
HEARINGS OFFICER DECISION

November 28, 1996

This Decision Consists of Findings of Fact and Conclusions.

CU 9-96	Conditional Use Permit for a "Template Dwelling"
HV 11-96	Major variance to the yard (setback) requirements
SEC 15-96	Significant Environmental Concern Permit

The applicant has requested a Conditional Use Permit for a "template Dwelling", a Minor Variance from the Code's requirement of a 200 foot setback from side lot lines for a 150 foot setback from the west side lot line, and a Significant Environmental Concern Permit for this tract which is in the Commercial Forest District.

Site Address	14633 NW Rock Creek Rd
Tax Roll Description	Tax Lot 52 in Section 26, T2N R2W, W.M., Multnomah County, Oregon
Site Size	4.63 acres
Property Owner and Applicant	Doni L. Roach 3810 SE Madsen Court Hillsboro, OR 97123
Comprehensive Plan Designation	Commercial Forest
Zoning Designation	Commercial Forest (CFU) SEC-h (wildlife habitat)

I. SUMMARY OF THE REQUEST

The applicant requests a Conditional Use Permit for a "template Dwelling", a Minor Variance from the Code's requirement of a 200 foot setback from side lot lines for a 150 foot setback from the west side lot line, and a Significant Environmental Concern Permit for this tract which is in the Commercial Forest District and has an Significant Environmental Concern (Wildlife habitat) overlay zone.

The lot consists of 4.63 acres. The lot generally slopes gently up from Rock Creek Road to the north, contains slopes up to 20 percent in areas. There is a small man-made pond on the northeast portion of the lot fed by a natural spring in the area above the pond. The lot was previously logged and only a scattering of conifers remain. The site is vegetated with thick brush and numerous small and large deciduous trees. There is a cleared area near the center of the lot. There is a grove of Cedar trees also located near the center of the lot. The vicinity has characteristics similar to the subject property.

II. PUBLIC HEARING

A. Hearing

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

B. Summary of Testimony and Evidence Presented

1. Phil Bourquin, County Planner, summarized the staff report and recommended conditions of approval. Phil said that the applicant originally requested access from the west side of the property at Rock Creek Road. The original access site is very steep and there are Code provisions to minimize the length of driveways. The applicant revised the proposed access. She now proposes to use an existing driveway, which will shorten the driveway. He showed a map (Exhibit E1), the preliminary road profile, of the access now proposed. Phil said he drove up the existing access very easily to the site.

Phil said that the applicant originally requested a variance request that was greater than 25 percent of the setback requirements. The staff had some concerns with the major variance request. The applicant chose to revise her application and request a 150 foot sideyard, which is 25% of the requirements and qualifies as a minor variance. Phil said the nearest dwelling is on the property to the west, the direction they are requesting a variance from. The area where they propose to locate the dwelling is relatively flat. The overall site includes some steep slopes, is hilly, and there are a lot of trees on the lot. The area for the proposed dwelling is an existing cleared area, toward the center of the property.

2. Don Jones, representing Doni Roach the applicant testified that the applicant accepts the staff report and recommended conditions of approval. He said that the length of the access is approximately 350 feet. The distance from the road to the house is approximately 200 feet.

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

A. Conditional Use Permit Request for Template Dwelling

1. A "template Dwelling" may be approved as a conditional use permit in a Commercial Forest zone when it is found to satisfy the standards of the Multnomah County Code. MCC 11.15.2050(B). The standards are in subsections .2052 and .2074. Under 11.15.2052 a 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 15, 1990;**

Findings. The lot was created in 1976 and was portioned out of tax lot 41. This deed was recorded on October 17, 1976, Book 1132, page 387. The zoning of the property on October 17, 1976 was F-2 (Agriculture) with a minimum lot size of 2 acres. There are no adjacent parcels in contiguous ownership with the subject parcel. The subject property (Tax Lot 52) is a lawfully created lot of record. The owner does not own any adjacent property.

