



Decision of Hearings Officer

Case File: Conditional Use CU 4-98
Minor Variance HV 7-98

Proposed Action and Use: CU 4-98 is a request for modification of a condition of approval imposed in case number CU 12-96, which approved a new dwelling in the Commercial Forest Use (CFU) district. The condition requires compliance with the private road standards of the CFU, which include a 20' wide access road and other standards. The applicant is also requesting immediate Building Permit approval. The variance request is to allow the minimum road width of 20' to be reduced to 16'.

Location: 32152 SE Stevens Road

Property Description: TL '44' of Section 8, T1S, R4E

Zoning: CFU, Commercial Forest Use
SEC, Significant Environmental Concern

Applicant/Owner: Andre Protassy
12120 SW Boones Ferry Road
Portland, OR 97219

Decision:

The Hearings Officer denies the variance request for the first 170' of roadway (as measured from the terminus of Stevens Road, east of the Protassy property).

The Hearings Officer approves the variance request for the remainder of the roadway at a width of 18 feet, except that the roadway shall be tapered from the 20' width at the 170' point from the end of Steven Road down to a width of 18 feet , according to County specifications.

The variance is granted upon the express condition that the Applicant obtain a Grading and Erosion Control permit from the County for all required road work and related drainage improvements prior to commencing roadway improvements.

The Hearings Officer modifies Condition of Approval 3 of CU-12-96 to require that the Applicant comply with the requirements of MCC 11.15.2074(D), except as varied by this variance application.

Applications:

CU 4-98 is a request for modification of Condition of Approval #3 for CU 12-96 which requires that the applicant demonstrate compliance with the private road standards of MCC 11.15.2074(D). MCC 11.15.2074(D) requires Mr. Protassy to widen the existing private roadway to the Protassy residence to a minimum width of 20 feet, to provide a vehicle turnaround and a vehicle turnout. Mr. Protassy proposes to improve the road to a width of sixteen rather than twenty feet. As the road improvement standards included in the conditional use application mirror mandatory County code road requirements, a variance is needed to authorize the requested modification of the conditional use permit.

Mr. Protassy's land use application includes a request that the Hearings Officer direct Multnomah County Planning staff to sign a Building Permit application for the Protassy residence immediately. Mr. Protassy does not identify any provision in the County Code to support this request. Further, the Hearings Officer's authority is strictly limited by law and does not include the authority to direct County staff to take any type of action regarding building permits.

Procedural Matters

A hearing was held on the variance and conditional use applications on May 6, 1998. The record of the application was held open until May 13, 1998 for additional evidence. The Hearings Officer also gave the parties until May 16, 1998 to request an opportunity to respond to new evidence. During the comment period new evidence was received regarding the need to remove the telephone poles in question in this matter to construct a 16' wide road. The Hearings Officer extended the comment period until May 22, 1998 in order to allow the applicant to respond to this new information. On May 21, 1998 the applicant submitted additional information responding to the telephone pole issue.

Decision Format

This decision addresses two requested actions, a request for modification of the Hearings Officer decision, and a Minor Variance. The Applicant's narrative or response to an approval criterion is indicated by the notation "Applicant." Planning staff comments and analysis follow the Applicant's responses to the criteria. Additional planning staff comments are added where supplemental information is needed or where staff may not concur with the applicant's statements. If no staff remarks are indicated, staff concurs with the applicant. The Hearings Officer's comments follow staff remarks. A lack of any findings indicates that the Hearings Officer concurs with applicant and staff comments. Where staff comments differ from the applicant's comments, those of staff shall serve as the controlling findings, unless the Hearings Officer's findings

indicate otherwise.

FINDINGS:

Case History: The applicant's requests follow approval of his forest dwelling application, CU 12-96, in December of 1997, and approval of his Design Review permit DR 14-97 in February of 1998. These cases were and are intended to resolve a zoning violation that entails construction of a dwelling by the applicant without required permits. Inspection of the property for DR 14-97 revealed that a substantial portion of the private easement road is approximately 12' wide, does not meet the 20' width standard of the Commercial Forest Use district, and is therefore not in compliance with CU 12-96.

