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Decision of Hearings Officer

Variance for front yard setback for Single Family Residence, Road Rules Variance and Geologic Hazard Permit

Case File: T3-2019-11864

Hearing Date, Time, & Place:

Friday, September 13, 2019, at 9:00 am or soon thereafter, in Room 103 at the Land Use Planning Division office located at 1600 SE 190th Avenue, Portland, OR 97233

Location: 65 SE Red Elder Drive, Corbett
Tax Lot 1000, Section 05E, Township: 1 North, Range: 35 CC
Alternate Account # R289900050 Property ID: R164715

Applicant(s): Carl and Juliana Wallace **Property Owner(s):** Carl and Julianna Wallace

Summary: The applicants request a Variance to the front yard to allow a proposed single family dwelling with attached elevated driveway structure. The variance request is for a setback of 18 feet between the dwelling's attached garage and the north property line (SE Red Elder Drive right-of-way) and a zero foot setback for the driveway structure that will connect the second floor attached garage to the SE Red Elder Drive right-of-way. The standard setback is 30 feet between structures and road frontages in the Rural Residential (RR) zone. A Road Rules Variance is also requested to deviate from the standards for a fully built out right-of-way to allow a 15 foot wide gravel-paved roadway from the property frontage to the intersection of SE Red Elder Dr. and SE Hemlock Rd, and widening the remaining portion of SE Red Elder Dr. to 20 feet wide between the SE Elder Dr./SE Hemlock Rd. intersection and SE Red Elder Drive intersection with E. Larch Mountain Rd. In addition, a Geologic Hazards Permit is required to allow development on slopes of 25 percent or more.

Base Zone: Rural Residential (RR)

Overlay Zones: None

Site Size: 1 acre

Applicable Approval Criteria: *Code Compliance: MCC 39.1515*

Lot of Record: MCC 39.3005 Lot of Record-generally, MCC 39.3090 Lot of Record- Rural Residential.

Rural Residential: MCC 39.4360 (A) Allowed Uses – Single Family Residence on a LOR, MCC 39.4375 (A), (B) and (C) Dimensional Requirements and Development Standards

Geologic Hazards Permit: MCC 39.5075 Permits Required, MCC 39.5085 Geologic Hazards Permit Application Information Required; MCC 39.5090 Geologic Hazards Permit Standards

Variance: MCC 39.8205 Scope, MCC 39.8215 Variance Approval Criteria

Road Rules Variance: MCCRR 16.200

Hearing Officer Decision:

The Hearings Officer approves the variance request and the geologic hazards permit to allow the proposed single family residence, driveway structure and the road rules variance to allow deviation from the required right-of-way improvements. This decision is based on the findings provided below and subject to the following conditions of approval:

Conditions of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s) with the exception that the road improvements proposed by the applicant are only required to be provided along the road frontage of the subject property on SE Red Elder Road. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. Permit Expiration –
 - a) This land use permit shall expire as follows:
 - i. When construction has not commenced within two (2) years of the date of the final decision, or; [MCC 39.1185(B)(1)]
 - ii. When the structure has not been completed within four (4) years of the date of commencement of construction, [MCC 39.1185(B)(2)]
 - b) For purposes of Condition 2.a.i, notification of commencement of construction will be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway. [MCC 39.1185(B)(1)]
 - c) For purposes of Condition 2.a.ii, completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval. [MCC 39.1185(B)(2)]

