



MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
1600 SE 190TH Avenue Portland, OR 97233
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DECISION OF HEARINGS OFFICER

Case File: Conditional Use CU 0-5

Hearings Officer: Liz Fancher

Hearing Date: November 15, 2000

Proposal: The applicants and property owners request Conditional Use approval to allow a temporary hardship dwelling for care of an aged relative.

Location: 23200 NW Reeder Rd.
2N1W03 -00200
R97103-0150

Applicant/Owner:
Timothy and Angela Schillereff
23200 NW Reeder Rd.
Portland, OR 97231-1418

Representative:
Greg Winterowd
Winterowd Planning Services
310 SW 4th Ave. Suite 1000
Portland, OR 97204

Zoning: EFU, Exclusive Farm Use

Decision: **Approve Conditional Use Request CU 0-5 subject to the following conditions:**

1. Every two years, commencing with a date two years from the final approval of this application, the property owner shall provide written verification to the Planning Director of the fact that the hardship that warranted approval of the hardship dwelling permit continues to exist. If the verification is not provided or if the Director determines that the hardship no longer exists, this permit will be null and void.

2. Within 3 months of the end of the hardship, the manufactured dwelling must be removed unless the applicant obtains legal authorization to site a new dwelling on the subject property that allows the manufactured home to remain on the property.
3. Approval is granted for the use and in the location described in the land use application. Any change in use or substantial change in location will require a new conditional use review and approval.

Decision Format

This Decision addresses one requested action; the approval of a Conditional Use Permit. The Applicant's response to an approval criterion is indicated by the notation "Applicant." Planning staff comments and analysis follow the Applicant's responses to the criteria. Where appropriate, hearings officer comments follow staff analysis. Additional planning staff and hearings officer comments are added where supplemental information is needed or where staff or the hearings officer may not concur with the applicant's statements. If no staff or hearings officer remarks are indicated, the hearings officer concurs with the applicant. If no hearings officer comments are indicated following staff comments, the hearings officer concurs with staff. Material that is stricken has been marked by the hearings officer. This marking is intended to show that the hearings officer does not concur with the marked material.

Findings

Applicant's Proposal:

Applicant: This conditional use application for a temporary hardship dwelling is made pursuant to MCC 11.2012(H). ~~An amendment to Conditional #3 of CU 23-90 is necessary to allow retention of both existing dwellings on the Sauvie Island Kennels site. (Decision approving CU 23-90 attached as Exhibit 1.)~~

Alternatively, the Schillereff's request that the County approve the continuance of an existing hardship dwelling on the site, consistent with MCC 11.15.8710(D) and Condition #3 of CU 23-90. This alternative would require an interpretation by the Planning Director that the County effectively granted a hardship dwelling permit to the Schillereffs in 1990, when it approved the continued use of a second dwelling on the property by the Persingers, Angela Schillereff's elderly aunt and uncle.

Staff: Additional information/explanation is included under the "Introduction" section of the applicant's April 4, 2000 submittal. Staff understands the code to require that the existing manufactured dwelling must meet the EFU Hardship Dwelling requirements of MCC 11.15.2012(H) in order to remain on the property. This is because amendment of a prior approval for one use (a night watchman's residence) in order to allow a different use (hardship dwelling) is not provided for in the code. MCC 11.15.7110(D) provides that a Conditional Use permit must be issued only for the specific use.

Hearings Officer: The hearings officer finds that an amendment of CU 23-90 is not necessary. MCC 11.15.2012 (H) gives the hearings officer the authority to grant approval of a hardship dwelling. The structure in question is a manufactured home and, therefore, qualifies for use as a hardship dwelling. Additionally, no part of the 1990 permit precludes the hearings officer from approving a new use on the property.

The 1990 permit approved a watchman's residence on the property. The approval requires removal of the residence within six months after the Persingers' life estate in the subject property ends. The Persingers life estate has ended and six months have passed. As a result, the approval granted by CU 23-90 has expired and the watchman's residence must be removed. Yet, as the law allows approval of a temporary hardship dwelling in the same location and structure as the watchman's residence, the approval of this application will allow the manufactured home to remain. Its use as a "watchman's residence," however, has ended and it is now a "hardship dwelling" subject to the terms and conditions of this permit rather than CU 23-90.

Description of Site and Vicinity: The proposed (and existing) temporary dwelling site is located southwest of and adjacent to the existing kennel building as shown on the applicant's Map #1 contained in the 4/4/00 submittal. This map also includes the location of the original 1942 dwelling, the drainage swale, and other structures on the property and in the vicinity.