The record of CU 12-96 includes a written statement from Mr. Protassy that his private road access was 20-feet wide. This statement was provided in order to demonstrate compliance with MCC 11.15.2074(D)(2). This statement is clearly wrong. The road is, *according to Mr. Protassy's current evidence*, a single lane road that is approximately 10 to 12 feet in width. Mr. Protassy claims that his misstatement in CU-12-96 was made because "I assumed that the road, since it has been used for so long, is legal and never bothered to measure it." Whether the road was or was not legal was not question asked in CU-12-96. The question asked was whether the road was 20-feet wide. That question was answered as follows: "The width of the road is at least 20 feet wide . . ." The Hearings Officer finds that Mr. Protassy's prior statement could not reasonably be confused with a statement regarding the legality of the road. Further, a review of the photographs of the roadway and of a car parked in the roadway make it obvious that the existing road is not 20-feet wide. As a result, the Hearings Officer concludes that, at a minimum, Mr. Protassy's prior statement exhibited a complete lack of concern for providing this hearings body with accurate evidence.

Other factual inaccuracies occur throughout Mr. Protassy's testimony, most notably, his statement that the trees that he replaced in April 1998 were lost in an ice storm in the winter of 1997. Photographs from CU-12-96 show that most of the walnut trees that Mr. Protassy claims were lost in the winter of 1997 were not present on the Protassy property in November of 1996. Mr. Protassy offers excuses for his inaccurate testimony, claiming that he was not referring to the loss of all of the trees but it is clear from the photographs that almost all of the walnut trees in question were missing from the Protassy property prior to November 16, 1996.

The fact that Mr. Protassy has provided such inaccurate testimony in this and the earlier conditional use proceeding casts a long shadow on the reliability of the remainder of Mr. Protassy's evidence. As a result, the Hearings Officer has carefully reviewed all of the evidence to determine whether Mr. Protassy has met his burden of proof in the variance and modification proceeding. The burden of proving this case rests on Mr. Protassy's shoulders. Without competent evidence, the requested variance and modification cannot be approved.

A 16' road width for the private road was approved in a Design Review permit for the adjacent Camp Angelos, in October of 1993. Camp Angeles has failed to improve the road to the approved 16' width. The County is currently proceeding to require Camp Angeles to comply with the road improvement requirements of its Design Review approval. The County's approval of a variance for this road in that case was made under different approval criteria and is not binding upon the County in this proceeding. Further, the hearings officer is not authorized to rely upon the fact that such a variance was approved to justify the approval of the requested variance to the road standards of the CFU zone. Approval must be granted based upon facts included in the record of this case and upon the law that relates to the approval of the Protassy dwelling.

The applicant requested immediate zoning sign-off of a Building Permit application in order to obtain the confirmation of compliance with building code requirements needed to meet Condition of Approval #6 of CU 12-96. This condition must be satisfied by June 14, 1998, which is six months from December 14, 1997, the date the decision was final. As discussed above, the Hearings Officer lacks the authority to direct the County to take administrative actions to order County staff to sign a building permit application. As such, this request is denied.

Description of Site and Vicinity: The access road is described in the applicant's Exhibits A. and B., which are contained in casefile Exhibit A1.

Notification and Public Participation: Notice of the hearing Scheduled for May 6, 1998 and applicable criteria was sent to 15 neighboring property owners, interested parties, and agencies on April 15, 1998. A copy of the notice is included as Exhibit "B1" of this report.

Requested Actions

1. CU 4-98, Request for Modification of Hearings Officer Decision

Applicant:

This request is for:

- (a) Modification of condition #3D on a prior Hearings Officer decision from CU 12-96, HV 18-96, and SEC 27-96.
- (b) Immediate permit for sign off from Planning Commission in order to obtain Building permit which is going to satisfy condition #6 of the Hearing's Officer decision from CU 12-96, HV 18-96, and SEC 27-96.