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

Findings. The subject property contains 4.63 acres, generally sufficient to accommodate a dwelling. When applying the 200 foot setback requirement from the back and sides and the 60 foot requirement from the county road, a triangular envelope is identified. This envelope is the area where development would meet the setback standards of this section and MCC .2074. Nearest the road this envelop could accommodate a structure with a 100 foot dimension along the front lot line. The property owner proposes a single floor structure approximately 120 feet in length. Because of steep slope of the property immediately north of Rock Creek Road and because the proposed dwelling is approximately 120 feet in length, it would be difficult to locate the dwelling within the setback requirement. The applicant is requesting a minor variance pursuant to MCC .8505 through .8525 to place the dwelling a minimum of 150 feet from the east property line.

(3) The tract shall meet the following standards:

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

Findings. The tract is composed of Cascade silt loam (7C & 7D) which are capable of producing between 140 and 164 cf/ac/yr of Douglas Fir timber based on the Soil Survey of Multnomah County, Oregon, Soil Conservation District, USDA, August 1983.

According to Planning Department records and maps, at least all or part of 12 other lawfully created lots existed on January 1, 1993 within a 160-acre square. These lots are identified as follows: 1) Tax Lots 4, 60 and 44; 2) Tax Lot 33; 3) Tax Lot 3; 4) Tax Lot 22; 5) Tax Lot 28; 6) Tax Lot 24; 7) Tax Lot 53; 8) Tax Lots 54 and 41; 9) Tax Lot 9; 10) Tax Lot 56; 11) Tax Lot 18; and 12) Tax Lots 30, 37 and 6.

The Multnomah County Public Assessment and Taxation records show that there are 5 dwellings that existed on January 1, 1993 within the 160 acre square. The dwellings are: Tax Lot 54 built in 1979; Tax Lot 44 built in 1981; Tax Lot 37 built in 1992; Tax Lot 39 built in 1963; Tax Lot 18 built in 1967.

The subject parcel meets the template requirement of this section.

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

Finding. No dwellings or lots within an urban growth boundary were utilized in verifying the number of dwellings and lots which existed on January 1, 1993.

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

Finding. Based on the Multnomah County Public Assessment and Taxation records and a staff visit to the site, no dwellings currently exist on the property.

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

Finding. The tract includes only tax lot 52 and no dwellings exist currently on the tract. There are no other lots or parcels in this tract. Therefore, the criterion is satisfied.

- (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**

Findings. Under this provision, only one dwelling is allowed on the tract. If the proposed application is approved and the dwelling constructed, no other dwelling would be allowed except for the purposes of replacement.

- (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. Under this section, if a dwelling is approved on this parcel, the parcel could not 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 applicant has submitted the Multnomah County Wildlife Habitat map which identifies big game winter habitat areas. The subject parcel is located within a section that is not identified as a big game winter habitat area. Therefore, this criterion has been met.

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

Finding. The applicant is proposing to establish a driveway from an existing County Road (Rock Creek Road), therefore the criterion is not applicable to this application.

- (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 minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;
- (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. A condition of approval requires that a stocking survey be submitted, before a building permit is issued, showing compliance with MCC 11.15.2052(A)(6).

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

Finding. The proposed dwelling meets development standards except for the setback standards for which a variance has been requested.

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

Finding. The applicant has complied with criterion (8) by recording Exhibit VIII (Conditions and Restrictions form) on April 19, 1996.

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

Finding. Since this tract is made up of one parcel, zoning would preclude future partitions and development. This criterion is not applicable.

2. **Dimensional Requirements** are set out in MCC 11.15.2058.

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

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

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

Findings. The subject property has frontage along a County maintained road, Rock Creek Road. The proposed development meets the front setback, the rear and east setback requirements. The applicant proposes that the west setback be 150 feet. A variance has been requested for the west sideyard setback.

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

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

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

Finding. The subject site abuts Rock Creek Road, a County owned and maintained road with a 60 foot right-of-way. No additional deed dedication or restrictions are required along Rock Creek Road. However, the applicant will be required to receive a driveway approach permit before a building permit is issued which will require inspection and approval from the Multnomah County Right-of-Way Division.

