawfully established, or that it contained all of the features required to constitute a replaceable dwelling.

**HO:** The applicant has supplied factual information to show that he expended funds to construct a building of some type on the subject property between February 1989 and November 1992. The assessor's records indicate that the building constructed with these materials was an agricultural building. Such a building would have been exempt from building permit requirements. Mr. Protassy states, however, that the materials purchased in 1989 - 1992 were used to construct the existing single family residence.

Mr. Norr claims that the construction of the residence qualifies under MCC 11.15.2048 (E) and MCC 11.15.2049 (B) as a "replacement dwelling." This is essentially a claim that Mr. Protassy's reconstruction of a dwelling was a permitted use. Mr. Protassy has, however, elected to proceed to seek conditional use approval for a new dwelling rather than to seek approval of his residence as a replacement dwelling by filing for approval of a conditional use permit. It is that application, not a request to confirm the legality of an existing dwelling, that is pending for decision by the Hearings Officer.

The Hearings Officer notes, however, that MCC 11.15.2048 (E) authorizes a property owner to replace an *existing* lawfully established single family dwelling. The dwelling being "replaced" is no longer existing and the existing dwelling was not lawfully established. MCC 11.15.2049 (B) requires proof that replacement of a lawfully established dwelling must be "made necessary" by fire. The photograph submitted as Exhibit I and the fact that the insurance settlement paid for partial loss of a structure make it unclear whether replacement of the residence was, in fact, "necessary." Further, there is no proof that the replacement dwelling provisions of the code, MCC 11.15.2048 (E) and MCC 11.15.2049 (B) relied upon by Mr. Norr applied to the Protassy property when the fire damaged home was replaced in 1989 to 1992, the time frame relevant to the actions already undertaken by Mr. Protassy.<sup>1</sup>

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<sup>1</sup> If Mr. Protassy could establish that the dwelling was lawfully established in 1989 to 1992, under the laws in effect at the time of construction, no conditional use permit application would be needed. Mr. Norr's claim appears, however, to be premised upon the assumption that it is appropriate to apply the

**MCC .2074 (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);**

**Applicant:** A house was existing on the property for at least thirty years. In October 1988 the house burned down and was replaced by the current dwelling. The proposed dwelling is located so as to have the least impact on adjoining lands which are occupied by residential dwellings. All of the surrounding partials did not and do not currently practice farming and foresting. The closest blueberry farming exists about 1000 feet from my dwelling. Even if farming and foresting can occur on the adjacent developed partials, my dwelling will not negatively impact those practices. It did not bother anyone for more than thirty years, and will not do so now. I have spoken with the owners of all the adjoining lands, and find that there will be no adverse effect on their lands in relation to where my dwelling was build. Finally, I farm on this property since 1987 and no body of the neighborhood seems to be bothered. I also signed and recorded with county of Multnomah stating "I will not interfere or impede any forest and farm operations in the area"(Document attached).

**Staff:** The dwelling is located at the northwest corner of the property approximately 35' from the west property line and canyon rim, and 60' south of the north property line and center of the 30' easement road. The parcel map in Exhibit "A2" shows the dwelling location south and west of the hay field on tax lot '49', and at a substantial distance from tax lot '22' which is the next closest parcel in farm use.

Forested lands adjacent to the subject parcel exist to the west and south along the side slope of the Sandy River canyon. The County code does not limit forest management practices (MCC .6406(C), therefore forest management could occur within 35' of the proposed dwelling location. The applicant should consider the types of forest management activities which could occur, and demonstrate how the dwelling location would have the least impact on those practices. Thirty years of harmonious co-existence does not in itself ensure future lack of conflict between residential and forest uses, especially when forest management rotations are often much longer than 30 years. The deed restriction referenced by the applicant is an educational tool intended to alert future potential buyers that intrusive activities may occur nearby. It is not intended as a substitute for other means of minimizing conflicts. The dwelling location does not satisfy the 200' side and front yard setbacks of the zone, and the application includes a variance request as required in MCC .2058 (C).