Submitted here with are the following exhibits:

Exhibit A- Site Plan
Exhibit B- Photographs

- Exhibit C- letter from Halstead's Arborculture Consultants
- Exhibit D- Signed statement from Thomas Layton (Fire Chief), Multnomah County Fire District #14.
- Exhibit E- Signed statement from Dennis Bryson (Fire Chief), Multnomah County RFPD #14.
- Exhibit F- Site Map.
- Exhibit G- Robert E. Meyer Consultants Inc. Statement.
- Exhibit H- CS 4-92 #574- #583-B from March 2, 1992.
- Exhibit I- Administrative decision on an application for Hillside development permit and final design review plan. File numbers DR 17-93; HDP 21-93.
- Exhibit J- Staff Report for Public hearing on August 3, 1994, HV 12-94 (Variance).
- Exhibit K- Decision of the Hearings Officer HV 12-94.
- Exhibit L- Variance request from Spencer H. Vail, Planning Consultant.

The Site: The site is located approximately one and a quarter miles South of the community of Springdale. It starts at westerly terminus of SE Stevens Road and ends 660 feet to the westerly property line with American Hellenic Education Center Inc. (Camp Angelos). A private roadway provides the current access. This roadway is of varying widths and has two turn arounds.

History: The private road has been serving more or less, three sites for more than thirty years. This road came to the attention of the Planning Commission on March 2, 1992, when a decision was made and approved for community serving expansion CS 4-92 #574/#583-B. Condition # 1 of the approval was to widen the road to 20 feet. Nevertheless, the Planning Commission indicated quote: "Full placement and associated work necessary to widen the access drive shall avoid or minimize adverse effects to existing wall nut trees on tax lot 44, immediately abutting the south boundary of the easement road.

On October 7, 1993, the application for Hillside development permit and final design review plan DR 17-93; HDP 21-93 was approved with conditions. Design review plan was calling for construction of a new access road there fore, for an administrative approval, the design review plan and Hillside development permit had to be modified to provide at least 16 feet of road width for the entire length of the private access from the SE Stevens Road Right-of-way.

On August 3, 1994, a public hearing was held to approve variance HV 12-94. Staff has indicated that the road starting from the end of Stevens road to the entry gate of Camp Angelos is 16 feet or wider which was previously approved from the planning director. A response of Fire Chief, Dennis Bryson of RFPD 14 indicated that a twelve foot wide access is satisfactory to the Fire District.

On August 24, 1994, variance HV 12-94 was approved by the Hearings officer. The road was accepted and approved the way it is except 250 feet on the American Hellenic Education Center Inc. property. The planning director granted 25% minor exception to the 20 foot road width requirement in the DR 17-93 decision. The fact that the road

between Camp Angelos property and West end of Stevens road was inspected, accepted and approved from Portland Planning Division, its staff and Hearings officer creates a confusing situation. I do not know why a road which was serving the area for many years and was approved by the County and Planning Commission for certain reasons, has to be approved twice or for the same reasons again. If the road was accepted and approved by the Planning Commission, it means that the road is legal and that is why I am asking the Hearings Officer to exclude or modify #3 D from the conditions of approval in CU 12-96.

Regardless of all the facts above, the access private road can not be widened without causing tremendous hardship to tax lot 44 and all the adjoining properties for the following reasons:

- (1) Widening the road is going to kill the ten forty years old walnut trees which are part of my farming. It was already mentioned from the Planning Commission as a condition #1 from March 2, 1992 decision CS 4-92, #574/#583-B and Halstead's Arboriculture Consultant's report from March 16, 1998.
- (2) Widening the road will cause removal and replacement of all electrical polls and cable along the entire private road. The electrical polls sitting almost in the middle of the road will be unsafe for the drivers and causing eventual accidents. Especially dangerous will be for the school district buses full of children driving very often in dozens into the camp. That also will cost unnecessary and expensive work for PGE and Paramount Cable to remove all the electrical polls.
- (3) Widening the road on the south will cause removing and replacing of the entire telephone line along the private road, which will also be expensive work for the telephone company.
- (4) Widening the road (because of the slope) is going to carry twice the amount of water all the way down to the camp property and will cost tremendous erosion and eventual take the entire hill side down. This is regardless if ditches are built on the side of the road or not. It happened some time in the past, and widening the road will double the danger of land slide and erosion.