Note: The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. Prior to Land Use Planning review and sign-off for a building permit, the property owners or their representative shall:
 - a) Record pages 1 through 5 and Exhibit A.3 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]
 - b) The property owner shall provide a lighting plan showing the existing and proposed location for all exterior lighting on all buildings and in the landscaping or yard. All existing lighting on the dwelling, within the landscaping or in the yard shall be photographed for documentation purposes. Copies of these photographs shall be provided to Land Use Planning. All lighting whether existing or proposed on any of the accessory buildings being authorized by this decision shall comply with the Dark Sky Lighting Standards of MCC 39.6850.
 - c) As a condition of approval, compliance with maximum building height will need to be verified prior to issuance of any future building permit. [MCC 39.4375 (C)].
 - d) The parking spaces shall be delineated with markings, planting or other measures to ensure compliance with MCC 39.6565 (A) & (B).
 - e) The applicant(s), owner(s), or their representative(s) shall obtain an Erosion and Sediment Control (ESC) permit from the County. Proof of issuance of the ESC permit must be submitted when the applicant brings the building plans in for sign-off. [MCC 39.6225 A.1-6) and MCC 39.6210 (B)]
4. The property owner shall ensure that the proposed development work is observed by a Certified Engineering Geologist or Geotechnical Engineer. This observation shall be at the owner's expense. The name, address and phone number of the Certified Engineering Geologist or Geotechnical Engineer that will be conducting the observation of the development shall be submitted to the Planning Director prior to zoning review for a building permit. The observation of the development activities by the Certified Engineering Geologist or Geotechnical Engineer shall include but is not limited to foundation work, confirmation on installation and effectiveness of all erosion and sediment control measures, and a final observation prior to the final building permit inspection. [MCC 39.5090 (D)]
5. The property owner shall implement the erosion and sediment control measures as shown and listed on the erosion control plan (Exhibit A.11) and described in the erosion control standard narrative (Exhibit A.15 and A.16), unless amended by the observing Certified Engineering Geologist or Geotechnical Engineer to achieve better site suitability for the development and improve erosion and sediment control. [MCC 39.5090 (D)]
6. The property owner shall consistently maintain the erosion and sediment control measures to ensure the measures are in proper working order. The property owner and observing Certified Engineering Geologist or Geotechnical Engineer shall monitor the erosion and sediment control measures to ensure the measures are in proper working order. Additional

measures shall be immediately installed to remedy the problem if sediment is determined to be escaping the development area. [MCC 39.5090 (M)] and [MCC 39.6210 (E)(2)]

7. The property owner is responsible for removing any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems. If any features within the adjacent public right-of-way are disturbed, the property owner shall be responsible for returning such features to their original condition or a condition of equal quality. [MCC 39.6210 (i)(C)]
8. The County may supplement described erosion control techniques if turbidity or other down slope erosion impacts resulting from on-site grading work. The Portland Building Bureau (Special Inspections Section), the local Soil and Water Conservation District, or the U.S. Soil Conservation Service can also advise or recommend measures to respond to unanticipated erosion or sedimentation effects. [MCC 39.5090 (V)]
9. The erosion control permit notice card (provided at plan signoff) shall be posted at the location of the driveway entrance to the property as it leaves the easement access road in a clearly visible location (print towards the road) prior to any soil disturbance. This notice is to remain posted until such time as the grading/excavating work is completed and the vegetation has been re-established in disturbed areas. The erosion control permit notice shall be obtained during zoning review of building permit plans. In the event this sign is lost, destroyed, or otherwise removed prior to the completion of the grading work, the applicant shall immediately contact the County Land Use Planning Office to obtain a suitable replacement. [MCC 39.6235]
10. The property owner shall install the stormwater trench designed by Mia C. Mahedy, P.E. in the early phase of the development as shown on the site plan/erosion control plan (Exhibit A.11). This system shall collect and disposed of stormwater from new impervious surfaces and shall properly control the rate of flow for a 10year/24hour storm event with the runoff no greater than that which existed prior to development. [MCC 39.5085 (A)(B)]
11. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and will expose the smallest practical area at any one time during construction. [MCC 39.5085 (H)]
12. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development. [(MCC 39.5090 (J)]
13. Silt fencing shall be installed down slope of the disturbed soil area prior to soil disturbance and maintained until project is finalized and vegetation has been re-established. The location of all silt fencing, other grading and erosion control measures to be installed, and soil stockpiles must be shown on all final plan sets. [MCC 39.5090 (M)]
14. The property owners (or representative thereof) shall maintain best erosion control practices through all phases of development. The erosion control measures shall be as described in the narrative included as (Exhibit A.15 and A.16) and as shown on the site plan (Exhibit A.26). Erosion control measures are to include the installation of sediment (silt) fence barriers at the locations shown on the plan labeled Exhibit 6. Straw mulch or erosion blankets shall be used as a wet weather measure between October 1st and June 31st

to provide erosion protection for exposed soils areas. Soil stock piles shall be covered with plastic sheeting at least 6 mil in thickness which is anchored to remain in place during windy periods. If there is any indication of overland flow of water carrying sediment onto a neighboring property, additional silt fencing or other erosion control measures shall be required to remedy that problem. The property owners shall ensure post construction re-establishment of vegetative ground cover for disturbed soil. The property owners shall verify that all erosion control measures are properly working throughout the project until vegetation has been re-established. [(MCC 39.5090 (R))]