Notification and Public Participation: Notice of the hearing Scheduled for November 15, 2000 was sent to 18 neighboring property owners, interested parties, and applicable agencies on November 1, 2000. A copy of the notice is included as Exhibit "B1" of this report.

Approval Criteria

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

1. Criteria for Approval of a Temporary Hardship Dwelling in the EFU Zone:

MCC 11.15.2012 Conditional Uses: The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7105 to .7135:

* * *

- (H) One manufactured dwelling in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. A manufactured dwelling allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS Chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the**

manufactured home will use a public sanitary sewer system, such condition will not be required. The Planning Director shall review the permit authorizing such manufactured homes every two years. When the hardships end, the Planning Director shall require the removal of such manufactured homes. Oregon Department of Environmental Quality review and removal requirements also apply. As used in this subsection "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

Applicant: As indicated in the introduction to this narrative, there are two existing dwellings on the site – one manufactured home placed on the site as a night watchman’s residence in 1990 and one conventional single family home which preceded County zoning. The Schillereff’s own and manage Sauvie Island Kennels and occupy the manufactured dwelling. Tim Schillereff’s grandmother occupies the conventional single family dwelling previously occupied by the Persingers. She is 89 years old, legally blind and requires daily care from her children (~~See Exhibit 2~~).

The site is currently served by five septic tanks. Four of the five septic tanks on the site serve the newly remodeled kennel and the existing watchman’s residence. (~~See Map 3, Approved 1996 Site Plan~~). The fifth existing septic tank serves the existing conventional single family residence (the old Persinger home that is now occupied by Mrs. Meifert). Condition #2 of CU 23-90 required the installation of a new septic system for the night watchman’s facility. This condition was imposed because the then existing system serving the Persinger residence was inadequate to serve the new watchman’s residence and because a natural drainageway separates the old Persinger residence from the night watchman’s residence and the kennel facility, making it impractical to connect the two systems.

Staff: This standard allows temporary placement of a manufactured dwelling for care of an aged person. This is the situation described by the applicant. The manufactured dwelling was not able to be connected to the existing system serving the old dwelling when it was placed on the property in 1990. ~~Staff understands that when the hardship ends, the owner intends to demolish the old (circa 1942) dwelling and to retain the manufactured dwelling. Although the code anticipates that the manufactured dwelling that is placed for the hardship period would normally be the one that is removed, retaining the manufactured dwelling and removing the old dwelling would accomplish the same result of not increasing the number of dwellings on the property. This can be accomplished under the replacement dwelling provisions of MCC 11.15.2008(L).~~ Staff agrees that the hardship associated with the care of Mrs. Meifert is consistent with the term as it is used in the code.

Hearings Officer: The issue of whether the applicants will be able to qualify to retain the manufactured home on the property by obtaining approval of a replacement dwelling is not an issue that is presently before the County. The applicant is not currently seeking approval of a replacement dwelling. Under current Oregon law, it would be possible for the applicant to replace the 1942 dwelling with the manufactured home, if the 1942 dwelling is removed. The issuance of this temporary use permit and its requirement that the manufactured home be removed does not prevent the applicant from obtaining future

approvals to retain the manufactured home as the primary residence of the Schillereffs. The means of achieving that end will be dictated by the law in effect when the application is filed.¹ Whether it will be possible to do so when the hardship situation no longer exists is unknown.

MCC 11.15.2018 Lot, Parcel and Tract Requirement

(A) The Lot, Parcel and Tract requirement shall be applied to all uses in this district except for Single Family Lot or Parcel of Record Dwellings: MCC 11.15.2010(E), MCC 11.15.2012(O) or MCC 11.15.2012(P). For the purposes of this district, a lot, parcel or tract is defined as:

* * *

(2) A lot or parcel of land:

- (a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;**
- (b) Which satisfied all applicable laws, including but not limited to land divisions and zoning ordinance, when the parcel was created; and**
- (c) Does not meet the minimum lot size requirements of MCC .2016; and**
- (d) Which was not contiguous to another substandard parcel or parcels under the same ownership on or after February 20, 1990, or**

Staff: Staff consulted Tax Assessor’s records in the Planning Department office on behalf of the applicant for this information. The subject parcel was apparently created prior to 1962 since it is shown on these early zoning maps of the County. The adjacent property to the south is owned by the Vetsch family and the Assessor’s record shows no new deeds recorded after 1985. The record of the prior proceedings associated with the kennel use indicates that the adjacent property to the east has been in the ownership of Marquham Farms Corp. since 1986.

