
**BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER**

This Decision consists of Conditions, Findings of Fact and Conclusions.

April 18 1997

CU 1-97 HV 2-97

Conditional Use and Major Variance Request

Applicant requests Conditional Use approval to establish a single family residence and approval of an application for a Major Variance from a side yard requirement on lands designated for Commercial Forest Use.

Location:

Approximate address: ⁸³⁸³~~8500~~ SE Rodlun Road

Property Description:

Tax lot 1200, SW ¼ of SW ¼ Section 21, T1S, R3W;
4.63 acres; Tax Account # R99321-0340

Zoning Designation:

Commercial Forest Use

Property Owner:

Ambrosie & Susana Halmagean
492 SE Hale Drive
Gresham, OR 97080

Applicant:

Planning Design Group
Brian DeMarco
122 SE 27th Ave.
Portland, OR 97214

MULTNOMAH COUNTY
PLANNING SECTION

97 APR 21 PM 4:29

RECEIVED

Hearings Officer Decision:

Approve applicant's request for Conditional Use approval and Variance from the side yard setback requirements to allow a single family residence on lands designated for Commercial Forest Use, subject to the specific conditions contained herein.

Conditions of Approval:

1. A Hillside Development Permit will be required for all areas where site clearing is done on slopes exceeding 25% and a Grading and Erosion Control Permit will be required where 50 or more cubic yards of earth is disturbed.
2. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters. The dwelling shall also comply with the Uniform Building Code, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.
3. A stocking survey shall be submitted prior to issuance of a building permit in accordance with the procedures and provisions of MCC 11.15.2052 (A)(6).
4. Prior to issuance of a building permit, provide verification that the driveway surface can support 52,000 lbs. GVW along with construction drawings demonstrating the width and grade of the driveway comply with the standards of MCC 11.15.2074 (D).
5. Prior to the issuance of a building permit, a well report shall be submitted demonstrating compliance with MCC 11.15.2074 (C), and at that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity to comment and appeal of those particular findings.
6. Prior to the issuance of a building permit, apply for and obtain approval of Design Review for all structures and site development.
7. Prior to 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, to the extent possible within the limits of the yard setbacks approved herein, in accordance with MCC 11.15.2074 (A)(5).
8. Prior to issuance of a building permit, the property owners will be required to sign a Covenants, Conditions and Restrictions form as provided in 11.15.2052(A)(9).
9. Prior to issuance of a building permit, verification is required that the property owners' signed statements acknowledging the rights of nearby property owners to conduct forest operations, have been recorded.
10. Prior to issuance of a building permit the property owners will be required to sign deed restrictions or other similar deferred improvement agreements in format

approved by the County agreeing to participate in future right-of-way improvements on Rodlun Road.

11. Approval of this Conditional Use shall expire two years from the date of this Order unless substantial construction has taken place in accordance with MCC 11.15.7110 (C) (3).

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Procedural Issues

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

FACTS

1. Applicant's Proposal

The applicant requests Conditional Use Approval to establish a single family residence in the Commercial Forest Use zone. Applicant is also requested a Major Variance from the 200 foot setback on the parcel's west property line.

2. Site and Vicinity Information

The subject parcel is 5.12 acres, with a narrow configuration. Other similar sized and smaller tracts are located in the immediate area. The location proposed for the dwelling is in an area on the side already cleared of trees and is located 30 feet from the west boundary line. A site plan is attached hereto as Exhibit "A" and is incorporated by this reference herein.

3. Testimony and Evidence Presented

- A. The exhibits which are listed on the attached exhibit list, which is marked Exhibit "B", were received by the hearings officer and are incorporated by this reference herein.
- B. Multnomah County Planner Phil Bourquin submitted a staff report and testified at the hearing.
- C. The applicant Brian DeMarco of Planning Design Group appeared at the hearing and testified in support of the application.
- D. Tony Sepich submitted written documents for consideration at the hearing.

STANDARDS AND CRITERIA - ANALYSIS AND FINDINGS OF FACT

1. MULTNOMAH COUNTY ZONING CODE CRITERIA:

Zoning Ordinance Requirements:

CONDITIONAL USE ORDINANCE CONSIDERATIONS:

11.15.2050 Conditional Uses

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

- (B) A Template Dwelling pursuant to the provisions of MCC .2052 and .2074.

