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

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

July 9, 1997

CU 6-97 Conditional Use Request

HV 4-97 Major Variance Request

Applicant requests Conditional Use approval for a 16,400 sq. ft. Light Industrial Warehouse/Commercial use in the RC (Rural Center) zone, and requests a Variance from the front yard setback requirement of 30' to 0'.

Location: 28885 SE Dodge Park Blvd.

Property Description: T1S, R4E, Section 19, TL 64

Zoning Designation: RC, Rural Center

Property Owner: Robert Hoover
9280 SE Orient Drive
Boring, OR 97009

Applicant: Michael Hammons
20320 SE Hwy. 212
Clackamas, OR 97015

Hearings Officer Decision:

MAJOR VARIANCE Deny request for major variance from the front yard
(HV 4-97): setback requirement.

CONDITIONAL USE Deny request for conditional use approval for a 16,400
(CU 6-97): sq. ft. structure for light industrial, warehouse and
commercial uses.

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. JURISDICTIONAL 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.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the applicant.

FACTS

1. APPLICANT'S PROPOSAL

The applicant requests Conditional Use approval for a 16,400 sq. ft. Light Industrial Warehouse/Commercial use in the RC (Rural Center) zone, and requests a Variance from the front yard setback requirement of 30' to 0'.

The applicant proposes a 16,400 square foot structure for light industrial, warehouse, and commercial uses. The proposed building is on a 1.4 acre site in the Orient Rural Center. The vicinity map is attached hereto as Exhibit "A" and incorporated by this reference herein. The building would have twelve (12) commercial/industrial tenant spaces and thirty-six (36) off-street parking spaces with access to Dodge Park Boulevard. A site plan drawing is attached hereto as Exhibit "B" and is incorporated by this reference herein. Applicant expects tenant uses would be car detailing, small machine shop, product packaging, engine repair, etc.

2. SITE AND VICINITY INFORMATION

The site is located between SE Dodge Park Boulevard and SE Powell Valley Road, about 3,000 feet from the Gresham city limits. The site is currently vacant and contains 1.4 acres. The Comprehensive Framework Plan designates the site as Rural Center, and the zoning designation is RC, Rural Center District.

3. TESTIMONY AND EVIDENCE PRESENTED

- A. Prior to the Hearing and during the course of the Hearing on June 18, 1997, the exhibits which are listed on the attached Exhibit "C", which is incorporated by this reference herein, were received by the Hearings Officer.
- B. Chuck Beasley testified for the County, summarized the history of the application and the administrative decision and subsequent appeal therefrom.
- C. Applicant Michael Hammons appeared and testified in support of the proposed action and use. The specific assertions made by Mr. Hammons will be discussed in more detail in the body of the opinion.
- D. Eddie C. Day appeared and testified in opposition to the proposed variance and conditional use. Mr. Day expressed concerns regarding traffic issues and the site design. In addition, he expressed concerns about the proposed uses and their impact on septic and the adequacy of the septic system for the proposed uses.
- E. John E. Stewart testified in opposition to the proposed variance and conditional use. Mr. Stewart expressed concern regarding noise generated by the proposed uses and the compatibility with existing development in the area. Mr. Stewart also expressed concern about storm water runoff and the adequacy of the on site traffic design.
- F. Senior Planner Gary Clifford also testified on behalf of the County that the County business licenses are not used as a regulatory device for land use planning. They are simply revenue raising licenses for the County.

STANDARDS AND CRITERIA ANALYSIS AND FINDINGS OF FACT

Site plan for the Conditional Use is premised upon obtaining a Variance. The site plan shows zero setback from Dodge Park Road. Accordingly, prior to determining whether the Conditional Use application can be approved as submitted, it would be appropriate to address the Variance criteria.

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.

- (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.

Analysis:

The applicant's representative, Michael Hammons, both in the written material presented and testimony during the hearing, argued that the prospective realignment of the intersection of Dodge Park Boulevard and Orient Drive affected the property in question unlike any other in the area. It appears that the applicant is citing an access requirement as a circumstance or condition that does not generally apply to other property in the vicinity. However, Chapter 11.60 of the Multnomah County Code, subsection 05.220(A) provides that one driveway access per frontage will be the standard for approval and that double frontage lots will be limited to access from a single street. Accordingly, the one driveway access requirement is the standard that appears to apply to all lots in the vicinity, even double frontage lots such as the subject parcel.

In addition, the applicant presented no evidence as to the access standards that were applicable to other property in the vicinity, nor did the applicant make any comparison to the surrounding uses.

Accordingly, a finding cannot be made that the applicant meets this criteria for approval of a variance.

- (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.

