



DEPARTMENT OF ENVIRONMENTAL SERVICES  
LAND USE PLANNING DIVISION  
1600 SE 190<sup>TH</sup> AVENUE  
PORTLAND, OREGON 97233  
(503) 248-3043 FAX: (503) 248-3389

---

## DECISION OF HEARINGS OFFICER

---

Case File:	CU 2-99
Hearings Officer:	Liz Fancher
Hearing Date, Time, & Place:	August 18, 1999, 10:30 AM 1600 SE 190 <sup>th</sup> Avenue Portland, OR 97233

---

**PROPOSAL:** To change the existing use of an adult foster care facility in an existing residence, to a residential care facility on the subject parcel. The subject parcel is 2.7 acres in size and is zoned Rural Residential (RR). The applicant is applying for approval for the Community Service (CS) use of the site as a residential care facility. The land use application process for the CS use is a Conditional Use action in the RR zone. A Pre-Application (PA 16-99) Meeting for the proposal was held on May 26, 1999.

**LOCATION:** 18857 SE Giese Road.  
Lot 12 of Byrline, Section 20, T1S, R3E, W.M.  
R#12390-1000.  
See attached map.

**APPLICANT/**  
**PROPERTY OWNER:** Gheorghe and Agnia Cioruta  
18857 SE Giese Road  
Gresham, OR 97080

### **HEARINGS OFFICER DECISION:**

**Approval with Conditions** of the proposed Conditional Use, **CU 2-99**, for the Conditional Use application for a change in use from an adult foster care facility to a residential care facility on the 2.7-acre parcel in the Rural Residential (RR) zone. The Conditional Use application is for approval of a Community Service use, the residential care facility. The applicant does not propose any exterior alterations to the existing residence to accommodate the change in use of the structure. The application materials have met the applicable Multnomah County Code provisions and Comprehensive Plan Policies.

This decision is supported by the findings listed below, prepared by County staff and the applicant. Those findings are hereby adopted as findings of the Hearings Officer.

## **APPROVAL CRITERIA:**

### **ZONING ORDINANCE REQUIREMENTS:**

MCC 11.15.2202 – Rural Residential (RR)  
MCC 11.15.6100 – Off-Street Parking and Loading (OP)  
MCC 11.15.7005 – Community Service (CS)  
MCC 11.15.7105 – Conditional Uses (CU)  
MCC 11.15.7805 – Design Review (DR)

### **COMPREHENSIVE PLAN POLICIES:**

13 Air, Water and Noise Quality  
14 Developmental Limitations  
22 Energy Conservation  
37 Utilities  
38 Facilities  
40 Development Requirements

### **CONDITIONS OF APPROVAL:**

1. A Grading and Erosion Control (GEC) permit will be required for any volume of soil or earth disturbed, stored, disposed of, excavated, moved, or used as fill greater than 50 cubic yards, if any is proposed as a part of site plan review (none anticipated).
2. Approval of this Conditional Use for a Community Service Use shall expire two years from the date of issuance of a final decision approving the conditional use unless “substantial construction” has taken place in accordance with MCC 11.15.7010 (C)(3) or the subject proposal is completed as approved.
3. Prior to issuance of building permits, the applicant shall obtain approval of the Design Review application required by MCC .7820, Design Review. The provisions of MCC .7805 through .7865 apply to all Conditional Uses and Community Service Uses in any zoning district. The application shall include the applicant’s responses to the criteria of MCC .6130 through .6142.
4. The applicant shall monitor the on-site water usage for a minimum of ten months to determine if the on-site sewage disposal system continues to be adequate for a 12-bedroom adult foster care. One year from the date of issuance of a final decision on CU 2-99, the applicant shall submit a letter from Mike Ebeling, or his designatee, to Staff indicating the on-site sewage disposal system is still adequate for the residential care facility. Mr. Ebeling can be reached at (503)-823-7790. If the applicant fails to comply with this condition, the County may require the applicant to improve the on-site sewage disposal system so that it is capable of serving the facility and meets all relevant environmental regulations or to reduce the number of residents in the foster care home.
5. When ready to have land use or building permits signed-off, the applicant shall contact the Staff Planner, Tricia R. Sears, at (503)-248-3043, for an appointment to review and sign the plans. The applicant shall submit three (3) copies of the required plans. Multnomah County will keep one (1) copy and two (2) copies will be returned to the applicant for building plans review with the City of Gresham.
6. No additional land use action and/or permit requests shall be accepted, relating to the subject application, until such time as all required fees for the said application has been paid in full.

7. **This approval is based on the submitted material.** The proposed change in use from an adult foster care facility to a residential care facility shall be done in accordance with the design, size, and location shown and described in the application materials submitted by the applicant in case files CU 2-99 and PA 16-99. Additional submittals and approvals may be required of the applicant as noted in these Conditions of Approval.

**Summary of Staff and Applicant Comments:**

The following pages contain the applicant and Staff comments.

**Applicant:**

The subject property is located at 1887 SE Giese Road, Gresham, Oregon 97080 and has approximately 2.7 acres. This application is made to change the classification of the existing business from Adult Foster Care Home to a Residential Care Facility. At present time, since October 1995, the business functions as an Adult Foster Care Home licensed by Multnomah County Aging Services and by City of Gresham.