11.15.2052 Template Dwelling

- (A) A template dwelling may be sited 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 25, 1990;

Finding: The subject property is a legal Lot of Record. Lot of Exception case #LE14-90 establishes the lot as a lot of record. Title documents submitted by the applicant demonstrate that there are no adjacent parcels in contiguous ownership with the subject parcel.

- (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;

Finding: The subject property is 5.12 acres. However, because of the narrow configuration of the property – the subject property is 368.19 feet in width on the site plan – it would be impossible to locate the dwelling within the setback requirement. There is no opportunity to meet the minimum 200' setbacks from both side property lines on the property. The location proposed for the dwelling is in an area already cleared of trees setback 30' from the west boundary line. The 288' setback from the east property line meets the required setback. The proposed location of the dwelling minimizes the disruption of the property without excessive excavation and tree clearing work and, therefore preserves the environmental qualities of the property. Because of the size and shape of the property, the applicant is requesting a variance in the 200' setback from the west property line, pursuant to MCC .8505 through .8525 to place the dwelling in the most appropriate location for development. The variance criteria will be discussed later in these findings.

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

...

- (c) The *tract* shall be composed primarily of soils which are capable of producing 85 *cubic feet* of Douglas Fir timber *per acre per year (cf/ac/yr)*; and

Finding: The applicant presented the Soil Survey of Multnomah County for the subject property, which indicates that the property has Goble silt loam. The soil exposure in the area consists of silt, a structureless brown to yellow-brown mottled clay to sandy soil. The underlying geologic unit consists of bedrock of volcanic origin. The soil is capable of producing between 145 to 155 cf/ac/yr, of Douglas Fir timber based on the Soil Survey of Multnomah County from a fully stocked stand of 70 year old trees.

- (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

Finding: The applicant referenced Multnomah County and Clackamas County Tax Assessor's maps to demonstrate that all or part of the following Multnomah County Tax Lots are within the 160 acre square Template:

R993210310	R993210610
R993211060	R993211070
R993210320	R993210940
R993210120	R993210130
R993210120	R993210510

All or part of the following Clackamas County Tax Lots are within the 160 acre square template:

13E28B00500	13E28B00400
13E28B00600	13E28B00301
13E28B00900	13E28B00300
13E28B00700	13E28B00303
13E28B00800	13E28B01000

Because the applicant has demonstrated that all or part of 20 other lawfully created lots existed on January 1, 1993 within a 160 acre square Template, the applicant has met this criteria.

(ii) At least 5 dwellings lawfully existed on January 1, 1993 within the 160-acre square, or

Finding: Five dwellings lawfully existed on January 1, 1993, on the following tax lots within the 160 acre square Template in Multnomah County:

R993210310
R993210120
R993210610
R993210130
R993210510

Two dwellings lawfully existed on January 1, 1993, on the following tax lots within the 160 acre square Template in Clackamas County:

13E28B00400
13E28B00300

Because the applicant has demonstrated that 7 lawfully created dwellings existed on January 1, 1993 within the 160 acre square Template, the applicant has met this criteria.

- (d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.

Finding: None of the lots and dwellings noted above under (c)(i) and (c)(ii) are currently located within the urban growth boundary. The parcel meets the requirement of 11 lots and 5 dwellings within the 160 acre template.

- (e) There is no other dwelling on the *tract*;

Finding: No dwelling is located on the tract or on lots that make up the tract.

- (f) No other dwellings are allowed on other lots (or parcels) that make up the *tract*;

Finding: No other lots make up the tract, therefore this criteria is met.

- (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

Finding: No other lot is part of this *tract*.

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

Finding: Since this *tract* consists of only one lot or parcel, no part of this *tract* will be used to qualify another *tract* for the siting of a dwelling.

- (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 subject property and proposed dwelling is located outside any big game winter 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, 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 is proposing to establish a driveway from an existing paved private easement road and has provided a copy of a Warranty Deed with road easement.

- (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 will verify that the 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;**
 - (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: These criteria require the County to impose approval conditions to meet these requirements. The owner has agreed to a condition of approval requiring that a stocking survey be submitted showing compliance with this requirement prior to issuance of a building permit, and such a condition will be imposed.

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

Demonstration of compliance with this criteria is addressed later in these findings.

- (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;**

Finding: The applicant has submitted concurrent herewith a signed and notarized statement binding successors in interest to the property to the restriction that the owner or owners accept as normal and necessary the farming or forest practice on surrounding forest and agricultural lands. A condition of approval is hereby imposed requiring verification of recordation of the statements prior to issuance of a building permit.