**HO:** The applicant has requested and obtained approval of a variance to the minimum yard and setback requirements of the CFU zone due to conditions which make it

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replacement dwelling statute retroactively to events which may have occurred prior to adoption of the replacement dwelling use. As a general rule, retroactive application of the law is not permissible and Mr. Norr has not cited legal authority to establish that such application is appropriate in this case.

infeasible to place the dwelling in any location other than its present location. The home location is also close to the existing easement road, an area used by residents and their guests. It is also clustered near other existing development (residence and camp), leaving adjoining resource land that is suitable for agricultural or forest use, as minimally impacted by human habitation as possible. Placement of the home close to the road minimizes the impact of human activities on farm and forest practices because all such disruptive human activities are confined to the same general area and may be more readily avoided by farmers and foresters.

The Applicant obtained a report from a professional forester, Daniel Green. Mr. Green's opinion was that the home location had the least impact on adjoining farm and forest operations. This conclusion is, however, premised upon the assumption that "in terms of impacts on a neighbor's forest or farming practices, there is no clear effect of a house on a neighbor." This statement is inconsistent with the policies underlying county regulation of forest zones. Those policies seek to minimize the number of homes sited in resource zones so that forest operations, such as slash burning and tree falling, may occur without risk of injury to residents and residences. This portion of Mr. Green's report was not relied upon by the hearings officer in determining compliance with this code section. The hearings officer does, however, base her conclusions upon the factual material included in Mr. Green's report, including his discussion of farm uses, forest practices, area development and access to adjoining forested property.

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

**Applicant:** I have no other intentions but to legalize the dwelling on my property and to keep it as natural as possible, like it has always been. Like I indicated above, I am currently farming and have complied with all guide lines relating to whatever I do. I also intend to comply with all state and county guide lines for residential living in the CFU zoned area.

**Staff:** The dwelling location places the dwelling in a corner of the subject parcel nearest the road and in an area between relatively flat farmable land to the east of the dwelling and the forested canyon side slopes. The site plan in Exhibit "A3" and site inspection by staff confirms that the existing dwelling location is in an area of essentially flat ground which has some limitation to farm management because it is a relatively small area with an irregular shape which is defined by the steep canyon rim. The south and southwest portions of the parcel are sloping forested land, while the majority is open field. The dwelling location would not limit forest practices such as set up of logging equipment to access the existing forested areas.

**(3) The amount of land used to site the dwelling or other structures, access roads, and service corridor is minimized.**

**Applicant:** Less than 1.67% of the land was used for the house and driveway. The site (3/4 of it) has always been clear and no forest land has been used what so ever. The

dwelling meets all of the set back standards except to the 200 foot requirement for which a variance has been applied for. The dwelling did not require any removal of dirt and trees because it is sitting on exact same place where the old house was for more than thirty years. The access road is also existing for more than thirty years. The driveway is property installed and maintained in accordance with the driveway standards. And it has been signed off by the fire protection district chief

**HO:** Placement of the home in close proximity to the access easement minimizes the amount of land required for non-agricultural and non-forest use.

- (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**

**Applicant:** The driveway is 50 feet.

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

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

**Applicant:** The dwelling is protected by the Corbett Fire District (Document attached.)

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

**Applicant:** There is no perennial water on site.

- (c) Maintenance of a primary and a secondary fire safety zone on the subject *tract*.**

**Applicant:** As for fire safety, the primary and secondary fire safety zones are indicated on the site plan. The primary being 30 feet from the dwelling and the secondary will extend additional 100 feet on the south and 100 feet on the east. The west and north secondary fire safety zones cannot be met because of the existing dwelling (Variance has been applied). The zones will be maintained by pruning and spacing vegetation so that the fire will not spread between the crowns of trees. And trees and brush will be properly maintained to prevent spreading of fire up to the crowns of trees. All other vegetation will be kept less than two feet in height.

- (i) A primary safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure ....**

- (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 30	75
Less than 40	100

**Applicant:** There is less than 10% slope in the primary fire safety zone (Not required).

**HO:** The Hearings Officer finds that the cited code sections, read together, require a primary fire safety zone of 30 feet for the subject property.

- (iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone... .
- (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 Practices 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).

**Applicant:** See response of (C).

**HO:** The applicant must also provide the required 100' secondary safety zone to the maximum distance possible on the subject property.