Analysis:

The applicant argued that the 30-foot setback restricts the ability to develop the parcel to its highest and best use. However, that is not the criteria that needs to be addressed. The applicant also proposed using undeveloped right-of-way as a 30-foot setback. However, that proposal is not consistent with ordinance standards. The applicant is requesting a variance from the setback standards, not a vacation of a portion of County right-of-way. The Hearings Officer does not have the discretion to allow the applicant to use undeveloped right-of-way in lieu of the required setback on the property in question.

The criterion requires the comparison between the impact of the front setback requirement on the subject property in contrast to other properties in the area. The applicant simply did not make the required comparison.

The applicant has failed to demonstrate that he meets the second criteria involved for a variance from the 30-foot setback requirement.

- (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.

Analysis:

The applicant argues that the appeal of a variance will not detrimentally effect the property owners in the area in any way. The applicant proposes to utilize a sight-obscuring fence upon the front and southeast side property lines.

As staff indicated, the 30-foot front yard setback of the R-C zone is a no paving area with a landscaping strip of a minimum ten feet deep, as required by the off-street parking provisions of MCC .6138(B) and the Design Review standards for parking and loading areas in MCC .7855(C)(3). The wider, undeveloped area in the front results in a more open rural appearance of a prospective development, compared with the appearance of the same type of business located in the Urban Light Manufacturing district subject only to a ten foot buffer. The requirement for an increased yard setback is consistent with one of the purposes of the R-C zone, which is to provide for local employment consistent with rural character. The setback and no paving requirement preserves the rural atmosphere.

The applicant appears to be trying to maximize the development on the lot with no preserves of any buffer from Dodge Park Boulevard. This is not consistent with the rural

character of the R-C zone. Therefore, a finding cannot be made that the approval of a 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.

- (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.

Analysis:

The granting of the proposed variance does not appear to establish a use which is not listed in the underlying zone. The range of potential uses is provided for in the conditional use provisions of the R-C zone.

Variance Conclusion:

The applicant has not demonstrated that all of the Major Variance Approval Criteria have been met. The need for the variance appears to be motivated by the design of the project, rather than any difficulty inherent in the land. Accordingly, the applicant's request for a variance will be denied.

CRITERIA FOR APPROVAL OF A CONDITIONAL USE PERMIT IN THE RC ZONE:

A. Rural Center RC

MCC 11.15.2242 Purposes

The purposes of the Rural Center District are to provide standards and review procedures which will encourage concentrations of rural residential development, together with limited local and tourist commercial uses which satisfy are and regional needs; to provide for local employment through light industrial uses consistent with rural character and to manage the location and extent of public service centers and limit the extension of public services.

MCC 11.15.2252 Conditional Uses

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

MCC 11.15.2252

- (B) The following Conditional Uses pursuant to the provisions of MCC .7105 through .7640:

- (3) The Light Manufacturing Uses of MCC .5120 which require the daily employment of twenty or fewer persons; and

B. Urban Light Manufacturing LM

MCC 11.15.5120 Primary Uses

The following uses, conducted within an enclosed building:

- (A) The manufacture, compounding, processing, packaging, treatment, storage or wholesale distribution of such products as bakery goods, fruits, vegetables, sea foods, dairy products, candy, confections, beverages including brewing and bottling, miscellaneous food products, ice and cold storage plant, drugs, pharmaceuticals, perfumes, toilet soaps, toiletries, barber and beauty supplies, and similar items, but not sauerkraut, vinegar or pickles manufacture;**
- (B) The manufacture, compounding, assembling, treatment, storage or wholesale distribution of articles or merchandise from previously prepared materials such as bone, cellophane, canvas, cloth, cork, feathers, felt, fur, glass, hair, foam, lacquer, leather (but not tanning), paper or paperboard, plastics, precious or semi-precious metals or stones, shell, textiles, tobacco, wood (except as provided in the GM and HM districts), yarns and paints;**
- (C) The manufacture, assembly, packaging, repair, storage or wholesale distribution of articles such as electrical appliances, lighting and communication equipment, electronic, radio or television equipment, parts or accessories, professional, scientific, optical, photographic or controlling instruments, amusement devices, small parts assembly, jewelry, musical instruments, toys, sporting goods, novelties, rubber or metal stamps;**
- (D) The manufacture, finishing, refinishing, repair, storage or wholesale distribution of furniture, office or store fixtures, small boats, upholstery, cabinets, office, computing or accounting machines, electric and neon signs, billboards and other signs;**
- (E) Business, professional, executive, administrative, wholesale, contractor or similar office, clinic, service or studio, trade, business or commercial school, research, experimental or testing laboratory;**
- (F) Printing, publishing, bookbinding, graphic or photographic reproduction, blueprinting, or photo processing;**
- (G) Building, building maintenance, plumbing, electrical, heating, roofing, glass, landscaping, painting or similar contractor's office, shop, warehouse, equipment sales or maintenance;**