- (9) Evidence is provided, prior to the 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;**
 - (a) The covenants, conditions and restrictions shall specify that:**
 - (i) All lots (or parcels) that are part of the *tract* shall be precluded from all future rights to site a dwelling; and**
 - (ii) No lot (or parcel) that is part of the *tract* may be used to qualify another *tract* for the siting of a dwelling;**
 - (b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the *tract* is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;**
 - (c) Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December, 1995).**

Finding: These criteria are to be met prior to issuance of a building permit. A condition will be imposed requiring compliance with this criteria.

11.15.2058 Dimensional Requirements

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

Finding: The subject lot meets the lot of record standard of MCC .2062(A) and (B) and was lawfully created prior to January 25, 1990.

- (B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.

Finding: This section is not applicable in the instant case.

- (C) Minimum Yard Dimensions - Feet:

Frontage on County Maintained Road	Other Front	Side	Rear
60 from centerline	200	200	200

Finding: The subject property fronts on SE Rodlun Road for approximately 387'. The east property boundary has a dimension of 501.30', the south property boundary has a dimension of 305.19' and a west property boundary has a dimension of 656.36'.

The proposed dwelling would be sited 30 feet from the west (side) property line, approximately 288 feet from the east (side) property line, 332 feet from the south (rear) property line and approximately 206 feet from the north property line adjacent to Rodlun Road.

The subject parcel is approximately 368.19 feet wide. It is not physically possible to comply with the 200 foot side yard requirement with both side yards. The residence can only be constructed if a variance is granted. The applicant has applied for a variance to the side yard requirement, as addressed later in these findings. The variance is being approved and accordingly the subject property will meet the approved yard dimensions.

Maximum Structure Height - 35 feet

Finding: The dwelling will not exceed 35 feet in height.

Minimum Front Lot Line Length - 50 feet.

Finding: The subject property fronts on SE Rodlun Road for approximately 387 feet, which exceeds the minimum standard.

These yard dimensions and height limits shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Variances to dimensional standards shall be pursuant to MCC .8505 through .8525, as applicable. [Amended 1984, Ord. 428 § 2]

Finding: The application being reviewed is a Conditional Use Permit and not a "use permitted outright". The applicant has applied for a Variance.

- (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: No dwelling on an adjacent lot is located within 100 feet of the proposed location or the new driveway.

Based on Multnomah County Assessment and Taxation Records and the applicant's submittal, there are no dwellings on lots immediately adjacent to the subject parcel. Therefore, this criteria is not applicable.

- (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.**

Finding: Multnomah County has indicated that no additional right-of-way dedications are required. The existing right-of-way in front of the subject site is 60 feet. However, the Transportation Division has requested that the property owner sign deed restrictions committing the property owner to participate in future right-of-way improvements. At the hearing, the applicant was questioned regarding this requirement and indicated a willingness to comply with the condition. Accordingly, a condition will be imposed requiring the property owner to commit to participation in future right-of-way improvements.

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

Finding: No accessory structures are being applied for at this time.

11.15.2074 Development Standards for Dwellings and Structures

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);**

Finding: The proposed location of the dwelling appears to have the least impact on surrounding forest or agricultural lands for the subject property. The proposed location for the dwelling is sited away from surrounding properties and minimizes the need for additional tree clearing. The site is located adjacent to the recorded access easement currently bisecting the property. The proposed dwelling site is at the western edge of the subject property and utilizes an existing cleared area for its building footprint. There is no reason to believe that the construction of a dwelling as proposed will interfere in any manner with accepted farm or forestry practices on surrounding lands.

The applicant has submitted a signed and notarized statement binding successors in interest to the property to the restriction that the owner or owners accept as normal and necessary the farming or forest practice on surrounding forest or agricultural lands.

Because of the existing property dimensions, it is not possible for the dwelling to be located in compliance with all minimum yard setback requirements. The applicant is applying for a variance to the one side setback.

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

Finding: The criteria is addressing impacts "on the tract". In this case the tract includes only the subject parcel. The subject parcel is not receiving special assessment for farm or forest production and based on a site visit by staff on March 3, 1997, it does not appear to be in either farm or forest production. Since no farm or forest practices are currently present, adverse impacts will not occur. Additionally, the size of the parcel and the location of the road easement make it unlikely the parcel would become part of a large tract in the future. The criteria is satisfied.