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

Finding. No accessory structures have been requested. This criterion does not apply.

3. Access Requirements. MCC 11.15.2068

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

Findings. The subject site abuts a county owned and maintained road, NW Rock Creek Road. The applicant proposes the road for access. This criterion is met.

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

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

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

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

Findings. Existing forestry and agricultural practices in the surrounding area are minimal primarily because the lots are small and therefore hinder economically feasible forestry and agricultural practices in the area. Because of the limited forestry and agricultural practices, it is expected that this additional dwelling in the area will not impede accepted forestry or agricultural practices on surrounding forest or agricultural lands.

The applicant has located the proposed dwelling in the central portion of the lot, a maximum distance from any surrounding farm and forest operations. The variance requested would shift the dwelling to approximately 150 feet from the west boundary. The proposed dwelling will be located downhill from the north, east and west property lines. The property to the west is in residential use. The proposed location would minimize impacts to adjacent forest or agricultural lands.

The drawing displayed at the hearing (Exhibit E1) shows the proposed location of the dwelling, location of the unimproved existing road through the property to the proposed dwelling site and the general topography of the area. The location of the proposed dwelling should not affect any activities in the surrounding areas because the lot size satisfies the setback requirements with a variance of MCC 11.15.2058.

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

Findings. There are currently no forest operations or accepted farming practices on the subject parcel. Additionally, the stocking requirement under MCC .2052(A)(6) may result in the parcel being used for forest operations.

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

Findings. The area to be used by the access road, parking and the area of the buildings is estimated at 20,000 square feet, approximately 10 percent of the lot. The access road is approximately 350 feet in length. These criteria are met.

- (5) The risks associated with wildfire are minimized. Provisions of reducing such risk shall include:
 - (a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;

Finding. The proposed dwelling will be located within the Tualatin Valley Fire and Rescue District. The District can provide adequate services for the proposed dwelling as indicated by a review by the Fire 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 a pond on the lot fed by a perennial spring. A condition of approval requires compliance with this criterion.

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

and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

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

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

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

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

Findings. The applicant intends to remove all brush and some of the smaller deciduous trees in an area around the dwelling and garage structure to comply with the requirements of this section as well as to landscape the area with more suitable plantings to compliment the existing surrounding trees and vegetation on the property.

The site contains slopes up to 20 percent. For lands with slopes between 10 and 20 percent an additional 50 feet is required for the primary fire safety zone, a total of 70

feet. With this larger primary fire safety zone, the total primary and secondary fire safety zone required is 170 feet. With approval of the requested variance the west side yard will be 150 feet, 20 feet short of meeting the secondary fire safety zone requirement. Subsection (v) of the section states that the secondary fire safety zone is required only to the extent possible within the area of an approved yard. With approval of the variance, this criterion is met.

A condition placed on approval requires maintenance of the primary and secondary fuel brakes. The site does not include slopes of 40 percent or greater.

- (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.
 - (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.

Findings. The applicant plans to install a septic tank and drill a well because neither a sewerage system or water is available in the area. A condition of approval requires that a well report be before a building permit is issued. The County will renotify applicable property owners of its proceedings concerning finding of compliance with the condition.

- (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 of the driveway length or 400 feet whichever is less.

Findings. The proposed driveway would be subject to compliance with the standards of this section. A condition of approval requires the applicant to submit, before a building permit is issued, written verification from an Oregon Professional Engineer proving compliance with the 52,000 lb. GVW standard for all bridges or culverts. A condition of approval requires the applicant to submit, before a building permit is issued,

verification of an all weather surface for the driveway of at least 12 feet in width and other requirements of MCC 11.15.2074(D).