The house itself has 3950 sq. ft. and consists of 11 bedrooms, 7 bathrooms, 1 living and dining room, and kitchen. The difference between the proposed Residential Care Facility and the existing Adult Foster Home is the number of residents allowed. For an Adult Foster Home there is a limit of 5 residents while in a Residential Care Facility the capacity allows 6-12 residents.

It is important to mention, that in order to change the current status to a Residential Care Facility, there is no need of extra buildings or additions to the existing facility. The extra space to accommodate more residents (from 5 to 12) was made possible by moving out of five family members that used to live in the house.

This facility meets the needs of the community for a variety of reasons:

1. It provides care very similar to "home" setting versus big institutionalized facilities. This house kept as the "old farm house" character of the building.
2. Elderly people from this neighborhood do not have to move far from their roots, families, friends, or go to a different area or part of town. (E.g. It happened in the past that we had to turn down the next door neighbor's request for a place for his father.)
3. To preserve the community identity, there is a need of a facility in a "farm like" setting for people that used to live all their lives on farm. (E.g. Right now we care for a resident whose family lives 3 houses down the street, and 2 blocks away lives the family of another former resident.)
4. The subject property is consistent with the character of the area:
  - a. The size of the building is the average size in the neighborhood.
  - b. The land covered with grass is used as pasture.
5. This type of facility, long term care for the elderly, is needed for this vicinity since there is no similar business in a 10 mile radius.

It is known that this property is located in the area that is included in the first tier for future urban development in Metro plans for this part of the county.

**Staff:**

No previous land use cases on file with Multnomah County. The applicant has four building permits on file with the County for the subject parcel (1995, 1995, 1996, 1998).

The subject parcel is zoned Rural Residential (RR).

The applicant proposes to change the use of the site from an adult foster care facility to a residential care facility. The use requested is a Community Service under MCC .7020 (A)(5) Group Care Facility. The land use application for approval of the request is a Conditional Use, as established by MCC .2212 (A) in the Rural Residential zone.

A residential care facility as defined under OAR 411-055-000 as, "a facility that provides care for six or more persons over the age of 18 on a 24-hours basis in one or more buildings on contiguous property. For the purpose of these rules, residential care facility includes residential care homes with 6 – 15 persons and residential care centers with 16 or more persons."

Multnomah County Code defines a Group Care Facility (Section .0010) as, "A building or buildings on contiguous property used to house six or more handicapped or socially dependent persons. This definition includes the definition of Residential Care Facility, Residential Training Facility, and Residential Treatment Facility contained in ORS 443.400 (5), (7), and (9)."

The applicant states that the no physical alterations to the existing structure are proposed to accommodate the change in use of the facility. Elevation drawings of the house have been submitted by the applicant. The existing residence contains eleven (11) bedrooms. The applicant has provided floor plans of the residence. Exhibit #2 illustrates the floor plan of the first floor of the structure.

Movement of earth materials, including the cutting, filling, and storing of materials, requires a GEC permit when the amount exceeds 50 cubic yards. Grading and Erosion Control requirements of the Multnomah County Code are included in this document. Grading the site to accommodate changes to the drainfield or to create additional surface area for parking requires a GEC permit if the amount of material exceeds 50 cubic yards. Based on the applicant's submitted materials, a GEC permit is not required for the requested change in use on the site.

The subject parcel is considered a Lot of Record based on the criteria of Section .2222. Multnomah County zoning maps illustrate the subject parcel has been the same size and shape since at least 1962. Zoning maps reviewed by Staff include the 1962, 1978, 1986, 1989, and 1998 maps. Staff checked with the Assessment and Taxation Staff and found the Byrline subdivision, the subdivision in which this parcel is part of, was recorded in 1906.

The applicant has provided documentation regarding ownership of the subject parcel. A copy of the deed was submitted to Staff.

The applicant shall has addressed the applicable Comprehensive Plan Policies (13, 14, 22, 37, 38, and 40) and submitted the required Service Provider sheets. Staff points out Condition of Approval #4 requires the applicant to comply with Mike Ebeling's, Senior Environmental Soils Inspector of the City of Portland, request to continue to monitor the on-site sewage system for one year. Ebeling can be reached at (503)-823-7790.

Multnomah County Land Use Planning Staff have discussed the proposed change of use with Alan Young of the Multnomah County Right-of-Way Division. Young stated there are no Right-of-Way requirements applicable to this proposed change of use (a driveway permit is on file). Should you have any questions about this comment, contact Alan Young at (503)-248-3582.

The Conditional Use application and request for Community Service approval requires additional review of the site under the Design Review process (Section 11.15.7805). The Design Review process is a detailed review of the site for compliance with parking and landscape provisions found in Off-Street Parking and Loading (OP) (Section 11.15.6100). Section .7010 (F) requires Design Review applications for Community Service/ Conditional Use applications. Condition of Approval #3 reiterates the Design Review application must be submitted by the applicant for the site.

The parking standards, under Section .6142 (A)(8) include a parking requirement for a group care facility of 1 space per 4 beds. The applicant request is for eleven bedrooms for the residential care facility plus the continued use of the site for residential purposes for the property owner. Thus, the **total #** of required parking spaces at the site would be **5 parking spaces**. The applicant has illustrated the location of the required parking spaces on the full size plans submitted with the application. The reduced copy of the site plan does not illustrate the location of the parking spaces on the site.