- (H) Retail or wholesale lumber, building materials, garden supplies sales and tools, or small equipment sales, rental, repair or servicing;
- (I) Laundry for carpets, uniforms, linens, rags, rugs and similar items, dyeing plant, dry cleaning not using explosive or inflammable materials;
- (J) Automobile, light truck, motorcycle and recreational vehicle repair or maintenance, body and fender work, painting, parts and glass replacement, upholstery, engine, radiator or battery rebuilding, tire recapping, commercial, industrial or fleet vehicle parking and auto detailing;
- (K) Metal or sheet metal shop, ornamental iron works, welding, blacksmithing, electroplating, tool and hardware manufacture, machine shop not using a drop hammer or large capacity punch press;
- (L) Warehouse, furniture and household goods storage, moving equipment rental, distribution plant, parcel delivery, wholesaling of durable and non-durable goods, light and heavy equipment sales, rental or repair, fuel and ice distribution;
- (M) Manufacture of non-structural clay products, ornamental clay, concrete, plaster or plastics casting stone and purchased-glass products cutting, polishing or installation;
- (N) Collection, recycling, sorting, baling or processing of previously used materials such as rags, paper, metals, glass or plastics; and
- (O) Any use not listed in MCC .5125 or .5130, determined by the Planning Commission to be consistent with the purposes listed in MCC .5105.

Analysis:

The applicant indicates that the proposed development would have 12 commercial and industrial tenant spaces. The applicant anticipates that the use would be light manufacturing and the total number of employees would not exceed 20 at the site.

The RC zone conditionally allows the listed Light Manufacturing uses which are the primary uses of the Urban Light Manufacturing district, with the limitation that no more than 20 persons are employed, and that the business activity takes place within an enclosed building. The restriction on the number of employees serves to limit the scale of the use to rural character consistent with the purpose of the RC zone.

The proposed use is a multi-business facility that provides for up to 12 separate businesses rather than the single purpose businesses currently found in the area. There

is no information in the application that quantifies the number of employees common to other businesses in the area, however allowing 20 employees for each of the twelve potential business spaces is beyond rural scale. Although this is a multi-business facility, the number of employees in total at the site would need to be limited to 20 to fit the purposes of the zone. The applicant has not demonstrated that there is a practical way to establish and enforce such a limitation.

As staff has indicated, the "Light Manufacturing Uses" of MCC .5120 include a listing of 15 uses or categories of uses which can be allowed conditionally in the RC zone. This listing includes uses described with adjectives like; manufacture, assembly, packaging, wholesale distribution, processing, and others. These are uses with functional characteristics such as no customer visits, and regular shipping activity. Other uses include professional service or studio, retail or wholesale garden supplies, automobile repair, auto detailing, which have different characteristics and site needs, including customer visits to the site and temporary on-site storage of autos. The applicant lists warehouse and distribution plant as examples of the types of uses allowed, references "commercial-industrial" tenant spaces. Applicant therefore contends that Comprehensive Plan Policy does not apply. However, a number of the uses listed in MCC .5120 have commercial-retail characteristics including, E., F., G., H., I., and J. If these uses were intended to be allowed, Policy 27 should have been addressed, and the parking requirements would be different.

Elimination of the uses with commercial characteristics identified above leaves a broad range of uses which could be allowed. Since there will be multiple businesses which must be found consistent with the zoning ordinance and this decision, individual permitting of each tenant space through the Land Use Permit process would need to be implemented, if approval were granted. However, as a practical matter it would be extremely difficult to limit the employees to 20 or fewer. The applicant has not provided enough information to determine exactly what the proposed uses are or that they will require the daily employment of 20 or fewer persons.

C. Conditional Use Approval Criteria

MCC 11.15.7120 Conditional Use Approval Criteria

(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall not apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

- (1) Is consistent with the character of the area;

Analysis:

Staff has provided a description of the character of the area. The subject property is located within and along the edge of a linear RC zoning district which extends for approximately one mile along Orient Drive and Dodge Park Blvd. between S.E. 282nd Ave. on the west, to 302nd Ave. to the east. The two intersections at either end contain contiguous parcels with developed business uses, with other businesses scattered throughout the corridor. Agriculture based business including nurseries, farm equipment and feed store appear to make up the majority. The uses adjacent to the subject property include an auto towing/wrecking yard on the west, farm land across Powell Valley Road to the north, two rural residential uses to the east, and the Dodge Park Blvd./Orient Drive intersection to the south, with farmland beyond.