Staff Comment: The applicant notes under “The Site” above that the road is of varying widths and has two turn arounds. Staff is unable to find a description of the varying widths expressed in feet in the application. Only one turn around is indicated on Exhibit A1. A. It is not clear that the turn around meets the 48’ radius turn-around requirement in MCC .2074(D)(7). A diagram of turn around types is included in Exhibit C4, and are referenced in the 6/5/96 fire district sign-off in Exhibit A3.

Staff notes that two statements above made by the applicant are not accurate. The applicant’s statement that staff found the road to be 16’ wide, and that the road was accepted and approved as it is, are not consistent with the record. These statements are addressed in the staff comments beginning on page 8. of this report.

The applicant questions why, since the road in question has already been approved for a reduced width, must he also request a variance. The portion of the access road from Stevens Road to the Camp Angelos property received a Minor Exception to the access road width requirement of the Off-Street Parking Standards. In order for the applicant to meet the code requirements for a dwelling in the CFU district, he must demonstrate compliance with the code requirements of that section, including the road standards of .2074(D). Conditions of approval were imposed to ensure compliance with these code requirements.

Hearings Officer: The standards of the CFU zone are different from the off-street parking standards considered in the Camp Angeles approval. The approval of the variance of one legal standard does not, in any way, justify the variance of the different legal standard of the CFU district. The CFU zone variance must rise or fall upon its own merits.

Applicant:

(b) In the decision of the Hearings officer CU 12-96, HV 18-96, and SEC 27-96, condition #6 cannot be satisfied without sign off from the Planning Commission, which has been refused to me. The condition has to be satisfied no later than six months from the date that approval has taken place. The dwelling is 90% finished and is sitting in this condition since 1992. I have suffered great loss of materials, furniture, tools and instruments because I do not have heat inside of the dwelling and the moisture destroyed and continues to destroy my belongings. That is why I seek immediate sign off from the Planning Commission in order to obtain building permit and satisfy all the building requirements of the Uniform building code, including the satisfaction of condition #6 of the Hearings officer decision from CU 12-96, SEC 27-96, and HV 18-96.

Staff Comment: In his application for a new dwelling under CU 12-96, the applicant stated that the road meets all of the standards of .2074(D), including that it is 20' wide. The County is holding a special hearing on May 6, 1998, in order to expedite processing of the variance request, notwithstanding that the road improvement standards could have been addressed at the July 16, 1997 hearing.

Staff believes that any needed road improvements should be constructed prior to building permit approval in order to ensure safe access to structures which are under construction, and after completion. This is also cited as an Oregon Uniform Fire Code requirement on the Multnomah County fire district response form in Exhibit A3.

Hearings Officer: The Hearings Officer lacks the authority to direct staff to "sign-off" the building permit application sought by Mr. Protassy.

MCC .2074 - Development Standards for Dwellings and Structures: Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993, shall comply with the following:

* * *

MCC .2074 (D) A private road (including all easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:

- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;**
- (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**
- (3) Provide minimum curve radii of 48 feet or greater;**
- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**
- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below;**
 - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
 - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**
- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;**
- (7) Provide for the safe and convenient passage of vehicles by the placement of:**
 - (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
 - (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of ½ the driveway length or 400 feet whichever is less.**

MODIFICATION OF CONDITIONAL USE CONCLUSION:

Staff:

1. The applicant has requested modification of the Hearings Officer decision through the variance application HV 7-98. Staff recommends approval of a modified variance which would reduce the road width requirement which must be met to satisfy Condition of Approval #3. A. and D.
2. Approval of request (b), building permit approval prior to construction of the required improvements is not found to be consistent with the purpose of the code because no assurance is provided that the road will be constructed. Staff recommends denial of this part of the request.