Specific sections of the parking requirements that are applicable to this proposal include Section .6108 Plan Requirements, Section .6116 Change of Use, and Section .6140 Landscape and Screening Requirements.

Staff has discussed the proposed change in use with the State of Oregon Senior and Disabled Services Division. (SDSD). SDSD is the State agency that licenses residential care facilities in Oregon. The applicant is subject to the requirements of SDSD. The requirements are listed under the Oregon Administrative Rules (OAR) 411-55-000, Residential Care Facilities. Gary Dominic of SDSD is the Residential Care Facilities (RCF) Coordinator. He stated that applicants applying to the State for a RCF license are required to be in conformance with the requirements of the local planning and building departments. Mr. Dominic can be contacted in Salem at (503)-945-6404 for additional information.

You can access the Oregon Administrative Rules cited above via the world wide web at: [http://arcweb.sos.state.or.us/rules/oars\\_400/oar\\_411/411\\_055.html](http://arcweb.sos.state.or.us/rules/oars_400/oar_411/411_055.html) or you may inquire about a copy from the Multnomah County Land Use Planning offices at (503)-248-3043.

The application, CU 2-99, was deemed complete on July 19, 1999. Staff visited the site on July 27, 1999.

## **Applicable Multnomah County Code Provisions and Comprehensive Plan Policies**

### **Multnomah County Code**

#### **Rural Residential (RR)**

##### **11.15.2202 Purposes**

**The purposes of the Rural Residential District are to provide areas for residential use for those persons who desire rural living environments; to provide standards for rural land use and development consistent with desired rural character, the capability of the land and natural resources; to manage the extension of public services; to provide for public review of non-residential use proposals and to balance the public's interest in the management of community**

growth with the protection of individual property rights through review procedures and flexible standards.

#### **11.15.2204 Area Affected**

**MCC .2202 through .2230 shall apply to those lands designed RR on the Multnomah County Zoning Map.**

**Staff:** The subject parcel, R#12390-1000, is zoned Rural Residential, RR, according to the zoning maps on file at Multnomah County.

#### **11.15.2206 Uses**

**No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2208 through .2216.**

**Staff:** The applicant's proposed use of the site is listed as a use in Section .2212 as a Conditional Use [subsection (A)]. Section .7020 (A)(5) is part of the Community Service section and lists a group care facility as a Conditional Use.

#### **11.15.2212 Conditional Uses**

**The following uses may be permitted when found by the Hearings Officer to satisfy the applicable Ordinance standards:**

- (A) Community Service Uses under the provisions of MCC .7005 through .7041.** *[Amended 1982, Ord. 330 § 2]*

**Staff:** The applicant has applied for the appropriate land use application. The applicant has submitted a narrative to address the Community Service criteria in Section .7015.

#### **11.15.2218 Dimensional Requirements**

- (A) Except as provided in MCC .2220, .2222, .2224 and .7720, the minimum lot size shall be five acres.**

**Staff:** The subject parcel, R#12390-1000, is considered a Lot of Record based on the criteria of Section .2222. Multnomah County zoning maps illustrate the subject parcel has been the same size and shape since at least 1962. Zoning maps reviewed by Staff include the 1962, 1978, 1979, 1986, 1989, and 1998 maps. The parcel is part of the Byrline subdivision. This subdivision, according to Assessment and Taxation Staff, was recorded in 1906. The applicant meets the criterion as a Lot of Record.

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

- (C) Minimum Yard Dimensions - Feet**

**Front   Side   Street Side   Rear**

30      10      30      30

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**Staff:** The existing structure, currently an adult foster care facility, meets the required rear and side yard setback requirements. The garage is illustrated at 18 feet from the front property line; the structure does not meet the 30-foot front yard setback requirement. The applicant has four building permits on file at Multnomah County; the permits are from 1995, 1995, 1996, and 1998. The building permit from January 20, 1995 includes a site plan that illustrates the existing garage at 17 feet from the property line. The garage is listed as “2) existing shop” on the site plan submitted by the applicant. Staff is unable to determine the exact date the garage was built on the site as there are no building permits for the parcel prior to the January 20, 1995 building permit. The residence was built in 1927 according to the Multnomah County Assessment and Taxation records. Staff is not, at this time, making a determination as to whether the garage met the setback requirements at the time it was built. The applicant does not propose exterior changes to the garage or to the residence.

- (D) 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 requirements not otherwise established by Ordinance.**

**Staff:** This proposal has been reviewed by Alan Young in the Right-of-Way Division of Multnomah County. Young states that no additional right-of-way requirements are applicable to this case. A driveway permit is on file with the County. Young can be reached at (503)-248-3582. The application meets this criterion.

- (E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

**Staff:** This criterion does not apply to existing structures on the site and the applicant does not propose to alter the physical structure to accommodate the proposed use as a residential care facility.