As staff indicated, the overall character of the area retains the sparse settlement and openspace characteristic of rural areas, especially south of Orient Drive and north of Dodge Park Blvd. in the area east of its intersection with Orient Drive. With the exception of the business nodes at the east and west end of the district, and of the lumber yard and feed store in the center, the businesses contain relatively small structures surrounded by openspace. Both Dodge Park Blvd. and Powell Valley Road are lined with trees and shrubs, and this contributes to the rural feel of the area. It is the size and intensity of the proposed development rather than the uses themselves that appear to be inconsistent with the character of the area. At this time, we do not know what the specific uses will be.

It appears that the facility will provide only one floor for business activity. The other visual element of open space is supported by the drainfield/parking area on the east side of the building, and with the 30' setback along the rear property line. The proposal for the Dodge Park Blvd. frontage includes the variance request to dedicate most of the 30' front setback area to access lanes and parking. Removing the parking from the setback area and providing landscaping in the area would enhance the rural appearance and reduce the impact of the building form Dodge Park Blvd.

The other primary aspect of compatibility in this case is traffic. Dodge Park Blvd. east of the site had a relatively low traffic volume compared to Orient Drive during the time staff was on site. Traffic on Powell Valley Road was lighter still. The applicant has provided no information regarding the expected vehicle trip generation for the site. The multi-business nature of the facility does contrast with the other existing businesses in the area, and that coupled with the number of employees and delivery/shipping trips which could reasonably be anticipated from the tenants, leads to the expectation that substantial trips will result. However, the proximity of the facility to the intersection of Dodge Park Blvd. and Orient Drive, appears to mitigate this. Traffic to the site will not be required to traverse the neighborhood east of the site to access it.

(2) Will not adversely affect natural resources;

Analysis:

The proposed use of this property would have no adverse affects on the natural resources of the area. No wetlands, waterways, scenic views, fish and wildlife habitats, energy sources, or natural areas have been identified on the site. This criterion is satisfied.

(3) Will not conflict with farm or forest uses in the area;

Analysis:

The applicant contends that the effects on farm or forest uses are insignificant – primarily due to physical barriers between the site and nearby commercial farm or forest uses, and the non-farm/non-forest uses existing on immediately adjacent lands to the west, east and south. The nearest farm uses are north of Powell Valley Road. Considering the existing non-farm uses already in the vicinity, the proposed facility would not appear to conflict with nearby uses. The site plan indicates that placement and orientation of the structure and access would direct the proposed activities toward the Orient Rural Center south and west of the site. This criterion is satisfied.

(4) Will not require public services other than those existing or programmed for the area;

Analysis:

Public water is available to the site from the Lusted Water District. The County Sanitarian has approved a Land Feasibility Study confirming the ability to use on-site sanitation with a capacity to serve up to 30 employees for each eight hour shift. Electric, natural gas and telephone service are available to the site.

The property is in the service area of Multnomah County Fire District No. 10. The fire district response indicated on the service provider form is that water pressure and flow is not adequate unless an on-site reservoir and hydrant connected to the Lusted Water District are provided. The applicant has shown the location of a reservoir in the southwest corner of the property. Adequacy of fire service also related to Policy 38 in part D. of this report.

The septic system approval is for up to 30 employees per work shift and is limited to residential strength effluent typically from toilets, washbasin, and sinks. The uses listed in .5120 include businesses which may have effluent volume or strength which is greater than that for which the system is approved and will require enhanced treatment capability. For example, the uses listed in MCC .5120 (A) include processing of a wide range of organic and chemical compounds which may generate effluent which cannot be adequately treated in a standard septic system. The site plan shows no additional area for expansion of the septic system to accommodate additional strength or volume of waste. Without limits to the waste stream, the use would need to be connected to a

public sewer system. Sewer systems are defined in Statewide Planning Goal 11, Public Facilities and Services, as urban facilities which cannot be extended outside of Urban Growth Boundaries. These findings relate to Comprehensive Plan Policy 13, Air, Water and Noise Quality, and Policy 37 Utilities, in part D. of this report. The opponents have expressed concerns that the septic system is inadequate to process the waste that would be generated on site.

- (5) 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 will be acceptable;

Analysis:

The site is not identified as a big game habitat area in the Comprehensive Plan or by the Oregon Department of Fish and Wildlife. This criterion is satisfied.

- (6) Will not create hazardous conditions; and

Analysis:

The applicant proposes twelve (12) commercial/industrial tenant spaces and thirty-two (32) off-street parking spaces with access to Dodge Park Boulevard. However, without variance approval, it does not appear that applicant would be able to get 32 parking spaces on site. Applicant expects tenant uses would be car detailing, small machine shop, product packaging, engine repair, and similar activities.