2. Minor Variance Request HV 7-98:

Applicant:

THE SITE: The site is located approximately one and a quarter miles South of the community of Springdale. It starts at westerly terminus of SE Stevens road and ends 660 feet to the westerly property line with American Hellenic Education Center Inc. (Camp Angelos). A private roadway provides the current access. This roadway is of varying widths and has two turn arounds.

Hearings Officer: The applicant has demonstrated that there is one loop road near the end of Stevens Road. A large portion of the loop road, however, is located on land that is not owned by Mr. Protassy and that is located outside of the 30' easement area provided for the private road. In order to qualify as the turnaround required by MCC .2074 and the Hearings Officer's conditional use approval, Mr. Protassy must provide proof of his right to use this turnaround in order to satisfy the conditions of approval of CU-12-96. This issue is not before the Hearings Officer for decision in this case. These comments are offered, however, as *dicta*, in an attempt to help Mr. Protassy understand the requirements of the approved conditional use permit.

HISTORY: The private road has been serving more or less, three sites for more than thirty years. The road came to the attention of the Planning Commission on March 2, 1992, when a decision was made and approved for the community serving expansion CS 4-92 #574/#583-B. Condition #1 of the approval was to widen the road to 20 feet. Nevertheless, the Planning Commission indicated quote: "Full placement and associated work necessary to widen the access drive shall avoid or minimize adverse effects to existing wall nut trees on tax lot @ immediately abutting the south boundary of the easement road.

On October 7, 1993, the application for Hillside development permit and final design review plan DR 17-93; HDP 21-93 was approved with conditions. Design review plan was calling for construction of a new access road there fore, for an administrative approval, the design review plan and Hillside development permit had to be modified to provide at least 16 feet of road width for the entire length of the private access from the SE Stevens road Right-of-way.

On August 3, 1994, a public hearing was held to approve variance HV 12-94. Staff has indicated that the road starting from the end of Stevens road to the entry gate of Camp Angelos is 16 feet or wider which was previously approved from the planning director. A response of Fire Chief, Dennis Bryson of RFPD 14 indicated that a twelve-foot wide access is satisfactory to the Fire District.

On August 24, 1994, the Hearings Officer approved variance HV 12-94. The road was accepted and approved the way it is except 250 feet on the American Hellenic Education Center Inc. property. The planning director granted 25% minor exception to the 20 foot road width requirement in the DR 17-93 decision.

The road between Camp Angeles property and west end of Stevens road was inspected, accepted, and approved from Portland Planning Division as a 16 feet wide access private road.

Staff Comment: The statement above which states; “Staff has indicated that the road starting from the end of Stevens road to the entry gate of Camp Angelos is 16 feet or wider which was previously approved from the planning director” appears to be in error in part. On page 7 of the staff report for HV 12-94 (see Exhibit A1. K.) the statement that the roadway is 16 feet or wider is the applicant’s response, not staff’s.

The applicant has submitted a letter from Fire District Chief Tom Layton, dated 4/20/98, which verifies that the easement road was considered and approved as adequate both for access to the applicant’s property and for Camp Angelos. This letter and attached fire district responses are included in Exhibit A3. The attached responses include the June 5, 1996 letter from Chief Thomas Layton, and the August 17, 1993 letter from Chief Dennis Bryson. The letter from Chief Layton is in response to the request from Mr. Protassy, in connection with his dwelling request (CU 12-96). The response from Chief Bryson is apparently in response to a request from Camp Angelos in connection with the 1993 Design Review and Hillside Development Permits (DR 17-93 and HDP 21-93). Staff is unsure what this latter response means for the entire access road, extending from the end of Stevens Road to the camp facilities, for two reasons. The 8/17/93 response carries a notation by the Chief Bryson that the access road will serve two parcels of property. If the four tax lots owned by the camp are considered as one parcel, the access road served three parcels at the time, Mr. Protassy’s parcel, the adjacent parcel to the north, Tax Lot ‘49’, and the camp. Second, the staff comment on page 7 of HV 12-94 (see Exhibit A1. K.) relates that in a telephone conversation with Chief Bryson, he indicated that a 12’ wide access road “on one section of the road was adequate for emergency vehicle access.”