B. Variance Request

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

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

Findings. The variance request is 150 feet from the west lot line, a 25 percent deviation from the 200 foot side yard requirement. This is a minor variance under the Code's definitions. Because of the configuration of the lot, it would be difficult to site the proposed dwelling at any location on the property and maintain a distance of 200 feet from any property line. The proposed dwelling site would help maintain most of the natural qualities of the property. The proposed site would cause the least amount of excavation work, minimize the number of fir trees to be removed and preserve a grove of cedar trees located near the center of the lot. The proposed site also would not interfere with a pond and a natural spring located above the pond.

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

Findings. The variance allowing location of the dwelling near an adjoining property line would not affect the public welfare because the proposed dwelling site is overall the most suitable site on the lot. Under current zoning, the adjoining property to the west could not be further developed. Therefore, the variance can have no adverse effect on the development of the adjoining property. This criterion is met.

- (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.**

Findings. The current Comprehensive Plan states that the minimum lot size shall be 80 acres with lots. Because all 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 more than one dwelling per

lot. Therefore the granting of a variance for the dimensional change will not effect the realization of the Comprehensive Plan nor would it establish a use in the vicinity.

C. Significant Environmental Concern Permit

1. Criteria for Approval of SEC Permit. MCC 11.15.6420

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

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

Finding. The site does not include a lake, stream, or flood water area and therefore landscape and aesthetic enhancement for the purposes of 11.15.6420(A) is not applicable.

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

Finding. The subject parcel is designated Commercial Forest Use (CFU) under the Multnomah County Comprehensive Framework Plan. Statewide Planning Goal 3 - Agricultural lands and Goal 4 - Forest Lands were established in part to preserve and maintain agricultural lands and to conserve forest lands for forest uses. The County CFU zone has been deemed consistent with Goal 4 and provides for dwellings in certain instances. Only the footprint area of the proposed dwelling and the driveway access area of approximately 20,000 square feet (about 10 percent of the lot) will be affected. Compliance with the requirements of the CFU zone as demonstrated through this final order ensures agricultural land and forest land will be preserved and maintained.

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

Findings. The applicant intends to site the dwelling near a grove of cedar trees near the center of the property because this location would have the least effect on the natural qualities of the property. This location would cause the least amount of excavation work, minimize the number of trees to be removed and preserve a grove of cedar trees and an old and stately oak tree. Also, this location would not interfere with the existing pond and natural spring located above the pond.

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

Findings. The proposed use and location do not conflict with any known recreational plans nor is recreational use proposed. The proposed use is a single family residence. This criterion does not apply.

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

Finding. The applicant has submitted a Police Services Review form signed by the Multnomah County Sheriff's Office indicating the level of police service available to serve the project is adequate.

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

Findings. The dwelling would be sited in an area with wildlife habitat values and there may be some conflict with animals. The wildlife habitat is protected by compliance with the criteria for approval of a SEC permit which has been applied for. Because the property is not located near a river, lake or wetland, the protection of fish habitat would be at best minimal. The applicant does not plan to construct any barriers that would disrupt the habitat of the animals either during or after construction.

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

Finding. There are no rivers, lakes, wetlands or streams on this property.

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

Finding. There are no known archaeological areas located on the property. The applicant is advised that, if archaeological objects are discovered during construction, state statutes require construction be stopped and the State Historic Preservation Office be notified.

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

Finding. Because the property is not located near a river, lake or wetland, the property is not subject to any flooding. This criterion does not apply.

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

Finding. Erosion control for any areas of potential erosion during construction will be exercised as required as required by the Code.

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

Findings. Construction of the dwelling and improvement of the driveway is not expected to cause any adverse affect on the air, water and land quality or noise levels in the area. The construction methods the applicant plans are those utilized in the industry and the applicant plans no unusual methods.

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

Findings. The proposed dwelling will be of a standard construction and no unusual colors or lighting are planned. It is the applicant's intent to construct a dwelling that would compliment the natural qualities of the property. Approval of a Conditional Use for a new dwelling requires an applicant to apply for and obtain approval through the Design Review process. The process looks at design issues. This criterion will be ensured through the design review process.