#### **11.15.2222 Lot of Record**

- (A) For the purposes of this district, a Lot of Record is a parcel of land:**

- (1) For which a deed or other instrument dividing land was recorded with the Department of Administrative Services, or was in recordable form prior to October 6, 1977; and**
- (2) Which, when established, satisfied all applicable laws.**

**Staff:** The applicant provided a deed of the subject parcel. Staff reviewed the zoning maps on file at Multnomah County and these maps (1962, 1978, 1986, 1989, 1998) illustrate the subject parcel has remained the same size and shape since at least 1962. Staff contacted the Assessment and Taxation Department for records regarding the date the parcel was created. Assessment and Taxation stated that the parcel is part of the Byrline subdivision and that

subdivision was recorded in 1906. The subdivision was recorded prior to the implementation of zoning in Multnomah County. The subject parcel meets the criterion.

- (B) A Lot of Record which has less than the area or front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.**

**Staff:** The applicant's subject parcel, addressed as 18857 SE Giese Road, has more than 50 feet of frontage on a public road. The applicant parcel has less than the required minimum lot size. As previously stated, the subject parcel has existed in its current size and shape since at least 1962 when the zoning of the subject parcel was Suburban Residential (S-R). The subject parcel, as noted above in (A), was recorded in 1906 as part of the Byrline subdivision. The application meets the criterion.

- (C) Separate Lots of Record shall be deemed created when a street or zoning district boundary intersects a parcel of land.**

**Staff:** This criterion is not applicable to the subject parcel.

- (D) Except as otherwise provided by MCC .2220, .2144, and .7720, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.**

#### **11.15.2226 Off-Street Parking and Loading**

**Off-street parking and loading shall be provided as required by MCC .6110 through .6148.**

**Staff:** See the criteria of MCC .6110 through .6148 as noted below.

#### **11.15.2228 Access**

**Any lot in this district shall abut a street, or shall have other access determined by the Hearings Officer to be safe and convenient for pedestrians and passenger and emergency vehicles.**

**Staff:** The applicant parcel contains a circular driveway. According to Alan Young in the Right-of-Way Division, the subject property has a driveway permit on file with Multnomah County. The application meets the criterion.

#### **Off-Street Loading and Parking (OP)**

##### **11.15.6100 Purposes**

**The purposes of this subdistrict and these off-street parking and loading regulations are to reduce traffic congestion associated with residential, commercial, manufacturing, and other land uses; to protect the character of neighborhoods; to protect the public's investment in streets and arterials and to provide standards for the development and maintenance of off-street parking and loading areas.**



#### **11.15.6102 General Provisions**

**In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section.**

#### **11.15.6106 Continuing Obligation**

**The provision for and maintenance of off-street parking and loading facilities without charge to users shall be a continuing obligation of the property owner. No building or any other required permit for a structure or use under this or any other applicable rule, ordinance or regulation shall be issued until satisfactory evidence in the form of a site development plan, plans of existing parking and loading improvements, a deed, lease, contract or similar document is presented demonstrating that the property is and will remain available for the designated use as a parking or loading facility.**

**Staff:** The applicant does not have, nor does the applicant propose, off-street parking. The applicant parcel contains an area adjacent to an entry/ exit to the residence for convenient emergency service access. No loading facilities are present on the subject parcel. The subject parcel contains the required five (5) parking spaces (two for the single-family residence and three for the residential care facility). The applicant shall continue to maintain the required number of parking spaces on the subject parcel.

#### **11.15.6108 Plan Required**

**A plot plan showing the dimensions, legal description, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit, or for a change of classification to O-P.**

**Staff:** The applicant has submitted a site plan illustrating the location of the existing structures on the site, the driveway, the septic system and drainfield, the fence, the required parking spaces. The site plan illustrates the setbacks. The applicant submitted a plan, as part of the pre-application materials for PA 16-99, showing the uses of the adjacent properties. The plan is attached to this decision as Exhibit #4. The applicant proposes to change the use of the residence from an adult foster care facility to a residential care facility. The existing residence will not be altered except for such things as fire exit signs and so forth as required by ADA. As stated in Section .6106, off-street parking is not used for the site nor is it requested for the change in use. The application meets the criterion.

#### **11.15.6110 Use of Space**

- (A) Required parking spaces shall be available for the parking of vehicles of customers, occupants, and employees without charge or other consideration.**
- (B) No parking of trucks, equipment, materials, structures or signs or the conducting of any business activity shall be permitted on any required parking space.**
- (C) A required loading space shall be available for the loading and unloading of vehicles concerned with the transportation of goods or services for the use associated with the loading space.**

- (D) Except for residential and local commercial districts, loading areas shall not be used for any purpose other than loading or unloading.**
- (E) In any district, it shall be unlawful to store or accumulate equipment, material or goods in a loading space in a manner which would render such loading space temporarily or permanently incapable of immediate use for loading operations.**

**Staff:** The above standards are included for informational purposes.

#### **11.15.6112 Location of Parking and Loading Spaces**

- (A) Parking spaces required by this Section shall be provided on the lot of the use served by such spaces.**
- (C) Loading spaces and vehicle maneuvering area shall be located only on or abutting the property served.**

#### **11.15.6114 Improvements Required**

- (A) Required parking and loading areas shall be improved and placed in condition for use before the grant of a Certificate of Occupancy under MCC .8725, or a Performance Bond in favor of Multnomah County equivalent to the cost of completing such improvements shall be filed with the Planning Director.**

**Staff:** The subject parcel contains the required number of parking spaces. Staff visited the site July 27, 1999. The five required parking spaces are paved and so is the driveway. Two parking spaces are required for the single-family residence [Section .6142 (A)(1)] and three parking spaces are required for the use of the site as a residential care facility [Section .6142(A)(8)]. The application meets the criterion.