Conclusion: The request qualifies as a hardship dwelling due to the health care needs of Mrs. Meifert, Tim Schillereff’s grandmother. The manufactured dwelling is connected to a septic system. The property meets the Lot, Parcel and Tract requirements as evidenced by the record in prior land use proceedings. Conditions of approval to clarify removal and reporting requirements are recommended.

Hearings Officer: A deed to the subject property was recorded in the deed records of the Multnomah County Clerk on January 16, 1953. At the time, it was lawful to create a parcel of land by recording a deed to the property. No zoning ordinances or land division regulations applied to the subject property at the time.

¹ It is possible that Measure 7 might be interpreted to authorize the review of land use applications based on the law in effect before an application is filed. If this occurs, the statement made by the hearings officer will no longer be correct. On its face, however, Measure 7 does not authorize such an approach.

2. Criteria for approval of Conditional Use:

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 apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

Applicant: The underlying district does not include specific approval criteria for the proposed use. Therefore, the criteria listed below apply. Criterion 3, below, is derived from County EFU statute. Criteria 1-2 and 4-6 apply to conditional uses generally.

In this situation, no new residences are proposed. The existing conventional single family home was placed on the site in the late 1940s, and preceded application of County zoning in the 1950s. The manufactured home was placed on the site in 1991, and was justified by Planning Commission findings demonstrating consistency with the criteria below in 1990 (See CU 23-90, Exhibit1.)

Hearings Officer: The hearings officer's view of this application is that a new residence is being proposed. The watchman's residence is no longer a legal residence and has not been treated as such by the hearings officer. The prior history of having two dwellings on the property does, however, provide evidence regarding the impact of allowing a temporary hardship dwelling on the subject property as two homes have existed on the property since 1991 in the locations proposed in this application.

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

Applicant: An impact area with a quarter mile radius is shown on Map 1. This impact area has been accepted by the County as reasonable for examining potential impacts from the kennel use (CU 4-95/MC1-95). Land uses to the east and south are agricultural in nature and include feed grain, row crops and pasture for dairy cattle. To the north of the Schillereff property is the Sturgeon Lake Wildlife Refuge.

The Persinger residence (to be used by Mrs. Meifert as a hardship residence) has existed on the site since the approximately 1949. Several homes of a similar vintage exist on neighboring properties (Ray, Vetsch), as shown on Map 1. There is no evidence in any of the preceding Schillereff applications to suggest conflicts between this residence and agricultural and wildlife management activities in the area. Thus, it is reasonable to conclude that agricultural and wildlife habitat uses have co-existed and have not been adversely affected by this residence since the residence was placed on the site in the late 1940s.

Mrs. Meifert has lived on Sauvie Island (18200 NW Sauvie Island Road) since the 1960s, and so is well-accustomed to living with agricultural and wildlife uses. Mrs. Meifert does not drive a motorized vehicle and has very few visitors. Unlike a family new to the island, she will not complain about agricultural or wildlife management practices. Children and pets can sometimes cause conflicts with agricultural or wildlife management; Mrs. Meifert owns a Boston Bull Terrier, which is an indoor dog.

Staff: The subject property is in an area of relatively large farm parcels arranged along

NW Reeder Road. These parcels typically have multiple structures visible from the road, many of which are large scale. The manufactured dwelling is one story and is located close to the somewhat larger kennel building.

Hearings Officer: The manufactured dwelling is the structure that is being considered in this application, not the 1942 residence. The manufactured health hardship dwelling is consistent with the surrounding area.

(2) Will not adversely affect natural resources;

Applicant: The hardship residence has been located directly across NW Reeder Road from the wildlife refuge parking area since approximately 1949, without adverse impacts on the wildlife refuge.

The 1990 conditional use permit included the following findings pertaining to this criterion:

“Condition #2 requires installation of a subsurface disposal system for the new residence [the night watchman’s residence]. This will ensure against any potential adverse effects on water quality. No other natural resource effects from the watchman’s residence have been identified.”

Staff: Agrees.

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

- (a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and**
- (b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

Applicant: As indicated above, the hardship residence has been located on the site since approximately 1949. Marguerite and Red Persinger occupied the residence since 1973, until their demise in 1997 and 1999, respectively. There are no recorded instances of complaints from neighboring farm operators regarding occupancy of this existing dwelling by the Persingers. Nor is there any reason to suppose that occupancy of this existing dwelling by Mrs. Meifert (a 35-year resident of Sauvie Island) will have any adverse impact on existing farming operations in the area. Included in the record (Exhibit 3) are letters of support from immediate neighbors who occupy neighboring farm dwellings, for use of this existing residence as a hardship dwelling.