Conditions of Approval for Transportation

15. Access Permit: Applicant will need to obtain an Access Permit for the access point onto SE Red Elder Dr. prior to building permit approval. (MCRR 4.100)
16. Improvement Requirements: Applicant shall obtain a Construction Permit (MCRR 9.200) for any work within the right-of-way of SE Red Elder Dr. including the gravel-widening of the road to 15 feet wide **along the property frontage only** with the exception that the applicant must also provide the emergency vehicle pullout across from the driveway to their proposed home. Once the applicant is ready to file a Construction Permit, please contact: Rick Buen, PE, Engineer 2, Multnomah County Transportation Planning & Development, 503-988-3891, rick.buen@multco.us.
17. Stormwater: Any alteration of the storm water discharge onto County right of way requires a Discharge Permit. Any alteration of storm water drainage to the existing discharge needs to be reviewed by the County. Increased run-off to incorporated Multnomah County could negatively impact the roadway system.
18. Sight Distance: The property owner shall maintain the sight distance from all access points, including maintenance of vegetation.

Note:

Contact the City of Portland, Bureau of Development Services, On-site Sanitation at 503-823-6892 or e-mail septic@portlandoregon.gov for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.

Contact Katie Skakel, Planner, at 503-988-0213 or katie.skakel@multco.us, for an appointment for review of the conditions of approval and to sign the building permit plans. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department. At the time of this review, Land Use Planning will collect additional fees. The above must be completed before the applicant can obtain building permits from the City of Gresham Three sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off by land use planning, please read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, "Prior to land use sign-off for building plan check..." Be ready to demonstrate compliance with the conditions.

Dated and signed this 2nd day of October, 2019



Liz Fancher, Hearings Officer

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold font**. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*. The Staff comments are adopted as findings of the hearings officer: Supplemental findings provided by the Hearings Officer are identified as ‘**Hearings Officer:**’ and, in the event of conflict with staff findings, control.

1.0 PROJECT DESCRIPTION:

Staff: The applicant has requested a Variance to reduce the minimum front yard requirement by 40 % from a 30 ft setback requirement to 18 ft for the proposed single family residence; zero feet for the proposed driveway bridge and approval of a Geologic Hazards permit. The variance request if approved would result in a garage that is 18’ setback from the front lot line to the County right-of-way known as SE Red Elder Lane. The garage and single family house is proposed to be accessed by a "bridge-driveway" that has zero setback from the front property line. A Road Rules Variance has been requested through the County Transportation Division to deviate from the standards for a fully built out right-of-way to allow a 15 foot wide gravel-paved roadway from the property frontage to the intersection of SE Red Elder Dr. and SE Hemlock Rd, and widening the remaining portion of SE Red Elder Dr. to 20 feet wide between the SE Elder Dr./SE Hemlock Rd. intersection and SE Red Elder Dr.’s intersection with E. Larch Mountain Rd.

2.0 PROPERTY DESCRIPTION & HISTORY :

Applicant: “Land owners Carl and Julian Wallace are proposing to a build a single family dwelling on purchased property. Architect Mathew McCune with McCune Design, has been contracted and leading the design process. Timothy Schweitzer Structural Registered Engineer developed the structural stamped plans for the house and driveway. The home is currently designed at 2 bedrooms and 2.5 baths, a total 2162 sq ft living space. Per site evaluation done by City of Portland Bureau of Development Services, the site will have a professionally designed and installed ATT septic system. The project is currently in que with Olsen Well Drilling and pump for a private well. There are no other structures proposed at this time.”