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

**Applicant:** The building site has less than 10% slope.

**Staff:** In addition to the information provided by the applicant, staff notes that maintenance of the secondary fire break is not required if it does not fit within an approved yard pursuant to MCC .2074(A)(5)(c)(iv). Approval of the variance to the 200' side and front yard setback would allow this requirement to be met.

**MCC .2074 (B) The dwelling shall:**

- (1) Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;
- (2) Be attached to a foundation for which a building permit has been obtained; and
- (3) Have a minimum floor area of 600 square feet.

**(4) Have a fire retardant roof.**

**(5) Have a spark arrester on each chimney.**

**Applicant:** The dwelling placed on this property meets all building code requirements. The dwelling is attached to a foundation. The minimum floor area located on the property is exceeding the requirement of 600 square feet. The dwelling has a fire retardant roof and has a spark arrester on the chimney.

**Staff:** The dwelling has not been issued a Building Permit, therefore compliance with the applicable portions of this section, (2), (4), and (5) has not been demonstrated.

**HO:** Compliance with this requirement is typically imposed as a condition of approval.

**MCC .2074 (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 groundwater (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. If the water supply is unavailable from a public source, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

**Applicant:** Water service is provided by the Corbett Water District.

**Staff:** See Exhibit A6 for service availability form.

**MCC .2074 (D)** A private road (including all easements) accessing two or more dwellings, or 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;**
- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below;**

- (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;
  - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;
- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;
- (7) Provide for the safe and convenient passage of vehicles by the placement of:
- (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or
  - (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of ½ the driveway length or 400 feet whichever is less.

**Applicant:** The road (approved easement attached) is designed, build, and maintained to support 52,000 GVW. The width of the road is at least 20 feet wide and provides a minimum curve radii of greater than 48 feet. The base rock consists of six inches of 3 inch minus and the top gravel is 4 inches of 3/4 inch minus. The entire road is paved with asphalt. I am properly maintaining the road to have an unobstructed clearance of 13 feet and six inches and to provide for safe passage of vehicles. There are turnaround as indicated on the site plan. The road has been signed off by the proper authority at our fire protection district.

**Staff:** The subject road exists within a 30' easement, and staff has not observed any bridges or culverts. The applicant has included a service provider form which indicates adequate fire flow and location of the nearest hydrant (see Exhibit "A6").

#### **TEMPLATE DWELLING CONCLUSIONS:**

1. The parcel meets the Template Dwelling requirements for the number of houses and dwellings within the template area. Compliance with the Department of Forestry stocking requirements appears to be required, notwithstanding that the property is under special assessment for farm use according to the applicant. This code provision can be satisfied by notification of the assessor by the planning department as provided for in MCC .2052 (A) (6)(a).
2. The development standards of MCC .2074 (A)(1) which relate to protection of farm and forest management activities on adjacent land are met due to the location of the dwelling site away from nearby farm parcels, and in a somewhat confined portion of the site. Clustering the home near structures on adjoining lots minimizes the negative impact that human habitation has upon agricultural and forestry practices.
3. All of the development standards of MCC .2074 (B) have not been met. These requirements may, however, be satisfied by the imposition of appropriate conditions of approval.



## **2. Criteria for approval of SEC Permit:**

### **A. MCC 11.15.6404 Uses-SEC Permit Required**

**MCC 11.15.6404(C): Activities proposed for lands designated as scenic waterways under the Oregon Scenic Waterways System shall be subject to an SEC permit in addition to approval from the Oregon Parks and Recreation Department.**

**Staff:** The Oregon Parks and Recreation Department response letter of approval submitted by the applicant is included in Exhibit "A7" of this report. This response letter is discussed in the criterion immediately below.

**MCC 11.15.6420: Criteria for Approval of SEC Permit (General Provisions):**

**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 the Multnomah County sectional maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:**

**MCC 11.15.6420 (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.**

**Applicant:** I only used 1.67% of the subject property for sighting the dwelling, which is less than the recommended one acre. There was no removal of trees - no major excavation, so the partial left in native vegetation, is provided. I also plan to add vegetation native to the area.

