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

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

March 22 1999

CU 1-99

Conditional Use

Request for Conditional Use approval to allow a temporary hardship dwelling
for care of aged relatives in the Exclusive Farm Use zone.

Location:

31313 SE Lusted Road
Gresham, OR 97080

Property Description: Lot 11 of Buena Vista, Section 17, T1S, R4E

Zoning Designation:

EFU, Exclusive Farm Use

Applicant:

Marvin Phelps, Jr.
2401 SW 1st
Gresham, OR 97080

Owners:

Marvin and Grace Phelps
31313 SE Lusted Road
Gresham, OR 97080

Hearings Officer Decision:

Approve Conditional Use request to allow a temporary hardship dwelling in
the Exclusive Farm Use zone, subject to the conditions stated herein.

Conditions of Approval:

1. Prior to zoning approval of a building (placement) permit, the owner shall provide a copy of an Authorization Notice of the existing septic system. The temporary dwelling shall be connected to the existing system if allowed in the Authorization Notice. The applicant will be required to connect to the existing septic system if possible. If authorization cannot be obtained to connect to the existing system, the applicant will be required to submit approval for a new system prior to issuance of a placement permit.
2. The applicant is required to comply with the dimensional standards of .2016(C). Prior to zoning approval of the building (placement) permit, the applicant shall provide a plot plan, drawn to scale, which includes the dimensions of the proposed temporary dwelling, the distance between it and nearby structures, and which maintains a minimum of 30' from the dwelling to the north property line.
3. Prior to zoning approval of the building (placement) permit, the applicant shall indicate the location and size of any drywells or on-site detention needed to contain stormwater runoff from the new dwelling on the subject property.
4. Approval of this Conditional Use shall expire two years from the date of the Board Order unless substantial construction has taken place in accordance with MCC 11.15.7110 (C). The process for determination of substantial expenditure shall be initiated by the applicant/property owner by application made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.
5. At such time as the hardship necessitating the Conditional Use request ends, the applicant shall immediately notify the Planning Director. While the hardship is continuing, the applicant shall so notify the Planning Director every two years to facilitate review by the Planning Director of the status of the medical hardship or hardship for the care of the aged persons.

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 Owner/Applicant.

FACTS

1 - Applicant's Proposal

Applicant requests that the Hearings Officer approve a Conditional Use to allow a temporary hardship dwelling for care of his aged parents. The subject property is in the Exclusive Farm Use zone.

2 - Site and Vicinity Information

The proposed temporary dwelling site is in a currently unused area in the northwest part of the property. The site is flat, and is bordered on the north by fir trees, on the west and south by existing structures on the property, and on the east by the blueberry crop area. The property to the west is cleared but not managed for perennial crops, the north contains another blueberry crop area, adjacent property to the east contains other berries.

The property is approximately 4 acres in size and is on the north side of Lusted Rd. in an area of small (approximately 5 acre) parcels of the Buena Vista subdivision. Parcels on the south side of Lusted Road are somewhat larger, ranging from 20 to 50 acres in the immediate area. The land in the area is a mix of pasture, commercial nursery, and small farm use similar to the subject property.

3 - Testimony and Evidence Presented

- A. The list of exhibits for CU 1-99 which were submitted prior to the hearing date are set forth in the Exhibit "A", which is attached hereto and incorporated by this reference. At the hearing on March 17, 1999, an additional exhibit labelled H1, the Affidavit of Posting, was submitted to the Hearings Officer and received.
- B. Chuck Beasley testified for the County, summarized the history of the application and the staff report and described and played a video tape of the subject site.

C. Marvin Phelps, Jr., applicant, testified in support of the application.

STANDARDS, CRITERIA, ANALYSIS AND FINDINGS OF FACT

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.

The Applicant submitted the following information:

My folks have been on the farm for over 40 years now. Dad is 81 and Mom is 80. Although their health is pretty good for their age, time has taken its toll. Dad has recently been diagnosed with his second bout with cancer. His prognosis is very good but he can not do what he used to be able to.

Two reasons which bring us to this request to move onto the farm. First and foremost is to help look after my parents and second is to assist my folks with the running of the farm.

We believe putting a mfg. home on the north part of the party will not adversely affect the land resources, and will not affect surrounding farm lands. Noise levels in the area will not be above normal levels.

There is plenty of adequate drainage on the property. Adequate water supply (well) and (ph water). I do believe that this use will not affect police, or fire protection in any way.

Staff: This standard allows temporary placement of a manufactured dwelling for care of an aged person or persons. This is the situation described by the applicant. The temporary dwelling must be connected to the existing septic system if possible, and must also meet the minimum yard setbacks of the EFU zone. The applicant has requested an Authorization Notice to allow connection to the existing system. Staff has discussed the request to connect to the existing septic system with On-Site staff has been verbally advised that this is likely to be approved. The applicant has also submitted a Land Feasibility Study (50-98) which indicates that a new system can be constructed on the property.