Staff: The approximately 1 acre vacant subject property in the Rural Residential (RR) zone is located on SE Red Elder Dr. in the East of Sandy River Rural area in unincorporated Multnomah County. The subject property is part of the FOOTHILLS RANCH subdivision, a subdivision completed in 1958 that is outside the National Scenic Area and outside of the Metro Urban Growth Boundary. Adjacent vacant, wooded lots to the east and west of the subject property are also within the RR zone. A small tributary runs through a southern section of the subject property, south of the proposed development area. The subject property contains areas with steep slopes and the proposed development area includes average slopes greater than 25%. There are no zoning overlays on the subject property.

3.0 PUBLIC COMMENT:

3.1 Comments from Carol Perry via Phone, Neighboring Property Owner

Staff: Ms. Perry had concerns regarding the proposed adjustment to reduce the minimum

required yard (“setback”) from the front property line. She believes that the purpose of the setback is to protect the forest and ensure adequate distance between the road and homes. She believed that the applicant should be able to fit the home on the property without needing an adjustment.

See section 7.0 for discussion regarding the variance criteria.

3.2 Comments from Brian Boag, 207 SE Red Elder Drive, Corbett, OR (neighbor)

Hearings Officer: Mr. Boag expressed concern about the narrow width of Red Elder Road. The road provides access to the subject property and to the Boag property. Mr. Boag is concerned that the road will be blocked by construction vehicles because it is a single lane road with only a few turnouts. He explained that only some of the road rights-of-way in the subdivision have been improved with the result being that he must drive by the subject property in order to reach the County public road system.

3.3 Comments from Lila McGuire, Neighboring Property Owner

Ms. McGuire is concerned about obtaining access to her property via Red Elder Drive which is located beyond the subject property if the variance is approved. She testified that the neighborhood piles snow on the subject property in the winter and that constructing a driveway bridge at the right-of-way line will make it impossible for this practice to continue.

3.4 Elda Maguire, 502 SE Red Elder Drive, Corbett, OR (neighbor)

Ms. Maguire expressed concern that the location planned for the septic system would contaminate area groundwater and wells that draw drinking water from the aquifer. Ms. Maguire expressed her opinion that there would not be adequate room for a fire vehicle to turn around and that it is a considerable distance to the main County road.

4.0 ADMINISTRATIVE PROCEDURES CRITERIA

4.1 CODE COMPLIANCE AND APPLICATIONS.

MCC 39.1515 Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure

for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: There are no active code compliance cases or known code compliance issues on the subject property. *This criterion is satisfied.*

5.0 LOT OF RECORD CRITERIA:

5.01 MCC 39.3005 Lot of Record - Generally

As used in this Chapter, unless the context re-quires otherwise, the following words and their derivations shall have the meanings provided below.

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 33.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the trans-action, that was in recordable form prior to October 19, 1978; or
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

* * *

MCC 39.3090 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 39.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;

- (2) July 10, 1958, F-2 zone applied;
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (4) October 6, 1977, RR zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acer minimum lot size for properties within one mile of Urban Growth Boundary;
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 39.4395, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 39.4380, 39.4385, and 39.5300 through 39.5350, 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.

(D) The following shall not be deemed to be a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;
- (2) An area of land created by the foreclosure of a security interest.
- (3) An area of land created by court decree.

Staff: The subject property is part of the FOOTHILLS RANCH subdivision completed in 1958 (Exhibit A.23). The subject property as described in the warranty deed (Exhibit A.23) is in the same configuration as the original subdivision. MCC 39.3090 (B), (C), and (D) do not affect the outcome of this land use decision as the subject property configuration satisfied all applicable zoning regulations / subdivision requirements in effect at the time of the original subdivision in 1958. *These criteria are satisfied; the subject property is a Lot of Record.*

6.0 RURAL RESIDENTIAL - (RR) APPROVAL CRITERIA

6.1 Allowed Uses

MCC 39.4360 Allowed Uses

The following uses and their accessory uses are allowed, subject to all applicable supplementary regulation contained in MCC Chapter 39.

(A): Residential use consisting of a single-family dwelling constructed on a Lot of Record.