- (B) Any such bond shall include the condition that if the improvement has not been completed within one year after issuance of the Certificate of Occupancy, the bond shall be forfeited.**

#### **11.15.6116 Change of Use**

- (A) Any alteration of the use of any land or structure under which an increase in the number of parking or loading spaces is required by this Section shall be unlawful unless the additional spaces are provided.**
- (B) In case of enlargement or change of use, the number of parking or loading spaces required shall be based on the total area involved in the enlargement or change in use.**

**Staff:** The applicant's proposal for CU 2-99 is for a change in use. The applicant's request is to change the existing use of the site from an adult foster care facility to a residential care facility. The applicant site plan illustrates the location of the required parking spaces. The site plan is attached as Exhibit #1. The reduced copy does not actually illustrate the location of the parking spaces but the full size plans do. Two parking spaces are required for the single-family residence [Section .6142 (A)(1)] and three parking spaces are required for the use of the site as a residential care facility [Section .6142 (A)(8)]. The application meets the criterion.

#### **11.15.6120 Existing Spaces**

**Off-street parking or loading spaces existing prior to July 26, 1979 may be included in calculating the number of spaces necessary to meet these requirements in the event of subsequent enlargement of the structure or change of use to which such spaces are accessory. Such spaces shall meet the design and improvement standards of this Section.**

**Staff:** The applicant's site parking is not altered by the proposed use of the site as residential care facility as the site already contains the appropriate level of parking required for the use. The application meets the criterion. See also Section .6120.

#### **11.15.6126 Design Standards: Scope**

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

**Staff:** The applicant is required to submit for a Design Review application pursuant to the requirements of MCC .7010 (C)(3)(b)(i) under Community Service, MCC .7125 under Conditional Uses, and .7820 under Design Review. This requirement has been established as Condition of Approval #3. Staff has chosen to defer the analysis of the following Code sections, related to parking, to the Design Review application: MCC .6130 through .6142. These criteria focus on the design standards of the site and Staff believes the appropriate analysis is through the Design Review application. Therefore, the criteria shall be addressed by the applicant in the subsequent application for Design Review (DR). This has been established as a Condition of Approval under item #3.

#### **11.15.6128 Access**

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

**Staff:** This application for a change in use from an adult foster care facility to a residential care facility does not entail the use of off-street parking.

\*\*\*

***MCC 11.15.6130 through MCC 11.15.6142 shall be addressed in the Design Review application.***

\*\*\*

#### **11.15.6142 Minimum Required Off-Street Parking Spaces**

##### **(A) Residential Uses**

- (8) Group Care Facility, Home for Aged, or Children's Home – One space for each four beds.**

**Staff:** The applicant site plan, in the full size plans from the applicant, illustrates the location of the three spaces required for the residential care facility and the two single-family residence required parking spaces located on the subject parcel. The application meets the criterion.

#### **Community Service (CS)**

##### **11.15.7005 Purpose**

**MCC .7005 through .7041 provides for the review and approval of the location and development of special uses which, by reason of their public convenience, necessity, unusual character or effect on the neighborhood, may be appropriate in any district, but not suitable for listing within the other sections of this Chapter.**

##### **11.15.7010 General Provisions**

- (A) Application for approval of a Community Service use shall be made in the manner provided in MCC .8205 through .8280.**
- (B) Except as provided in MCC .7022(F) and (G), the Approval Authority shall hold a public hearing on each application for a Community Service Use, modification thereof, or time extension.**

**Staff:** The public hearing for the Conditional Use request for the approval of a Community Service use of a residential care facility on the subject parcel, addressed as 18857 SE Giese Road, is scheduled for August 18, 1999. The existing facility is an adult foster care facility and the applicant has proposed a change in use to a residential care facility.

- (C) The approval of a Community Service Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless:**
- (1) The project is completed as approved, or**
  - (2) The Approval Authority establishes an expiration date in excess of the two year period, or**
  - (3) The Planning Director determines that substantial construction or development has taken place. That determination shall be processed as follows:**
    - (a) Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.**

- (b) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:
    - (i) Final Design Review approval has been granted under MCC .7845 on the total project; and
    - (ii) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025(A) or .9027(A).
  - (c) Notice of the Planning Director decision shall be mailed to all parties as defined in MCC .8225.
  - (d) The decision of the Planning Director shall become final at the close of business on the tenth day following mailed notice unless a party files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of MCC .8290 and .8295.
- (D) A Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority. Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing.
- (E) In granting approval of a Community Service Use, the approval authority may attach limitations or conditions to the development, operation or maintenance of such use including but not limited to setbacks, screening and landscaping, off-street parking and loading, access, performance bonds, noise or illumination controls, structure height and location limits, construction standards, periods of operation and expiration dates of approval.
- (F) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC .7805 through .7865.
- Staff:** Condition of Approval #3 requires the applicant to submit for the Design Review application. As noted earlier in this report, Staff has deferred the analysis of MCC .6130 through .6142 to the Design Review (DR) application.
- (G) A Community Service approval shall not be construed as an amendment of the Zoning Map, although the same may be depicted thereon by appropriate color designation, symbol or short title identification.