Placement of the temporary dwelling must also meet the dimensional (yards) provisions of MCC .2016(C). The site plan submitted by the applicant does not show the distance from the proposed dwelling site to the north (rear) property line. The required minimum distance is 30.' The aerial photo of the property indicates that the north property line is approximately 100' from the 20' X 60' warehouse shown on the plot plan. Given the 20' distance from the warehouse and the 30' setback, the remaining room available for the temporary dwelling would be approximately 50'.

Hearings Officer: The Hearings Officer concurs that the factual situation described by the applicant meets the standards of justification for temporary placement of a manufactured dwelling in conjunction with an existing dwelling, as a temporary use for a medical hardship or hardship for the care of an aged person.

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 contacted the Tax Assessor's office on behalf of the applicant for this information. The subject parcel constitutes Lot 11 of the Buena Vista subdivision, which was created prior to zoning of the area in 1962. The subject parcel was purchased in its current configuration by the current owner in 1966. Two of the three adjacent parcels were purchased by the current owners prior to 1990 and are currently owned by them. These two owners are not related to the owner of the subject parcel. The third adjacent parcel, Lot 10, has changed ownership since 1990, however neither owner is related to the owners of the subject parcel.

Hearings Officer: The Hearings Officer concurs with staff's conclusion that this qualifies as a hardship dwelling due to the age of the applicant's parents and their health care needs. Since staff did not have a final determination that the proposed temporary dwelling can be connected to the existing septic system, a condition will be imposed that requires the applicant to connect to the existing septic system if possible. If not, the applicant will be given the opportunity to submit approval for a new system.

In addition, a condition of approval will be imposed in order to require compliance with the dimensional standards of MCC 2016(C). The information provided by the Assessor demonstrates that the subject parcel is not part of a tract, and the establishment of the subdivision prior to zoning allows a conclusion that the parcel was lawfully created.

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:**

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

Applicant: Temporary residence will be approximately 200 feet from existing residence. Closest neighbors are 600 to 1000 feet away. Temporary residence will have a row of tall Firs to the rear. A warehouse will be to the south, a warehouse to the west, and blueberries to the east. This is consistent with the area.

Staff: The subject property is in an area of relatively small parcels arranged along the north side of Lusted Road. The local area is within a larger area of EFU zoning that extends east from 302nd approximately 2.5 miles to the forest zoning of the Sandy River. Farming in the area includes small nursery areas, row crops, and pasture. Relatively

higher development density exists approximately 1/3 of a mile east along the south side of Lusted Road.

The parcels immediately east of the subject parcel contain multiple structures which are generally within about 400' to 800' of the road. The proposed plan places the temporary dwelling in a location that is not visible, or only slightly visible, from the road, so no visual increase in density will be apparent.

Hearings Officer: The Hearings Officer concurs that the proposal is consistent with the character of the area.

(2) Will not adversely affect natural resources;

Applicant: It will not affect natural resources. Home will use well water or pleasant home water. Run-off from roof will not be any more than what now exists. We will remove two existing small buildings to place temporary residence.

Staff: There are no natural resources such as streams or wildlife habitat that have been found significant. The natural resources impacts which could occur are loss of farmland or water quality. Staff notes that the proposed dwelling location has not been used as part of the blueberry crop area.

Hearings Officer: The Hearings Officer finds that the proposal will not adversely affect natural resources.

(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: A and B no farmland will be affected. This area on the property is not used for farm use of any kind. No blueberries or cultivated land will be used. The farm has no significant trees. No trees will be removed, if anything we will continue to plant more trees. In August of 1998 we planted 30 trees at the east end of property. We will not affect the costs of operation in any way. We will be able to assist my folks in a way we have not been able to, as we have lived a distance from the farm.

Staff: The adjacent uses include open space/pasture to the west, blueberry cultivation to the north, and cane berry production to the east of the subject parcel. Access to the proposed dwelling area will be via the existing driveway/access to the warehouse. The

dwelling is separated from the area to the east by blueberries on the subject property, from the north by a row of conifer trees, and from the west by an existing structure.

Hearings Officer: The Hearings Officer finds that the proposal will not conflict with farm or forest uses in the area.

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

Applicant: Existing public services will not be effected. My wife and I will be the only ones extra living on the property with my folks. No additional police, fire, or maintenance personnel will be needed to maintain the existing public services.

Staff: No new services are required.

Hearings Officer: The Hearings Officer finds that the proposal will not require public services, other than those currently existing at the 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;

Applicant: The closest winter habitat for big game is approximately 3 ½ miles to the east. It has been at least 10 years since deer have visited the property. Since we have no wetlands or marshes on the property, no birds, fish or other animals will not be affected.

Staff: Agrees.