The potential hazards identified by staff are associated with access to the site and parking area for maneuvering of vehicles and pedestrian access. No information has been received to indicate that the access to the site from Dodge Park Blvd. is or will be inherently hazardous. The parking layout places isolated parking spaces throughout the site with no pedestrian access indicated. The center of the "u" formed by the structure is devoted in substantial part to maneuvering area for trucks with parking spaces in the center and on the periphery outside the turning radius. A drive adjacent to the entrance intersects at right angle with parallel parking along the side, and leads to a group of parking spaces between the building and drainfield. Pedestrian safety could be enhanced by designated pathways in the parking lot. I do not find that the proposal as submitted would create hazardous conditions. However, the proposal as submitted is dependent on the approval of a variance, which was not approved.

- (7) Will satisfy the applicable policies of the Comprehensive Plan.

Analysis:

The applicable policies of the Comprehensive plan follow:

D. Comprehensive Plan Policies Applicable to the Decision

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.

Analysis:

As staff has indicated, potential impacts to air, and water, and the level of noise generated by a use which may locate in the proposed development are variable and will not be known until a land use permit application for a specific tenant is received. For example, in the area of water quality, the property has been approved for an on-site waste disposal system to serve the sanitation needs of up to 30 employees for one work shift. Some uses may require enhanced treatment capability. All three of these elements, water, air, and noise, are subject to standards for environmental protection or workplace safety. Since the specific use of each space is not known at this time, a finding can not be made that the proposed uses will have no significant impact on air, water or noise quality.

Policy No. 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 costs, and mitigate any adverse effects to surrounding persons or properties. Development limitation 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 3 or more weeks of the year;**
- E. A fragipan less than 30 inches from the surface; and**
- F. Land subject to slumping, earth slides or movement.**

Analysis:

The applicant has indicated that there are no slopes exceeding 20% on the site and it is not in the 100 year flood plain.

Staff reported that the Soil Conservation Service survey map # 29 for Multnomah County indicates that the soils on the subject parcel are Powell series, 34A and 34B. The

description of the soil profile is that the depth to fragipan is 20 to 30 inches, and that a perched water table develops over the fragipan in winter. The soil is rated as severely limited for septic system absorption fields due to wetness and slow percolation, and severely limited for building site development due to wetness. These limitations have apparently been taken into account during evaluation of the site for the septic system, and would need to be considered in design of the stormwater detention system, and for the building foundation. Thus, with appropriate design, adverse effects to surrounding properties could be mitigated.

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 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 recreational 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.

Analysis:

The factors in A. through E. of this policy have been considered in the context of this application. A finding can be made that the factors set forth above have been given the appropriate consideration.

Policy No. 27, Commercial Location:

Analysis:

The applicant contends that activities proposed on this site are classified as a "warehouse" and "distribution plant" and should be regarded as industrial rather than commercial uses.

The list of potential uses under MCC .5120 includes businesses which have commercial characteristics such as regular customer visits. If a condition of approval to not allow such uses was implemented, this policy would not apply. However, the applicant has specifically indicated such uses as potential tenants. Therefore, applicant should have addressed this policy.

Policy No. 30, Industrial Location:

The County's policy is to:

- A. Promote economic diversification and growth through the provision of buildable serviced industrial sites meeting locational and site requirements of manufacturing, wholesale trade, and distribution industries.**
- B. Encourage industrial development at locations which will reinforce orderly and timely development and provision of public facilities and services,**
- C. Encourage the siting and expansion of industry and generation of jobs in locations meeting the site needs of the industry and the needs for jobs by residents.**
- D. Encourage land use development patterns which protect the stability and functional aspects of industrial area by protecting them from incompatible uses.**
- E. Classify industrial developments according to their characteristics, scale of their operations, and potential impacts. As follows:**
- F. Locate industrial firms on sites with average slope gradients consistent with the firm's scale of operations and impacts. Site slope requirements by scale are:**

<u>Scale</u>	<u>Average site slope standard</u>
Isolated Light Industrial	less than 10%

For sites with average slopes steeper than the standard, the developer must be able to demonstrate that through engineering techniques all limitations to development and the provision of services can be mitigated.

- G. Support the location of industrial activities on existing transportation systems with volume capacities and modal mixes available and appropriate to serve present and future scales of operation. Vehicular access requirements by scale of development are:**

<u>Scale</u>	<u>Vehicular access standards</u>
Isolated Light Industrial	Direct access to a collector street without routing traffic through neighborhood streets.