#### **11.15.7015 Approval Criteria**

**In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for transmission towers, which shall meet the approval criteria of MCC .7035, and except for regional sanitary landfills which shall comply with MCC .7045 through .7070.**

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

**Applicant:** Currently the zoning for this property is Rural Residential (RR). The properties around are used for a variety of reasons: nurseries on the east side, pigeon growing on the west side, horse ranch, vegetables growing and orchard on the south side and raspberry farm on the north side.

The architecture of the house was preserved to look like the original 80 years old house. There is no need of any new buildings or additions for this business. The existing 3950 sq. ft. house is sufficient in size to conduct the normal operation as Residential Care Facility.

**Staff:** The applicant has submitted a tax lot based site map and has labeled the adjacent parcels with the types of uses described above. The plan is attached as Exhibit #4. Staff visited the site on July 27, 1999. Site visit photos are in the case file, CU 2-99. The existing facility looks like a single-family residence in rural setting. Properties adjacent to the subject parcel contain barns and farm animals. The site contains pasture and fruit bearing trees. There is no sign on the subject residence or site. The application meets the criterion.

**(B) Will not adversely affect natural resources;**

**Applicant:** There are no natural resources on the property. Besides the building itself and driveway the rest of the land is covered with grass and is used as pasture as in the past. There is no improvement or changes to be made on the property.

**Staff:** Staff visited the subject parcel on July 27, 1999. Photos from the site visit are located in the case file, CU 2-99. The applicant has provided the appropriate Service Provider forms for water, septic, drainage, police, and fire services. See the Staff comments under the Comprehensive Plan Policies. The applicant's proposed change in use from an existing adult care facility to a residential care facility will not adversely affect natural resources. The applicant does not propose to alter the structure's physical form. The application meets the criterion.

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

**Applicant:** The proposed land use is compatible with other properties. In fact, the subject property has less built area than most properties in the vicinity. Most neighbors have either big barns or big shops besides living spaces.

None of the neighbors use irrigation or large scale spraying to affect the well being of the residents.

**Staff:** The Staff site visit on July 27, 1999 confirmed the Staff opinion that the proposed change in use from an adult care facility to a residential care facility will not conflict with farm or forest uses in the area. The subject parcel contains the residence and the detached garage structures. The subject parcel contains, in the back yard, fruit trees and open space. The site itself is quiet in terms of noise and does not look out of place in the neighborhood. The adjacent properties are residential and farm oriented in use. Many of the adjacent sites contain barns, produce, and farm animals. The application meets the criterion.

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

**Applicant:** The existing water service, own well on premises, is equipped with an extra 500 gal. holding tank to cover extra usage in case of emergencies (fire sprinklers). The system was adequate for every day operations even before the addition of the tank.

The septic tank was replaced with 2 new 500 gal. each and the septic field was doubled in size from 400 ft. to 800 ft. to meet Sanitation requirements.

The other utilities: gas, electricity, and phone are available and already in use.

The fire station is ½ mile from the property on 190<sup>th</sup> Street.

**Staff:** The Service Provider forms indicate that no additional services need to be implemented to accommodate the change in use from an adult foster care facility to a residential care facility. Mike Ebeling of the City of Portland Septic and Sanitation Department has provided a Condition of Approval for the applicant to continue monitoring the adequacy of the on-site sewage facilities on the site. See Condition of Approval #4. The application meets the criterion.

**(E) 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 subject property is located outside a big game winter habitat area.

**Staff:** The subject parcel is located outside of the big game winter habitat area according to maps on file at Multnomah County. The application meets the criterion.

**(F) Will not create hazardous conditions; and**

**Applicant:** The change in use of the subject property will not create hazardous conditions. The traffic flow increase will be minimal for a couple of reasons:

- a. By moving out of 5 family members the number of cars was reduced from 6 to 2.
- b. Residents of this type of facility do not have their own transportation or possibilities to come and go like those at Retirement Centers. All transportation needs are provided by family members and are mostly doctor appointments. The visits are made usually between 9:00 AM – 3:00 PM, hours that are off peak hours. From past experience the number of visits are 1 to 2 per week per resident, and most visitors live in this area.

There is no potential of pollution hazards or safety problems.

There is no soil disturbance at all.

**Staff:** The applicant's proposal will not create hazardous conditions on the site. The adequacy of the on-site sewage disposal facilities will be monitored for one year in accordance with Mike Ebeling's Condition of Approval listed as #4 in this decision. The applicant does not propose to alter the physical structure of the residence to change the use from an adult foster care facility to a residential care facility. No soil disturbance will occur. The required services of fire, police, water, and utilities have been addressed by the applicant. The application meets the criterion.

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

**Applicant:** *No comment. The applicant has provided a narrative response to the applicable policies; please see the applicant and Staff statements below.*

**Staff:** The applicant has addressed Comprehensive Plan Policies 13, 14, 22, 37, 38, and 40 as required. The applicant has satisfied the applicable Comprehensive Plan Policies for the purposes of this application, CU 2-99, and thus the application meets the criterion. The applicant narrative and Staff response is included within this decision document.