The statement above which states; “The road was accepted and approved the way it is except 250 feet on the American Hellenic Education Center Inc. property.” appears to be in error in part. The Hearings Officer decision in HV 12-94 (see Exhibit A1. K.) does not “accept” or “approve” any portion of the access road. The decision clearly states on the first page that it is for one 250’ section, cites the already approved reduction from 20’ to 16’ (DR 17-93 decision), and states in the staff comment on page 9 that improvements are required to other portions of the road outside of the 250’ being considered for the variance.

Staff does not understand the last statement above because the Portland Planning Bureau has no review authority for implementation of land use decisions in unincorporated Multnomah County.

Hearings Officer:

The statement from Chief Tom Layton of the Multnomah County Rural Fire Protection District dated April 20, 1998 discusses the Protassy driveway and private driveway but

fails to explain why the District determined that a private roadway that does not meet the fire protection standards of the CFU zone that are plainly listed on the County's Fire Service comment sheet is adequate. The roadway width requirements were imposed by the County to satisfy fire safety concerns of area fire districts and departments. At a minimum, the Hearings Officer needs to know why this very narrow road will provide safe access to three properties, one of which is a very intensive use of land in a very isolated and vulnerable location. At the present roadway width, it is clear that residents and camp visitors fleeing a fire would prevent fire vehicles from driving down the private road. How this can be a safe situation is unclear from the evidence in this case.

MCC 11.15.8505 Variance Approval Criteria

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

Staff: This provision defines the circumstances under which a variance can be considered, and distinguishes between approval criteria for major and minor variances. A finding needs to be made that a practical difficulty to implementation of the 20' road width requirement exists for the application. The applicant makes three general arguments that there are practical difficulties in the application of the 20' road width requirement. These include potential damage to his walnut trees, re-locating existing utilities, and increased stormwater runoff and landslide hazard. See the numbered points under section 1. of this report. The statement of erosion effects or instability caused by road widening is unsubstantiated in the application.

The applicant has submitted a map to show the relationship between the easement road and the utility poles on the north side and the trees on the south side. Based on this map, the walnut trees start 184' from the end of Stevens Road, and the utility poles start 204' from the end. The practical difficulty described by the applicant begins at the point where widening of the road would begin to impact the trees on the south side of the road. Staff estimates that this would be approximately 170' from the end of Stevens Road.

A Minor Variance is defined as one that is within 25% of an applicable dimensional requirement. The dimensional requirement which is the subject of the variance is the CFU Development Standard in MCC 11.15.2074(D)(2), which requires an all-weather surface of at least 20 feet in width for a private road. The applicant is requesting a 4 foot variance for a reduction of 20% of the standard.

Hearings Officer: Mr. Protassy planted walnut trees in April 1998, long after approval of CU-12-96. Mr. Protassy claims that the locations he chose for these new trees must be protected from encroachment by any roadway improvements. These trees could have been planted elsewhere on the Protassy property where they would have not been effected by the road widening required by CU-12-96. As such, the location of the

newly planted trees is a self-created difficulty that, as a legal matter, does not warrant approval of a variance.

The evidence in the record indicates that the telephone poles located to the north of the private roadway will need to be moved by Camp Angeles when the camp widens the road to 16' in order to comply with its land use approvals. As a result, the current location of these poles is no longer a justification for this variance. Evidence from County staff reveals that a 21' wide road could be built if the existing road was widened to the north only. Mr. Protassy states that the existing telephone poles are two feet north of the easement area. As the poles in question have a diameter of less than one foot, a total of 3' feet may be required for the poles and a buffer area between the poles and the roadway. This means that Mr. Protassy should be able to widen the private roadway to a width of 18' without harming his walnut trees. This evidence does not, however, justify a variance to the 16' width sought by Mr. Protassy.