- H. Restrict the siting of industrial activities in locations where the site access would cause dangerous intersections or traffic congestion, considering the following:**
 - 1. Roadway capacities.**
 - 2. Existing and projected traffic counts.**
 - 3. Speed limits.**
 - 4. Number of turning points.**

- I. Support industrial development location at sites of a size which can accommodate the present and future uses and is of a shape which allows for a site layout in a manner which maximizes user convenience, energy conservation, and pedestrian and bicycle access to and within the site.
- J. Promote compatible development and minimize adverse impacts of industrial site development on adjacent properties and the community through the application of design review standards codified in MCC 11.05.7805-11.05.7865.

Analysis:

Staff indicated that the non-commercial uses of MCC .5120 generally fit the Light Industry Characteristics in the classification system under Policy 30 E, with the exception that no outdoor storage is allowed. The site slopes at approximately 3% grade to the south, consistent with the location standard for isolated light industrial uses in Policy 30 F. The site access standards are apparently not an issue given that the only requirements after review by the Transportation Planning section are for deed restrictions committing the property owner to participate in future right-of-way improvements, and allowance for one driveway to Dodge Park Blvd. Policy 30 J. would be satisfied on completion of Design Review for the entire project.

Policy (30)g requires "isolated light industrial" uses to have "direct access to a collector street without sending traffic through neighborhood streets". SE Dodge Park Boulevard is classified as a rural collector.

Policy 30(g) determines what the vehicular access requirements are for particular types of industrial development, based upon their scale. Under the provisions of Policy 30(g), isolated light industrial uses are "required" to have direct access to a collector street. Applicant contends that this proposed development would have direct access to Dodge Park Boulevard, a *rural collector traffic* way, and it therefore satisfies Policy 30g.

The applicant has not addressed Policy 30 I., which is an important site suitability policy. It is not clear how the proposed development maximizes user convenience, and pedestrian and bicycle access to and within the site. The plan as proposed relies on shared parking areas which are scattered around the site. The opponents testified that the site design did not provide sufficient room to allow a turning radius for trucks with semi trailers. That would have a significant negative impact on user convenience. No provisions are indicated for pedestrian access from parking areas to business spaces, or from business to business.

Policy No. 36, Transportation System Development Requirements:

The County's Policy is to increase the efficiency and aesthetic quality of the trafficways and public transportation by requiring:

- A. The dedication of additional right-of-way appropriate to the functional classification of the street given in Policy 34 and Chapter 11.60.
- B. The number of ingress and egress points be consolidated through joint use agreements,
- C. Vehicular and truck off-street parking and loading areas,
- D. Off-street bus loading areas and shelters for riders,
- E. Street trees to be planted,
- F. A pedestrian circulation system as given in the sidewalk provisions, Chapter 11.60,
- G. Implementation of the bicycle corridor capital improvements program,
- H. Bicycle parking facilities at bicycle and public transportation sections in new commercial, industrial and business developments, and
- I. New streets improved to County standards in unincorporated County may be designated public access roads and maintained by the County until annexed into a city, as stated in Ordinance 313.

Analysis:

Applicant is willing to commit to the future improvement of the abutting public roads through deed restrictions. Those future improvements would include sidewalks, curbs and additional paving in the right-of-way adjacent to the subject property.

This transportation system policy includes public transportation, however the site is not served by public transportation. Under Policy 36 A., no additional right-of-way is required, the location of the proposed use does not lend itself for a joint use access with the towing yard to the west as indicated in B. The off street parking policy of C. is implemented by the provisions of the Off-Street Parking subdistrict, addressed elsewhere in this opinion. The street tree policy of E. is implemented in the Design Review ordinance. The other sub-policies do not apply. The applicant has met the requirements of this policy.

Policy No. 37, Utilities:

The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

WATER AND 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.

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- E. There is adequate capacity in the storm water system to handle the 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.

Analysis:

The water disposal system standard which applies to the request is "B.", that a public water system is available and a septic system can be approved by DEQ. Both are true, however neither may be adequate for the mix of business uses proposed. As discussed under conditional use criterion (4) in part C. of this report, the public water available to the site is inadequate for fire fighting needs, and the septic system is limited to residential strength waste and has volume limitations. The applicant has repeatedly indicated that some of the proposed uses may involve car detailing, engine repair, or machine shop. They are uses which involve toxic or hazardous substances such as paint, solvent, oil, and various other chemicals. The proposed uses do not appear to be consistent with a septic system that is designed for residential strength waste.

The drainage standard of F. appears to be the only one applicable in this section since no stormwater system exists in the area, nor are there any adjacent surface water bodies, and the topography does not appear to direct runoff to adjacent properties. No information has been submitted to demonstrate that water run-off can be handled on site, and this is a requirement which must be satisfied prior to development. The scope of the project indicates that a Grading and Erosion Control Permit will be required prior to issue of Building Permit, and this requirement can be addressed at that time.