**(H) Will satisfy such other applicable approval criteria as are stated in this Section.**

**Staff:** Staff has provided a response to the applicable criteria for the request for approval of the change in use from an adult foster care facility to a residential care facility. The application meets the criterion.

**11.15.7020 Uses**

**(A) Except as otherwise provided in MCC 11.15.2008 through .2012 and MCC 11.15.2048 through .2050, the following Community Service Uses and those of a similar nature, may be permitted in any district when approved at a public hearing by the approval authority.**

**(5) Group care facility.**

**Staff:** The applicant has submitted the appropriate application for the request for the change in use from an adult foster care facility to a residential care facility. The applicant request for a Community Service approval is obtained through a Conditional Use application and review process. The public hearing is scheduled for August 18, 1999 before the Hearings Officer.

**Conditional Uses (CU)**

**11.15.7105 Purposes**

**Conditional uses as specified in a district or described herein, because of their public convenience, necessity, unique nature, or their effect on the Comprehensive Plan, may be permitted as specified in the district or described herein, provided that any such conditional use would not be detrimental to the adjoining properties or to the purpose and intent of the Comprehensive Plan.**

**Staff:** See the approval criteria in the Community Service Section .7015.

**Design Review (DR)**

**11.15.7805 Purposes**

**MCC .7805 through .7865 provides for the review and administrative approval of the design of certain developments and improvements in order to promote functional, safe, innovative and attractive site development compatible with the natural and man-made environment.**

**11.15.7810 Elements of Design Review Plan**

**The elements of a Design Review Plan are: The layout and design of all existing and proposed improvements, including but not limited to, buildings, structures, parking and circulation areas,**



**outdoor storage areas, landscape areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut and fill actions, accessways, pedestrian walkways, buffering and screening measures.**

**Staff:** The applicant's submitted plans provide much of the required information noted in Section .7810. Further review of the site plan and analysis of the Design Review criteria will occur when the applicant submits the application for Design Review.

#### **11.15.7815 Design Review Plan Approval Required**

**No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to this section, nor shall such a use be commenced, enlarged, altered or changed until a final design review plan is approved by the Planning Director, under this ordinance.**

**Staff:** The applicant will submit a Design Review application; see Section .7820.

#### **11.15.7820 Application of Regulations**

**The provisions of MCC .7805 through .7865 shall apply to all conditional and community service uses in any district and to the following:**

**Staff:** The applicant is required to submit for and receive approval for the Design Review application in accordance with this criterion, Section .7820, and in accordance with Section .6102. Condition of Approval #3 reiterates the applicant meet the required Code criteria.

#### **11.15.7870 Expiration of Approval**

- (A) Design review approval shall expire in 18 months from the date of final design review approval, however upon application a six month extension may be granted by the Planning Director upon a written findings that the applicable provisions of this ordinance are satisfied. The Director's decision may be appealed as provided by MCC 11.15.8290. Failure to apply for an extension shall result in expiration of the approval.**

**Staff:** This criterion is included as informational. As stated in Section .7820, the applicant is required to submit a Design Review application for the request for a Community Service approval though the land use application for a Conditional Use (this application for a change in use from an adult foster care facility to a residential care facility).

### **Comprehensive Plan Policies**

## **POLICY 13 Air, Water and Noise Quality**

**Multnomah County, recognizing that the health, safety, welfare, and quality of life of its citizens may be adversely affected by air, water and noise pollution, supports efforts to improve air and water quality and to reduce noise levels. Therefore, it is Multnomah County's policy to:**

- A. Cooperate with private citizens, businesses, utilities and public agencies to maintain and improve the quality of air and water, and to reduce noise pollution in Multnomah County.**

- B. Support and participate in the implementation of state and regional plans and programs to reduce pollution levels.**
- C. Maintain healthful air quality levels in the regional airshed, to maintain healthful ground and surface water resources, and to prevent or reduce excessive sound levels while balancing social and economic needs in Multnomah County.**
- D. Discourage the development of noise-sensitive uses in areas of high noise impact.**

**Staff:** The applicant's proposal to change from an existing adult foster care facility to a residential care facility will not entail any structural changes. Items such as fire extinguishers and exit signs may be required in accordance with ADA. These are the types of things the applicant may be required to alter on or within the existing house and detached garage. Air, water, and noise impacts, as compared to the existing level, will be minimal for the proposal.

## **POLICY 14 Developmental Limitations**

**The County's policy is to direct development and land form alterations away from areas with development limitations, except upon a showing that design and construction techniques can mitigate any public harm or associated public cost and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:**

- A. Slopes exceeding 20%;**
- B. Severe soil erosion potential;**
- C. Land within the 100 year flood plain;**
- D. A high seasonal water table within 0-24 inches of the surface for three or more weeks of the year;**
- E. A fragipan less than 30 inches from the surface;**
- F. Land subject to slumping, earth slides or movement.**

**Staff:** The subject parcel contains the following soil types according to the Soils map on file at Multnomah County and according to the Soil Survey of Multnomah County, Oregon: Cascade silt loam, 3 to 8 percent slopes (7B). The slope of the parcel does not exceed 20%. The soil type has slow runoff and a low potential of erosion according to the Soil Survey of Multnomah County, OR. The land is not within the 100-year floodplain. In addition, "A water table is at a depth of 18 to 30 inches from December through April" according to the Soil Survey. A fragipan is located at a depth of 60 inches or more. The land is not subject to slumping, earth slides or movement according to the Soil Survey.