In the 1990 findings for the night watchman’s dwelling, the Planning Commission adopted the staff’s findings relative to this criterion:

“Staff concurs that the proposal’s effects on farm and forest use in the area are negligible.”

Staff: Agrees.

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

Applicant: Public facilities and services already serve the site, as documented above and in findings in support of CU 23-90. The hardship dwelling has its own septic system and well. The dwelling is served via a common driveway serving the neighboring hunt club and the on-site kennel operation. As shown on the Approved 1996 Site Plan, Map 3, no new driveway is needed or proposed.

Staff's findings for the night watchman's dwelling (which included continued use of the other existing dwelling on the site by the Persingers) read as follows:

*"a. **Water Supply***

The site is served through a private well.

*b. **Sewage Disposal***

Sewage would be disposed through an on-site septic system. Condition #2 requires installation of a sub-surface disposal system for the house [i.e., the night watchman's residence]."

Staff: No new services are required.

- (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;**

Applicant: This criterion is not applicable. According to staff findings in support of the Planning Commission's 1990 conditional use decision:

"The site is not identified as a big game habitat area in the Comprehensive Plan or by the Oregon Department of Fish & Wildlife."

Staff: Agrees.

- (6) Will not create hazardous conditions; and**

Applicant: The existing dwelling is located outside of flood prone areas. According to the 1990 staff findings in support of CU 90-23:

"This and surrounding properties on this part of Sauvie Island are protected from flood hazards by a dike structure maintained by the U.S. Army Corps of Engineers. The site is not designated a Flood Hazard or Flood Fringe area by the County."

Staff: Agrees, no hazardous conditions that could arise from the manufactured dwelling have been identified.

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

Applicant: Policy 9 speaks to the need to maintain agricultural uses and conditional uses consistent with state EFU statutes and rules. The existing dwelling is proposed as a hardship dwelling, consistent with ORS 215.213(H). For reasons stated above, there is no reason to believe that the proposed use of this existing late-1940's dwelling (as a hardship dwelling) will have any adverse impacts on agricultural practices or costs within the impact area or anywhere on Sauvie Island.

Staff: No other applicable Framework Plan Policies are identified.

Conclusion: The request to approve the former watchman’s residence as a temporary hardship dwelling represents a low-impact request in this situation. The dwelling exists on the property and is already connected to necessary services. The low visibility of the proposed structure which is sited among existing structures has little if any impact on the character of the area as seen from Reeder Road. The history of the dwelling on the property also reveals no conflicts. The proposed dwelling does not appear to have any impact on natural resources due to its proximity to the wildlife viewing area to the north across Reeder Rd. There is also no history of conflicts with nearby farm uses from the residential use of the manufactured dwelling. The other conditional use criteria in (4), (5), and (6) have no applicability to this request. The one applicable Comprehensive Plan policy, Policy 9, is met as described by the applicant.

Dated this 5th day of December 2000.

Liz Fancher, Hearings Officer

Appeal to the Board of County Commissioners:

The Hearings Officer’s Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within **ten days** after the Hearings Officer decision is submitted to the Clerk of the Board. An Appeal requires a completed “Notice of Review” for and a fee of \$500.00 plus a \$3.50 - per- minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning Office at 1600 SE 190th Ave., Portland, OR (in Gresham) or you may call 503-988-3043, for additional instructions.

Case File: CU 0-5

Application Timeline:

Conditional Use Application received with full fees: April 5, 2000.

Application complete 31 days after submittal, May 5, 2000.

Applicant's first letter requesting extension and waiver of 150 rule, June 1, 2000

Applicant's second letter requesting extension, September 8, 2000.

NOTICE OF A PUBLIC HEARING (MAILED): NOVEMBER 1, 2000

Staff Report available: November 7, 2000.

Public Hearing before Hearings Officer: November 15, 2000. **Day 27.**

Exhibits List:

"A" Applicant Submittals:

A1 Applicant's 4/6/00 Submittal. Includes application form, justification statement dated 4/4/00.

A2 Applicant's requests for time extensions dated June 1 and September 8, 2000.

"B" Notification Information

B1 11/3/00 Notice of Public Hearing

"C" Staff Report

C1 CU 0-5, 11/3/00

"H" Documents Submitted to Hearings Officer

H1 WPS Fax from Lynelle Hatton, Winteroud Planning Services dated November 17, 2000.

H2 WPS Fax from Lynelle Hatton, Winteroud Planning Services dated November 21, 2000.