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

Finding: The amount of forest land used to site the dwelling has been kept to a minimum of approximately 3,000 square feet including the proposed driveway. The proposed driveway will be located close to the existing paved easement bisecting the property and will utilize an area previously cleared of trees.

- (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 proposed dwelling will be located close to the existing paved easement. No service or access roads will be required. The proposed driveway will be no longer than 100'.

- (5) **The risks associated with wildfire are minimized. Provisions for 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; [Added 1996, Ord. 859 § III]**

Finding: The subject property is served by Gresham Fire and Emergency Services District.

- (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 fuel 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.

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

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

- (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). *[Added 1996, Ord. 859 § III]*

Finding: A primary fire break of 30 feet can be met. However, the secondary fire break would extend into adjoining property. This secondary fire break of 100 feet will be met to the greatest extent practicable within the limits of the yard setbacks approved herein. A condition will be placed on approval which requires maintenance of the primary and secondary fire safety zones.

- (d) The building site must have a slope less than 40 percent.
[Renumbered 1996, Ord. 859 § III]**

Finding: The slopes do not exceed 20 percent.

(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;**
- (3) Have a minimum floor area of 600 square feet;**
- (4) Have a fire retardant roof; and**
- (5) Have a spark arrester on each chimney.**

Finding: These applicant has indicated that the dwelling will comply with this criteria. A condition requiring such compliance will be imposed.

(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.

- (1) If the water supply is unavailable from public sources, 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.**

Finding: The property owner intends to obtain domestic water from a well drilled on site.

(2) Evidence of a domestic water supply means:

- (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water, or**
- (b) A water use permit issued by the Water Resources Department for the use described in the application; or**
- (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

Finding: A condition of approval will require that a well report be submitted and a finding of compliance with this condition be re-noticed to applicable property owners prior to the issuance of a building permit.

(D) A private road (including approved 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 1/2 the driveway length or 400 feet whichever is less.

Finding: The property owner will be required to submit plans demonstrating compliance with this condition prior to issuance of a building permit.

VARIANCE ORDINANCE CONSIDERATIONS:

- (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.
 - (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.

Finding: The subject parcel is 368.19 feet in width on the site plan. There is no opportunity to meet the minimum 200' setback from both side property lines on the property. The location proposed for the dwelling is in an area already cleared of trees setback 30' from the west boundary line. Because the proposed dwelling is setback 288' from the east property line, that setback requirement is met, for that yard. The size and shape of the property is a circumstance that applies to the property and intended use which is not applicable generally to other property in the same vicinity in the district.

- (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.**

Finding: Other similar sized and smaller tracts are located in the area. Because the subject property is only 368.19 feet in width, there is no opportunity to meet the minimum 200' setback requirement from the west property line.

The "vicinity" includes those parcels within the 160 acre template. The district refers to the Commercial Forest Use Zoning District. The 200 foot side yard requirement would preclude use of the property for residential purposes. As demonstrated through this application other parcels in the vicinity include small lots with single family dwellings. Other larger lots also zoned CFU and in the vicinity would be provided a dwelling under standards of this section.

In reviewing the applicant's site plan, the location of the proposed dwelling should be weighed against other siting criteria in order to determine whether the variance could be minimized (e.g. setback 50 feet instead of 30 feet is a variance of 75% instead of 85%). It appears the proposed site is in an already cleared area, the primary fuel break of 30 feet could be maintained, and the area is relatively flat in relation to other areas of the site.

The applicant has demonstrated compliance with this criteria.

- (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 affect the appropriate development of adjoining properties.**

Finding: The applicant has demonstrated compliance with the Template Test and siting criteria with the exception of the side yard requirement along the west property line. The site is the most suitable location on the property and a dwelling could not be approved anywhere on the property without a variance. Provided the applicant complies with the conditions placed on approval the authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or adversely affect the appropriate development of adjoining property.

- (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 current Comprehensive Plan states that the minimum lot size shall be 80 acres with lots of exception allowed. Because the majority of the lots in the vicinity are

considerably less than 80 acres and are "Lots of Record" prior to January 25, 1990, the current Comprehensive Plan precludes further division of the lots and also does not allow for more than one dwelling per lot. Therefore, the granting of a variance for a dimensional change would not adversely affect the realization of the Comprehensive Plan nor would it establish a use in the vicinity which is not listed.