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.**

Analysis:

The property is located in the Orient School District, which will not have to accommodate any additional student enrollment as a result of approval of this request. Multnomah County Fire District No. 10 provides fire protection, and the Multnomah County Sheriff's Office provides police protection.

The fire district response indicated on the service provider form is that water pressure and flow is not adequate unless an on-site reservoir and hydrant connected to the Lusted Water District are provided. The applicant has indicated an area of the site plan which he maintains is adequate to provide the necessary reservoir. The school district has received mailed notice and opportunity to comment on this request, and the property is within the service area of the Multnomah County Sheriff. A finding can be made that this criteria is met.

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.**

Analysis:

Dodge Park Blvd. is not designated as a bicycle corridor on the Bikeways Plan Map. The manufacturing/warehousing nature of the proposed use suggests outdoor recreation areas are not appropriate, although a landscaped area for employee use would be a benefit. Bicycle parking facilities are appropriate in developments intended to provide local employment and which are not served by public transit. No bicycle parking facilities are indicated on the site plan, however it appears that a covered area for this purpose could be provided. A finding can be made that this policy has been given appropriate consideration.

E. Off-Street Parking/Design Requirements

MCC 11.15.2266 Off-Street Parking and Loading

Off-street parking and loading shall be provided as required by MCC .6100 through .6148.

Analysis:

The Rural Center zoning ordinance provision set forth above requires that off-street parking and loading be provided. The applicant has not submitted any written justification of how the off-street parking requirements can or will be met. The information available is in the description of the proposal and site plan. While many of the design and dimensional details required by the ordinance can be evaluated during the required Design Review phase of the permitting process, the applicant has not provided enough information to justify a finding that off-street parking and loading requirements can be met.

MCC 11.15.6126 Design Standards: Scope

- (A) The design standards of this section shall apply to all parking, loading, and maneuvering areas except those serving a single or two-family residential dwelling or mobile home on an individual lot.**
- (B) All parking and loading areas shall provide for the turning, maneuvering and parking of all vehicles on the lot. After July 26, 1979 it shall be unlawful to locate or construct any parking or loading space so that use of the space requires a vehicle to back into the right-of-way of a public street.**

Analysis:

The site plan is intended to provide adequate turning, maneuvering and parking on the subject parcel, and there are few alternatives to meeting this requirement because Dodge Park Blvd. has no room for on-street parking. The parking design avoids the need to back onto the street by connecting the parking area to the street with a 20' wide paved drive. The number of parking spaces needed to provide for parking of all used by the maximum of 20 persons employed at the site is 20. This does not allow for any loading areas, or space for occasional sales or other visits to businesses at the site. With several of these uses, i.e., auto detailing, and car repair, it would be reasonable to anticipate the need to park cars that had been repaired or detailed outside the buildings until the owners picked up the cars. A broad estimate of the number of parking and loading spaces needed is included in the findings under 11.15.6142 Minimum Required Off-Street Parking Spaces. The applicant has designed his building and parking to rely on approval of a major variance in order to locate a portion of the needed parking within the front setback area. Without the variance, it does not appear that the parking requirements can be met.

MCC 11.15.6128 Access

- (A) Where a parking or loading area does not abut directly on a public street or private street approved under MCC 11.45, the Land Division Chapter, there shall be provided an unobstructed paved drive not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.**
- (B) Parking or loading space in a public street shall not be counted in fulfilling the parking and loading requirements of this section. Required spaces may be located in a private street when authorized in the approval of such private street.**

Analysis:

The site plan shows the connection to Dodge Park Blvd. via a 20' side drive.

MCC 11.15.6130 Dimensional Standards

- (A) Parking spaces shall meet the following requirements:**
 - (1) At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.**
 - (2) Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.**
 - (3) For parallel parking, the length of the parking space shall be 23 feet.**
 - (4) Space dimensions shall be exclusive of access drives, aisles, ramps or columns.**
- (B) Aisle width shall be not less than:**
 - (1) 25 feet for 90 degree parking,**
 - (2) 20 feet for less than 90 degree parking, and**
 - (3) 12 feet for parallel parking.**
 - (4) Angle measurements shall be between the center line of the parking space and the center line of the aisle.**
- (C) Loading spaces shall meet the following requirements:**

(1)		Minimum	Minimum
	<u>District</u>	<u>Width</u>	<u>Depth</u>
	LM, GM, HM	12 Feet	60 Feet
	GC, EC, SC	12 Feet	35 Feet
	All Others	12 Feet	25 Feet

Minimum vertical clearance shall be 13 feet.

Analysis:

The site plan submitted by the applicant does not specify all dimensions of all spaces, but those illustrated are in dimensional compliance. The aisle widths for parallel and 90 degree parking appear adequate on the plan. No loading spaces are indicated on the plan.