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

Finding. There are no known fragile or endangered plant habitats at or near the proposed dwelling and accessory building site.

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

Findings. The applicant intends to follow the applicable polices of the Comprehensive Plan. The County requires a finding before approval of a quasi-judicial action of certain factors have been considered. Since this application involves a Quasi-judicial action, Plan Policies 13, 22, 37, 38, and 40 are applicable. These are addressed in

the staff report and incorporated herein. The Comprehensive Plan policies are themselves approval criteria if they have not be incorporated into the zoning code.

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

(B) Development Standards:

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

Finding. Because the property has been logged and has only a few fir trees scattered throughout the property and a grove of cedar trees, most of the site is "cleared area." The proposed dwelling location would be in an area of thick brush and a few large and small deciduous trees avoiding the grove of cedar trees. This criterion is met.

- (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**
- (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**
- (4) The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary.**
- (5) The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.**

Findings. The location of the proposed dwelling as shown on Exhibit E1 indicates that the dwelling is within 200 feet of the public road and a driveway less than 500 feet in length. The driveway entrance will be located near the eastern property line. The nearest driveway east of this location is over 500 feet. There are no structures on adjacent property that are within 200 feet of the property boundary. This criterion is met.

IV. CONCLUSION AND DECISION

A. Conclusions for Conditional Use Request for Template Dwelling

The application for the template dwelling demonstrates compliance with the Multnomah County Code tests for a template dwelling, other requirements of the County Code and Multnomah County Comprehensive Framework Plan.

B. Conclusions for Variance Request

1. The subject parcel has circumstances of size and steep slopes that do not generally apply to other property in the CFU district.

2. Granting the variance will not be detrimental to the public welfare or injurious to property in the vicinity because the proposed dwelling location will minimize the amount of excavation, the number of fir trees to be removed, preserve a grove of Cedar trees and would not interfere with a pond and a natural spring on the lot.

3. Granting the variance, with the conditions of approval, will not adversely affect the realization of the Comprehensive Plan because the adjoining lots are developed. Nor will granting the variance establish a use which is not listed in the CFU zone.

C. Conclusions for significant Environmental Concern Permit

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


V. Final Order and Conditions of Approval

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

1. The applicant's site plan as illustrated on Exhibit E1 is approved subject to submittal of the following revisions and clarifications upon application for design review.
 - (a) The site plan shall be revised to identify the specific footprint of the dwelling.
2. The applicant shall not fence the property unless any proposed fencing is determined by Multnomah County to be in compliance with the Significant Environmental Concern Wildlife Habitat Criteria (MCC 11.15.6426).
3. The applicant shall submit an on site sewerage verification form before the County issues a building permit.

4. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters. The dwelling shall also comply with 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.
5. The applicant shall submit a stocking survey, before a building permit is issued, in accordance with the procedures and provisions of MCC 11.15.052(A)(6).
6. The applicant shall provide verification from an Oregon Professional Engineer, before a building permit is issued, that the driveway surface can support 52,000 GVC and provide construction drawings demonstrating the width and grade of the driveway and other requirements comply with the standards of MCC 11.15.2074(D).
7. The applicant shall provide, before a building permit is issued, a well report demonstrating compliance with MCC 11.15.2074(C). At that time, persons entitled to notice will again be notified that the water service part of the approval criterion is being reviewed and there is the opportunity to comment and appeal those particular findings.
8. The applicant shall, before the County issues a building permit, apply for and obtain approval of Design Review for all structures and site development.
9. The applicant shall, before the County issues a building permit and as long as the property is under forest resource zoning, maintain primary and secondary fire safety zones around all new structures, in accordance with MCC 11.15.2074(A)(5)
10. 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).
11. The applicant shall, before the issuance of a building permit, apply for and obtain approval of Design Review for all structures and site development.
12. The applicant shall, before the issuance of a building permit, complete required improvements to Rock Creek Road as determined by County Engineering Services.

Dated this 28th day of November, 1996



Deniece B. Won, Attorney at Law
Hearings Officer