Mr. Protassy's evidence does not explain why it is not possible to construct storm drains and other drainage facilities to handle run-off from the private roadway. This may or may not require more than 3' of easement area. As the burden of proof is on the applicant in this proceeding and the hearings officer cannot go outside of the record of this matter to find this information. Without this information, the hearings officer may not justify a variance to a 16' wide road standard (from the 18' justified by the need to place telephone poles in the easement area and to avoid paving on the tree side of the roadway). The hearing officer she would like to approve a variance that will allow the roadway, drainage facilities and telephone poles to be constructed within the easement area without causing harm to the mature walnut trees. Hopefully, the 18' roadway width will allow Mr. Protassy to achieve this result.

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

Applicant: As mentioned above, the access private road is an existing road which has been serving Tax Lot 44 and the adjoining properties for more than thirty years. The owners of the adjoining properties have not expressed any concerns about this matter, and have signed a property owner consent of variance request. Approval of the Variance will only affect the subject property, and this proposal would not impede nor impact any of the neighboring practices. As for adversely affecting the development of adjoining properties, the adjoining properties are already developed and have been served by the same road. Also, as stated above, the Fire District has approved twice the 12 foot width as adequate for emergency vehicles.

Staff: The public welfare in this case is safe access and adequate fire access. The 20' road width requirement allows for two way traffic for emergency and private vehicles. Jerry Renfro, Tualatin Valley Fire and Rescue, confirmed in telephone conversation with staff that the 20' road width requirement is intended to allow two way access for

emergency vehicles. The proposed 16' wide road would allow a narrow two lane access for cars, but would not allow two emergency vehicles or a truck and an emergency vehicle to pass. Staff notes that the road development standard in the CFU zone in MCC .2074(D)(7) requires turnarounds or turnouts at intervals of less than 500 feet in order to provide safe and convenient passage of vehicles. The applicant has not shown that a turn around or turnout which meets the requirement of .2074(D)(7) exists within the first 400' or 500' from the end of Stevens Rd. The legal rights to the turn around shown on the applicant's Exhibit A1. A. are uncertain. If the turn around is not within a dedicated easement, then there is no assurance it will remain available because current or future property owners could restrict access.

As noted in the findings under (A) above, the applicant has not demonstrated a practical difficulty to meeting the 20' road width standard for the first approximately 170' from the end of Stevens Road. Improvement of the road to the full width for the first 170' would reduce the substandard road length to the end of the last utility pole to 386'. See Exhibit A5. Widening of the road to 16', plus improvement of a turnout in the middle of the section to 20' X 40' as provided in .2074(D)(7)(b), would meet that standard and substantially increase areas suitable for fire equipment and other vehicles to pass.

The two other adjoining properties are owned by the neighbor to the north, and by the American Hellenic Education Association. The CFU zoning on the property to the north limits that property to one dwelling. The Camp Angelos property received an initial Community Service Use approval in 1986, and approval for expansion in 1992. Future development requests by the Camp will be required to meet the access road requirements of the CFU district in MCC .2074(D), the minimum access road requirements in the Off-Street Parking ordinance .6128(A), and the Framework Plan Policy 31: Community Facilities and Uses.

Hearings Officer: Evidence received after the staff report was written show that the private road may be widened to a width of 18 feet because the telephone poles located to the north of the roadway will be need to be moved for construction of a 16' wide road and there is adequate room for such a road and the telephone poles within the existing easement area, without widening the road to the south toward the walnut trees.

(4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.

Applicant: No use is being permitted that is not allowed either outright or through a conditional use permit. The approval of the Variance request, therefore, will not provide for the establishment of a use not listed in the underlining zone. Previous approvals from the County for the single family dwelling on Lot 44 have been based partially on Findings that the use was consistent with the comprehensive plan. Approval of this Variance concerning roadway width will not jeopardize compliance with the plan.