**Staff:** The applicant's response does not describe how the development maximizes the amount of open space or vegetation between it and the Sandy River. The map in Exhibit "A2" indicates that the dwelling is 550' from the Sandy River. The shape of the property is such that the distance increases approximately 160' moving from west to east along the north property line. The amount of open space could theoretically be increased a portion of the 160' difference in width if the structure were moved to the northeast portion of the property. It is not clear whether this would result in substantial additional protection of protected resources. Some limited improvement could occur if the dwelling location were far enough from the canyon rim so that no portion could be seen from the river. Staff was able to see a small portion of the river and adjacent flood plain from a location adjacent to the west side of the structure during the 4/25/97 site inspection.

The letter submitted from the Oregon Parks and Recreation Department indicates a formal review is not required because the application complies with certain OAR provisions which allow a formal review to be waived (see Exhibits "A7" and "D1"). It

is not clear to staff however, that the dwelling site is outside the area of greatest visual effect, and that the other listed OAR requirements are met.

**HO:** The applicant has shown that other areas of the subject property are subject to flooding and that the open area and setback provided is the maximum possible given the flooding condition.

**MCC 11.15.6420 (B): Agricultural land and forest land shall be preserved and maintained for farm and forest use.**

**Applicant:** 2/3 of the land on the property was and is preserved and maintained for farm use. I am farming since 1987- and intent to do so in the future. The building is located in the Northwest corner of the property; and is sitting on approximately 8,000 sq feet, including driveway that makes 1.67% of the entire property so the rest of the land can be preserved for farm and forest use.

**Staff:** All of the land that makes up the parcel is suitable for either farm or forest use. The purpose of this criterion is not to preclude development, but to minimize impact on resource lands. The portion of the parcel converted to dwelling, yard, and driveway access is relatively small.

**MCC11.15.6420 (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.**

**Applicant:** A house was existing on the property for more than thirty years, and was rebuild on the exact same place. It is sitting on only 1.67% of the whole land, which did not and does not have effects of farming and forestry. The areas of the environmental significance will be fully protected.

**Staff:** The areas of environmental significance on the subject parcel relate to wildlife habitat and the Sandy River Scenic area. The response from ODFW regarding game impacts indicates minimal impact because of pre-existing development on the parcel (see Exhibit "A8"). No evaluation regarding dwelling location is provided. The State Parks response regarding scenic resources also indicates compliance with the applicable regulations. However, the findings under criterion (A) of this section indicate that scenic resources could be enhanced somewhat if the dwelling were moved further east, away from the canyon rim.

Staff sees no difference in utility of the building site (functional consideration) between its proposed location, and any alternate location eastward along the north property line. No evidence is provided that location of the structure further east would add substantial cost, whereas some improvement to scenic resources would accrue.

**HO:** The Hearings Officer finds that the proposed location is the least costly to develop due to the presence of utility service lines to serve the residence. The improvement to

scenic resources that would be achieved does not, in the opinion of the Hearings Officer, merit the disruption of existing farm land and the additional cost of developing a new site.

**MCC 11.15.6420 (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.

**Applicant:** This should not apply to a residential dwelling.

**HO:** This criterion is inapplicable as the use proposed by the applicant is not a recreational use.

**MCC 11.15.6420 (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.

**Applicant:** Letter from Multnomah County Sheriff's office indicated that adequate protection service can be provided to the proposed dwelling. The dwelling will also have adequate automatic fighting system and alarm system with which protection of private property, vandalism, will be provided to the maximum extent practicable.

**Staff:** See Exhibit "A6".

**MCC 11.15.6420 (F):** Significant fish and wildlife habitats shall be protected.

**Applicant:** The dwelling is 560 feet from Sandy River. It is sitting on less than one acre of the entire property. The distance between the dwelling and the Sandy river is covered by trees and has a heavy slope. There is no access to the river on the entire property, so there will not be negative impact on fish and wild life.

**MCC 11.15.6420 (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.

**Applicant:** The natural vegetation along Sandy River was not and will not be touched what so ever. Between the dwelling and Sandy river is more than 60% slope containing trees and solid rock which assure natural scenic quality and protection from erosion.