MCC 11.15.6132 Improvements

(A) Surfacing

(B) Curbs and Bumper Rails

- (1) All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.

- (C) Marking – All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC .6108, and such marking shall be continually maintained.

- (D) Drainage – All areas for the parking and maneuvering of vehicles shall be graded and drained to provide for the disposal of all surface water on the lot.

Analysis:

The improvements of surfacing, curbing, and marking will all be implemented during the Design Review process when a detailed parking plan is reviewed. The drainage and on-site disposal required under (D) should utilize a grease and oil separator at the parking lot inlet in order to capture some of the parking lot pollutants from stormwater. I find that this criteria can be met.

MCC 11.15.6134 Lighting

Any artificial lighting which may be provided shall be shielded or deflected so as to not shine into adjoining dwellings or other types of living units, and so as not to create a hazard to the traveling public on any street.

Analysis:

The applicant has not included any lighting plan. This requirement could be implemented through Design Review.

MCC 11.15.6138 Design Standards: Setbacks

- (A) Any required yard which abuts upon a street lot line shall not be used for a parking or loading space, vehicle maneuvering area or access drive other than a drive connecting directly to a street.
- (D) A required yard which abuts a street lot line shall not be paved, except for walkways which do not exceed 12 feet in total width and not more than two driveways which do not exceed the width of their curb cuts for each 150 feet of street frontage of the lot.

Analysis:

The required front yard in the RC zone is 30'. The applicant's parking plan shows the majority of the setback area used for parking, and is therefore not in compliance with the standards of this section. The applicant has requested a variance to the setback standard to allow the proposed plan. The request for variance has been denied. Therefore, the setback design standard has not been met.

MCC 11.15.6142 Minimum Required Off-Street Parking Spaces

(C) Retail and Office Uses

- (2) Service and Repair Shop and Retail Store handling bulky merchandise, such as automobiles and furniture – One space for each 600 square feet of gross floor area.
- (3) Bank or Office, including Medical and Dental – One space for each 300 square feet of gross floor area.

(E) Manufacturing and Storage

- (1) Manufacturing – One space for each two employee positions on the largest shift, or one space for each 800 square feet of non-storage gross floor area, whichever is greater.
- (2) Storage – One space for each 5,000 square feet of storage area for the first 20,000 square feet, plus one additional space for each additional 50,000 square feet.

(F) Unspecified Uses

Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.

Analysis:

The proposed development and use is a multi-use facility which will have higher parking needs than any of the single use businesses specifically listed in the ordinance. The higher parking needs arise from several aspects of the use including individual offices for each business as opposed to one office area for a larger business, a higher minimum number of employees per square foot of business area due to twelve business entities, and the potential need for loading space for multiple small businesses. No estimate of the number of truck trips for shipping or delivery is provided by the applicant. In addition, the number of parking and loading spaces needed is difficult to determine with the broad range of uses allowed.

The applicant indicates that the number of employees or owner/employees will be a maximum of 20 persons employed at the site in a maximum of 12 businesses. Yet the number of the businesses and the proposed uses appear to require more than 20 employees. No on-street parking is available, and the property is not served by public transportation. The list of potential businesses in MCC .5120 has been reduced to not allow the highest traffic/commercial types of uses, and the remaining potential uses include repair, contractor, and other uses which will require some customer and sales or other business office related parking. If the requirements for service and repair shop parking were applied to each separate use, 29 spaces would be required. The applicant has no information about whether parking space for business delivery or service vehicles will be needed.

An estimate of the parking requirements should be made in order to find whether the off-street parking and loading ordinance requirements can be met. In the staff report, staff estimated that each of the business would need a minimum of two spaces for employees, one for an office space and one for an employee or partner. That would be 24 spaces. Any space larger than 1,200 square feet should meet the minimum requirement for the type of use. Staff estimated the number of spaces needed for parking is 27 based on the configuration in the plan. I estimate 29 spaces are required. In addition, some amount of loading space will be required. Without the variance, parking spaces will be eliminated and the minimum number of parking spaces necessary will not be satisfied on site.


CONCLUSION

Based on the findings and the substantial evidence cited or referenced herein, I conclude that the Major Variance Request should be denied.

The site plan as designed proposes a complete variance from the 30 foot front yard setback. Without the variance, the site does not support a facility as large as the one proposed. Since there is no basis for approving the variance, and the site plan and conditional use are so closely tied thereto, I find I cannot approve the request for a conditional use.

Accordingly, the request for a conditional use approval and the request for a major variance are both denied.

IT IS SO ORDERED, this 9th day of July, 1997.



JOAN M. CHAMBERS, Hearings Officer