COMPREHENSIVE FRAMEWORK PLAN CONSIDERATIONS:

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

1. **POLICY 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.

Finding: No significant impact on air pollution will result from the construction of a single-family residence. The single family dwelling will preserve air, water and noise quality by exceeding code in several building requirements. Finally, water will be provided to the site in compliance with D.E.Q. and State Water Resource Requirements.

2. **POLICY 14: DEVELOPMENT LIMITATIONS:** The County's Policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:
 - A. Slopes exceeding 20%;
 - B. Severe soil erosion potential;
 - C. Land within the 100 year flood plain;
 - D. A high seasonal water table within 0-24 inches of the surface for more than 3 or more weeks of the year;
 - E. A fragipan less than 30 inches from the surface; and
 - F. Lands subject to slumping, earth slides or movement.

Finding: Based on the applicant's submitted site plan, and narrative as well as review of the soil types on the subject parcel, I find that the subject parcel exhibits none of the development limitations listed above. Accordingly, development on this parcel would not be effected with this Plan policy.

3. **POLICY 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.

Staff: The proposal satisfies subpart "A" of this policy because the dwelling and accessory building will meet current energy conservation standards of the Uniform Building Code. Subparts "B", "C" and "D" of this policy are not applicable because the site is not in an urban area. Approval of the applicant's proposal will not adversely impact the ability of the owner of the parcel to take advantage of subpart "E". The proposal satisfies Policy 22.

4. **POLICY 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.

Finding: The applicant has submitted a Land Feasibility Study (LFS) 99-91 relating to the site which approves a septic tank and drainfield system. The property owner proposes to provide an adequate private water system in the form of a well drilled on site. However, the applicant has not yet drilled the well and the County has no documentation for finding adequacy of a water supply.

Prior to the hearing, Tony Sepich submitted documents for inclusion in the record relating to the J&W landfill site. Apparently, the J&W landfill was operated in the late 1960's and the early 1970's, near SE 190th and SE Rodlun Road. In late 1971, the landfill was declared a health hazard and subsequently closed. At this time it appears that there is some potential for the release of hazardous substances from the landfill property.

The documentation submitted by Mr. Sepich indicates that the J&W landfill may raise some questions regarding the quality of the ground water in the general area of Rodlun Road and the potential for contamination of ground water at the time new wells are drilled. However, Mr. Sepich did not appear personally at the hearing or present any written or oral testimony for the hearings officer's consideration.

The property owner will be required to submit a well report before a building permit is issued. The report must demonstrate that the property can in fact be served by a safe and adequate private water system, consisting of a well drilled on site. Upon submission of such a report, the County will be required to notify property owners in accordance with applicable requirements and provide the opportunity to appeal the finding that the water source is adequate.

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.**

Finding: The site plan project description and other the materials furnished by the applicant demonstrate that the water run-off to be handled on the site or adequate provisions can be made therefore, and that 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.**

Finding: Portland General Electric and US West Communication provide necessary power and phone service to the area. Adequate energy supply and communications facilities are available to service a single family home.

5. **POLICY 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.

Findings: The applicant has submitted Service Provider Forms from Multnomah County Sheriff's Office, the Gresham Barlow School District, and Gresham Fire & Emergency Services indicating that the parcel is located within the respective districts and service is available.

6. **POLICY 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:

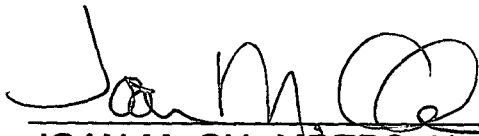
- A. Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.
- B. Landscaped areas with benches will be provided in commercial, industrial and multiple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

Finding: There are no pedestrian or bicycle path connections to parks, recreation areas or community facilities from or to the site. No dedications would be appropriate.

CONCLUSION

Based upon the Staff Report and the findings and substantial evidence cited or referenced therein, I conclude that the application for Conditional Use Approval to establish a single family residence on land designated for Commercial Forest Use and for a Major Variance from the side yard setback, satisfies all applicable approval criteria provided that the conditions of approval included herein are complied with. The application is hereby approved, subject to the conditions of approval contained herein.

IT IS SO ORDERED, this 18th day of April, 1997.

A handwritten signature in black ink, appearing to read "Joan M. Chambers", is written over a horizontal line.

JOAN M. CHAMBERS, Hearings Officer