**MCC 11.15.6420 (H):** Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

**Applicant:** Not applicable.

**MCC 11.15.6420 (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.**

**Applicant:** Not applicable.

**HO:** The applicant has produced evidence to show that most of his property is an area of annual flooding. The agricultural activities conducted on the property are, however, permitted in this zone. Retention of the property in its “natural state” is, therefore, not possible.

**MCC 11.15.6420 (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 restrictions on timing of soil disturbing activities.**

**Applicant:** There are no areas of potential erosion at the property. There will not be soil disturbing activities and best management practices possible will be provided.

**Staff:** No areas of erosion were observed on the property. However, an area of the canyon side slope immediately northwest of the subject parcel is eroding due to dumping of fill material over the edge of the rim. This indicates that the side slope is subject to erosion under some circumstances.

**HO:** The applicant has submitted evidence to establish that most of his property is subject to regular flooding. As a result, all such areas of the property are areas of potential erosion and must be protected by “appropriate means.” Exempt activities, however, need not be addressed in the plan. The hearing officer, therefore, has required the applicant to develop a plan, utilizing “current Best Management Practices” to assure that these areas of his property are protected from potential erosion. The review and approval of such a plan by the County would, however, involve the making of a land use decision. As a result, a second land use review process will be required to as a part of the condition of approval.

**MCC 11.15.6420 (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.**

**Applicant:** A single family dwelling is not a high emission source. Water quality will not be degraded by the dwelling on the property; and there are no streams, or creeks on the property. On approved site for the septic drain filled is provided and will not contaminate any streams or ground water resources in the area.

**Staff:** The resources that could be impacted by the project are water quality (on-site sanitation) and soil erosion. The on-site sanitation will be permitted under DEQ rules.

Soil erosion is not an obvious problem on the site, so long as concentrated flow is not directed to the canyon side slopes.

**HO:** The evidence provided at the land use hearing and in post-hearing comments indicates that large quantities of water flood across the subject property. Such flooding carries with it the inherent risk of erosion. The conditions of approval require the applicant to take measures to protect the property from erosion.

**MCC 11.15.6420 (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.

**Applicant:** The residence has a conditional use, but complies with the most strenth standards for residential lots. The design, construction materials, color and lighting, are compatible with the character and quality of the area.

**Staff:** This criterion will be implemented through application of the Design Review ordinance in MCC .7805. The gray color of the dwelling however, does not meet the visual character portion of the criterion, especially adjacent to and visible from the Scenic Area. This can be remedied by a condition of approval.

**HO:** Compliance with the staff recommended condition of approval involves the making of a land use decision. As such, proper notice and hearing opportunities must be provided to all affected persons.

**MCC 11.15.6420 (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 natural vegetation, shall be retained in a natural state to the maximum extent possible.

**Applicant:** The area was and will retain in natural state to the maximum extent possible.

**Staff:** No identified habitats are on site.

**MCC 11.15.6420 (N):** The applicable Policies of the Comprehensive Plan shall be satisfied.

**Applicant:** I will not interfere or impede any farm and forest operations in the area. A dwelling was existing for the last thirty years on the exact same place where the current one is. It did not and will not have any negative impact on adjoining lands. No one on adjoining partials practice foresting and farming. And they all have houses. Even if they start to practice foresting and farming, they will not be negatively impacted by the addition of my dwelling, besides I am farming my self I have no other intentions but to keep the house and the property as natural as possible. Due to the natural features of the property, the existing code does allow a SEC permit. The permit will not adversely

affect the realization of the comprehensive plan since all applicable plan policies and county code standards will be satisfied.

**Staff:** The County requires a finding prior to approval of a Legislative or Quasi-Judicial Action that the following factors have been considered. Since this application involves a Quasi-Judicial Action, Plan Policies 13, 22, 37, 38, and 40, are addressed in part B below.

## **B. Multnomah County Comprehensive Plan Policies:**

Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision are addressed as follows:

**Policy No. 13, Air, Water and Noise Quality:** Multnomah County, ... Supports efforts to improve air and water quality and to reduce noise levels. ... Furthermore, it is the County's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to Air Quality, Water Quality, and Noise Levels.