Hearings Officer: The subject site is located outside of big game winter habitat area.

(6) Will not create hazardous conditions; and

Applicant: No hazardous conditions will be created as the housing or building density will not be affected.

Staff: Agrees.

Hearings Officer: The Hearings Officer finds that the proposal will not create hazardous conditions.

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

Applicant: At this time we will satisfy all the applicable policies of the comprehensive plan as we have been apprised. The property will continue to stay in farm use!

Staff: The County requires a finding prior to approval of a Quasi-Judicial Action that Plan Policies 13, 22, 37, 38, and 40, are met.

Hearings Officer: The Hearings Officer concurs with staff's conclusion that the request for a temporary hardship dwelling represents a low-impact request in this situation. The low visibility of the proposed structure which is to be sited among existing structures would have little if any impact of the character of the area as seen from Lusted Road. The proposed dwelling does not appear to have any impact on natural resources because no managed farmland is being used to site the dwelling, and water quality will be protected through the on-site septic system permitting process. Impacts to farm or forest uses in the area are proximity related in this case since existing roads and driveways are to be used. Staff feels that the mature fir trees between the proposed dwelling and the blueberry crop area on the parcel to the north will act as an adequate buffer to minimize conflicts between residential and resource use. Staff also noted that the occupant will be assisting in the management of the same type of crop immediately adjacent to the dwelling on the east.

The other conditional use criteria in (4), (5), and (6) have no applicability to this request. The Comprehensive Plan policies are met.

Multnomah County Comprehensive Plan Policies:

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

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

Applicant: In August of 1998, Phil Crawford, approved the ground for an additional septic tank and leach lines if needed; or if the existing system fails.

I believe where the temporary housing will be placed, little or no noise will be heard by neighbors, other than the outside phone ringer that exists now. Visibility will be nonexistent from the road (Lusted). Only vision will be from the east. As the poplars grow, even that may be improved.

Staff: The primary issue under this policy is water quality related to septic system construction, and site development. No other impacts to Air, Water, and Noise are identified. This policy will be satisfied when a septic system construction permit and any necessary grading and erosion control permit is obtained and the property developed in compliance with the permits.

Hearings Officer: The Hearings Officer concurs with staff's conclusion.

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

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

Applicant: This proposal definitely promotes the conservation of energy and energy resources in an efficient manner by providing adequate setbacks for passive solar energy collection and by minimizing such factors as driveway length and building size.

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

Hearings Officer: The Hearings Officer finds that the applicable factors in Policy No. 22, Energy Conservation, of the County's Comprehensive Plan, have been considered.

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

WATER DISPOSAL SYSTEM:

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

DRAINAGE:

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

ENERGY AND COMMUNICATIONS:

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

Applicant: The farm is serviced by Pleasant Home Water District and has a 24 gpm well on it, so water service is not compromised.

There should be no impact on the amount of ground water. The runoff can be handled by the ground as it exists. There will be no impact on streams, ponds, or lakes or alter drainage on adjoining lands.

The temporary housing will be on a flat part of the property. This section is approximately two acres in size. There should be no erosion of any kind.

Staff: The Disposal System element "B", and the Drainage elements of F. and G. apply to this request. The property has a septic system and the applicant has requested an evaluation to determine if the existing system can accommodate the temporary dwelling. The property is served by the Pleasant Home Water District. The applicant has also received a Land Feasibility Study (LFS) which allows a new standard septic system. The property is essentially flat in the development area, and contains Powell silt loam (series 34A) soils which are described as somewhat poorly drained. Improvements needed to meet the drainage provisions are most often considered under a Grading and Erosion Control permit.

Hearings Officer: The Hearings Officer finds that the applicant has complied or will be able to comply, with the applicable water disposal system, drainage system, and energy and communication elements of Comprehensive Plan Policy No. 37.

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.**

Staff: Compliance with these elements has been demonstrated by the applicant's submittal of the appropriate Service Provider forms.

Hearings Officer: The Hearings Officer finds that the appropriate districts have submitted service provider forms.

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.**

Staff: The property is not subject to dedication of land for bicycle corridor improvements.

Hearings Officer: The Hearings Officer concludes that the subject property is not subject to bicycle corridor improvements and that appropriate consideration has been given to Comprehensive Plan Policy No. 40.

The Hearings Officer does find that the proposal has satisfied the applicable elements of the Comprehensive Plan.

CONCLUSION

Considering the findings and other information provided herein, and the testimony and evidence presented at the hearing, this application for a Condition Use approval to allow a temporary hardship dwelling for care of aged relatives in the Exclusive Farm Use zone, satisfies the applicable approval criteria and Comprehensive Plan policies. Accordingly, the Conditional Use permit is approved, subject to all of the conditions imposed herein.

IT IS SO ORDERED, this 22nd day of March, 1999.

JOAN M. CHAMBERS, Hearings Officer