## **POLICY 22**

The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. In addition, it is the policy of Multnomah County to reduce dependency on non-renewable energy resources and to support greater utilization of renewable energy resources. The County shall require a finding, prior to the approval of legislative or quasi-judicial action, that the following factors have been considered:

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

**Staff:** The applicant's proposal will not entail the alteration of the existing street plan. The applicant proposes to change the use of the site from an adult foster care facility to a residential care facility. Parking exists on the site. No alterations to the existing house and detached garage are proposed at this time, other than those needed to comply with ADA such as exit signs and fire extinguishers.

## **POLICY 37 Utilities**

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

### **Water and Disposal System**

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

**Staff:** The applicant has provided a copy of the Certification of Private On-Site Sewage Disposal Service Provider form signed by the City of Portland. In addition, a letter from Mike Ebeling of the City of Portland Septic and Sanitation Department is attached as Exhibit #3. His request for the

applicant to continue to monitor the adequacy of the on-site sewage disposal system is established as Condition of Approval #4 in this decision for CU 2-99.

### **Drainage**

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

**Staff:** The applicant will use the existing system to accommodate run-off. The applicant does not propose to expand the existing residence or the detached garage. The driveway and parking areas are already in place. No additional impervious surface area is proposed with this application. The City of Portland, as noted above, has signed the on-site disposal certificate for the site.

### **Energy and Communications**

- H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**
- I. Communications facilities are available.**

**Staff:** The applicant has stated, in the response to the Community Service criteria, that the utilities are adequate in their existing capacity.

## **POLICY 38 Facilities**

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

### **School**

- A. The appropriate school district has had an opportunity to review and comment on the proposal.**

**Staff:** The School Service Provider form is not required.

### **Fire Protection**

- 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.**

**Staff:** The applicant has provided the Fire Services Review form. According to the Gresham Fire and Emergency Services, "There is adequate water pressure and flow for fire fighting purposes" and "approved fire sprinkler and fire detection and alarm systems [are] installed" on the site.

## **Police Protection**

- D. The proposal can receive adequate local policy protection in accordance with the standards of the jurisdiction providing police protection.**

**Staff:** The applicant has provided a copy of the Police Services Review as signed by the Multnomah County Sheriff's office. According to the Sheriff's office, "the level of police service available to serve the proposed project is adequate."

## **POLICY 40 Development Requirements**

**The County's policy is to encourage a connected parks 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 subject parcel is zoned single-family residential. The subject parcel does not have a sidewalk. Bicycle parking facilities and landscaped areas with benches are not required for the site for the applicant's proposed change in use. The site does have a patio in the backyard with chairs for residents of the facility to use.

## **Case File: CU 2-99**

**Location:** Lot 12 of Byrline, Section 20, Township 1 South, Range 3 East, WM.

### **Application Timeline:**

Pre-Application Conference, PA 16-99: May 26, 1999.

Application received with full fees: June 11, 1999.

Application incomplete letter mailed: NA.

Determination that application is complete and letter mailed: July 20, 1999.

**Begin "120 day timeline" on July 20, 1999.**

Notice of a Public Hearing (mailed): August 2, 1999.

Staff Report available: August 11, 1999.

Public Hearing before Hearings Officer: August 18, 1999. **Day 29.**

## **List of Exhibits:**

### **List A: Staff/ Applicant Exhibits:**

1. Applicant site plan (reduced copy).
2. Applicant 1<sup>st</sup> level floor plan.
3. Letter from Mike Ebeling of the City of Portland Septic and Sanitation Dept. (dated 6/8/99).

4. Applicant plan illustrating the uses of surrounding properties.
5. Copy of the Affidavit of Posting: Hearings Officer.

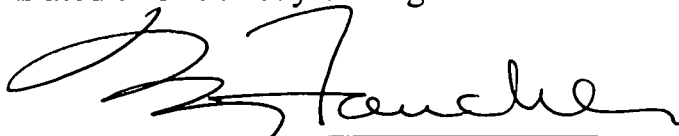
**List B: Notification Information:**

1. "Complete application" Letter, July 20, 1999, 3 pages.
2. Notice of Hearing, August 2, 1999, 4 pages.

**List C: Multnomah County Documents**

1. Staff Report – August 11, 1999
2. Photographs of 18857 Giese Road, Site Visit July 27, 1999 (three pages)

Dated this 19th day of August 1999.

A handwritten signature in black ink, appearing to read "Liz Fancher", written over a horizontal line.

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's decision is submitted to the Clerk of the Board or the decision will become final. An Appeal requires you to file a completed "Notice of Review" and filing fee of \$530.00 plus a \$3.70-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 190<sup>th</sup> Avenue, Portland, Oregon 97233 (Gresham area) or you may call 503-248-3043, for additional instructions.