**Applicant:** No response.

**Staff:** The primary issue under this policy is water quality related to septic system placement and construction. This policy will be satisfied when the necessary permits are obtained and the applicable sanitation regulations complied with.

**Policy No. 22, Energy Conservation:** The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. ... The County shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:

- A. The development of energy-efficient land uses and practices;
- B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreation centers;
- C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
- D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.
- E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.

**Applicant:** No response.

**Staff:** The parcel is in a rural area. Urban energy, transportation and lotting pattern issues do not apply.

**Policy No. 37, Utilities:** The County's policy is to require a finding prior to approval of a legislative hearing or quasi-judicial action that:

**WATER DISPOSAL SYSTEM:**

- A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or
- B. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or
- C. There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
- D. There is an adequate private water system, and a public sewer with adequate capacity.

**DRAINAGE:**

- E. There is adequate capacity in the storm water system to handle the increased run-off; or
- F. The water run-off can be handled on the site or adequate provisions can be made; and
- G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjacent lands.

**ENERGY AND COMMUNICATIONS:**

- H. There is an adequate energy supply to handle levels projected by the plan; and
- I. Communications facilities are available.

**Applicant:** No response.

**Staff:** The applicable service provider forms are in Exhibit A

**Policy No. 38, Facilities:** The County's Policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

- A. The appropriate School District has had an opportunity to review and comment on the proposal.
- B. There is adequate water pressure and flow for fire fighting purposes; and
- C. The appropriate fire district has had an opportunity to review and comment on the proposal.

- D. **The proposal can receive adequate local police protection with the standards of the jurisdiction providing police protection.**

**Applicant:** No response.

**Staff:** See the service provider forms in Exhibit "A6."

**Policy No. 40, Development Requirements:** The County's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

- A. **Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.**
- B. **Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**
- C. **Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

**Applicant:** No response.

**Staff:** The property is not identified as being a necessary connection between recreation areas or bicycle corridors.

### **SIGNIFICANT ENVIRONMENTAL CONCERN CONCLUSIONS:**

The applicant has demonstrated that the maximum amount of open space or vegetation is provided between the dwelling and the Sandy River or the Gorge Scenic Area as required in MCC .6420 (A). The applicant has, however, failed to provide a Best Management Practices plan as required to protect the property from the erosion threat posed by the flooding conditions which justified the approval of the variance application.

### **3. Criteria for Approval of a Major Variance:**

#### **MCC 11.15.8505 Variance Approval Criteria**

- (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.**

**HO:** There are practical difficulties in applying the requirements of the county's zoning ordinance which relate to the location of the proposed dwelling. Compliance with the



setback standards of the zone would require the applicant to place his home in the middle of an established agricultural field, taking a large area of the field out of agricultural production. The current drainageway runs across the center of the Protassy property making it most logical to locate a home on either the easternmost or westernmost side of the property adjacent to the easement road. The current home is located on the westernmost side of the property adjacent to the easement road. Placing a home in the center of the property would make it more difficult to conduct farming practices. Placement of the home in this location would make its residents more vulnerable to injury due to the drift of pesticides and dust from farm operations and annoyance from the smell of chemicals, fertilizer and animal waste.

- (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.**

**Applicant:** The subject property is restricted to 200 foot set backs which the adjoining and surrounding properties with houses are not restricted to. Because the house is already build (Rebuild), and always being there, at least for the last thirty years. I am requesting variance from both the front and the west side yard set back requirement. To reduce the west side set back to 35 feet from the property line. And the front yard set back to 50 feet from the center of the private eastment road. The setbacks under .2058(D) may allow for front and side yard setbacks of only 30 feet if the house were to use the clustering provisions of the zone. Please note that no one of the houses on the adjacent properties and the entire Stevens road meets 200 feet setback requirements. Some of them are not even 5 feet from the property line. Again, we have to take in to consideration the fact that the house is already build and enormous amount of money has been spent. I acted in good faith and I will do everything to comply with all ordinance CFU zone.