Staff: Staff agrees that approval of the variance would not adversely affect realization of the Comprehensive Plan or establish a use not allowed in the zone.

VARIANCE CONCLUSIONS:

1. Staff concludes that the applicant has not demonstrated that practical difficulties exist on the approximately 170' road segment beginning at Stevens Road. Since this threshold requirement for consideration of a variance has not been shown to have been met by the applicant, staff recommends that this area be excluded from consideration of the road width variance.
2. The requested variance reduces the road function from a two lane road suitable to all vehicles, to a narrow two lane road for cars. The applicant has not shown that no material detriment to the public welfare would occur if the variance is approved. In addition, the turn around and/or turn out standard of MCC .2074(D)(7) has not been shown to have been met. Staff feels that a conclusion of compliance with variance approval criterion #3. can be made if turnouts which meet the .2074(D)(7)(b) standard are provided. This would require improving one 40' long section in the middle of the 386' long variance area to the full 20' width.

Hearings Officer: The Hearings Officer concurs with staff's conclusion that the applicant has failed to demonstrate that a variance is justified for the eastern portion of the private roadway. The Hearings Officer also finds that, due to the fact that the telephone poles will be need to be moved to create a 16' wide road, that the road should be built to the maximum width possible in order to protect public safety. Although the evidence in the record is scanty, it appears that an area of approximately three feet is needed between the edge of the roadway and the northern boundary of the easement for power poles and buffer area. This 3 feet wide area will also allow some room for drainage facilities. Whether it is sufficient is unknown as the applicant has failed to provide this information. Yet, in the absence of proof from the applicant, the Hearings Officer may not grant a more generous variance upon the unproven assumption that a larger area is needed.

3. Multnomah County Comprehensive Plan Policies:

The Framework Plan Policies 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: A single family dwelling is not a high emission source. Water quality is not degraded by the dwelling on the property and there are no streams or creeks on the property. This policy is satisfied because all necessary permits have been obtained, and the applicable sanitation regulations have been complied with.

Staff: The primary issue under this policy is water quality related to any construction which would be required to widen the road. This type of development impact can be addressed through the Grading and Erosion Control Permit.

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: The parcel is in a rural area. For the proposed use, there are no new streets, power lines, or energy consumptive development requirements.

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

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: There has been an approved site for on-site septic tank and drain field by the sanitarian. A septic tank permit has been obtained. the water run-off will be handled on site, and the property is serviced by PGE, Cascade Utilities, and Corbett Water District. The applicable service provider forms have been submitted in exhibit A from CU 12-96, HV 18-96, and SEC 27-96.

Staff: The portion of this policy which is unmet by the submittal is Drainage. The applicable sub-policies are F. and G. The applicant has stated that widening the road will result in increased stormwater flow onto adjoining land, erosion, and increased danger of landslide. He notes that these effects will occur even if roadside ditching is constructed. This policy requires adequate stormwater measures to be provided, and absent expert testimony to the contrary, staff finds that the drainage policies can be met as part of the Grading and Erosion Control Permit process. A Grading and Erosion Control Permit is required for private road construction of the magnitude required to build to meet the revised width.

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.**

Applicant: All of the service provider forms have been signed and submitted, showing adequate service levels can be provided to the dwelling. The service provider forms are in exhibit A6 from CU 12-96, HV 18-96, and SEC 27-96.

Staff: The fire district has not commented on the proposed variance or modification of conditions requests. Staff assumes based on the 1996 response form that the district would not oppose the requests.

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.**

Applicant: This should not apply to a residential dwelling, nor is there a near by park or recreation area.

Staff: Concurs that this policy does not apply to the request related to a single family dwelling.

Dated this 7th day of June 1998.

Liz Fancher, Hearings Officer

Appeal to the Board of County Commissioners:

The Hearings Officer 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 2115 SE Morrison Street (in Portland) or you may call 248-3043, for additional instructions.