**Staff:** The applicant's response is that the 200' setback in the zoning code is the hardship, and that it arises because existing houses in the area are not subject to the same requirement. He appears to argue that his is the only existing dwelling which is subject to the larger setback. Neither of these arguments demonstrate a practical difficulty unique to the property as is required under this criterion. In fact, there are no physical circumstances which would preclude a dwelling location within the required setbacks. The ordinance does allow consideration of the location or size of physical improvements, but the presumption is that these improvements legally exist. To argue otherwise makes implementation of zoning regulations ineffective because it would always be possible build a structure first, and to then use the existing location as justification.

**HO:** The fact that all but the homesite portion of the property, as developed over a period of years prior to construction of the current dwelling, is subject to flooding is a fact which is not generally applicable to other property in the same vicinity or district.

This condition relates to the natural features and topography of the property and to the location of physical improvements (the homesite as constructed prior to reconstruction by Mr. Protassy) on the site.

**(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.**

**Applicant:** Because the zoning requirements were created in 1993 and all the existing dwellings including mine were created prior to that, then this does restrict me to a greater degree. And due to the existing situation I am unable to meet the requirement of 200 foot setback on the front and west side, which all of the houses on adjoining properties are not restricted to nor do they have that distance of set back between their houses and the property lines.

**Staff:** This criterion requires a comparison between any limitation to the use of the property due to the impact of the front and side yard setback requirements on the subject property in contrast to other properties in the area. The applicant's response does not demonstrate that use of the property for a dwelling is limited by the setback. The parcel size and topography appear to allow a dwelling to be located within the setbacks. The 200' setback only applies to new dwellings in the CFU zone, and the applicant's response does not make this comparison. The comparison that is made is between his new dwelling and other existing dwellings.

**HO:** The zoning requirements related to the proper location of the dwelling restrict the use of the subject property to a greater degree than they restrict other properties in the area and zoning district as all fully compliant home sites on the subject property are, according to the applicant's evidence, affected by flooding. Other properties in the area and in the zone are not similarly affected.

**(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.**

**Applicant:** The dwelling as an old and new rebuild one, has been there for many years. And no one of the adjoining property owners has expressed any concerns in the past and in the present. I have also recorded the necessary document with the county of Multnomah stating that "I will not impede the rights of any land owners and their farm and forest practices, if any." As for adversely affecting the development of adjoining properties, the adjoining properties are already developed and have houses, barns, cabins, etc.

**Staff:** The potential detriments to the public welfare or property in the vicinity identified relate to potential impacts to forest management on the adjacent parcel to the west due to the reduced 35' setback, and a small visual impact due to the location of the

structure at the rim of the Scenic Area. Staff is uncertain whether these impacts are "material."

**HO:** The Hearings Officer finds that the impacts of the chosen home location upon the adjoining property will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located. While the home location may not be the best location to minimize impacts on forestry activities on adjoining property, it does not impose a major impediment to forest practices, as attested to by the applicant's forester. The adjoining property is still accessible for logging activities and the applicant has agreed to accept the impacts of activities related to forestry in return for approval of this application.

**(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.**

**Applicant:** No use is being permitted that is not allowed either outright or through a conditional use permit. And due to the natural features of the property, the existing dwelling, the code does allow variance. The variance will not adversely affect the realization of the Comprehensive Plan since all applicable Plan Policies and County Code Standards will be satisfied.

**Staff:** Staff agrees that approval of the variance would not adversely affect realization of the Comprehensive Plan or establish a use not allowed in the zone.

**VARIANCE CONCLUSIONS:**

The Hearings Officer finds that the flooding of the applicant's property and the fact that the property was previously developed with a homesite and related infrastructure are unusual conditions which make it impractical to comply with the locational requirements (setbacks & forestry and SEC locational standards) of the County's zoning ordinance. The approval of a variance in this circumstance is warranted to alleviate the hardship that would be imposed by strict adherence to the zoning ordinance.

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**Appeal to the Board of County Commissioners:**

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An Appeal requires a completed "Notice of Review" for and a fee of \$500.00 plus a \$3.50 per minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning Office at 2115 SE Morrison Street (in Portland) or you may call 248-3043, for additional instructions.

**DATED this 18<sup>th</sup> day of November, 1997.**

LIZ FANCHER, Hearings Officer