Staff: The applicants propose to construct a single-family dwelling on the subject property. Lot of Record findings are in Section 5.2 above. *The proposed use is an allowed under this provision.*

6.2 MCC 39.4375 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS

(A) Except as provided in MCC 39.3090, 39.4380, 39.4385 and 39.5300 through 39.5350, the minimum lot size for new parcels or lots shall be five acres. For properties within one mile of the Urban Growth Boundary, the minimum lot size shall be as currently required in the Oregon Administrative Rules Chapter 660, Division 004 (20 acre minimum as of October 4, 2000).

Staff: The request is not creating a new lot, thus the criteria of being five acres is not applicable. *This criterion is not applicable.*

(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.

Staff: Not applicable as the street is not requested to be vacated. *This criterion is not applicable.*

(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 subject property is approximately 1 acre (43,560 sq. ft.) in size. The subject property has approximately 200 feet of frontage on SE Red Elder; exceeding the minimum lot frontage requirements of 50 feet. The site plan indicates that the proposal includes: 1) a new three-story single-family dwelling on the vacant lot, 2) an attached garage and driveway bridge structure, 3) a new ATT septic system, 4) a new well and 4) a new on-site stormwater management system.

Under Building height definition: (a) The vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields a greater height of building:

- 1. The elevation of the highest adjoining sidewalk or ground surface within a 5-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above the lowest grade.**
- 2. An elevation 10 feet higher than the lowest grade when the sidewalk or ground surface described in Item (1) above is more than 10 feet above the lowest grade.**

(b) The height of a stepped or terraced building is the maximum height of any segment of the building, or as amended by the State of Oregon Structural Specialty Code and Fire and Life Safety Regulations.

Staff: According to the elevation drawings (Exhibit A.25) the proposed building height is 43’-6” as measured from the rear of the building to the mid-point of the garage roof (45’-0” being max allowed- 35’-0” + 10’-0” for sloped sites). In order to confirm the building height

staff has included the Building Height definition above as well as provided a diagram that shows Building Height determination (Exhibit B.3).

Staff believes it also falls under b) that references stepped or terraced buildings. As a condition of approval, compliance with maximum building height will need to be verified prior to issuance of any future building permit. *This criterion is met.*

As shown on the site plan (Exhibit A.26), a variance request has been made to the 30 foot front yard setback. The variance request is for a zero foot front line setback for a driveway bridge structure and an 18 foot setback for the start of the garage which is part of the single family dwelling. The proposed house location is 30 feet from the west property line side line and 135 feet from the east property side line and is 180 feet from the rear property line. *These criteria are met or are otherwise approved by way of the Variance criteria.*

(1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall.

Staff: The proposed driveway bridge structure includes a retaining wall within the required setback, and that retaining wall, as a supporting structure for the driveway bridge is included as part of the zero lot line variance request. Because the wall is not over 6' tall it is not required to be setback and can be allowed through a variance for a zero front lot line setback. (Exhibit A.26) *This criterion is met.*

(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 county Road Official shall determine the necessary right-of-way widths based upon the county "Design and Construction Manual" and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.

Staff: SE Red Elder Drive is a dedicated County right-of-way that is currently 50 feet in width and is designated a "Local" roadway. The County's "Design and Construction Manual" indicates that a "Local Access" Road is 50 feet, 25 feet from the road centerline to adjacent property lines, (DCM Table 2.2.5 Rural Cross Section). As indicated in Transportation Department's findings (Exhibit B.2), currently, 25 feet of right-of way exists between the site's property line and the centerline of SE Red Elder Dr. The total existing right-of-way width of SE Red Elder Drive is 50 feet.

(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the lot.

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

Staff: As shown on Exhibit A.6, Exhibit A.7 and Exhibit A.8 the applicant has sanitation approval for a proposed 1060 gallon septic tank and treatment system 30' below the elevation of SE Red Elder Rd on the property (not in an easement) with sleeved pressure line that indicates specific installation standards that are a minimum of 50' on either side of stream. *These criteria are met.*

Hearings Officer: The applicant is not seeking approval of off-site sewage disposal, storm water/drainage control, or water systems.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The applicant has also provided a Storm Water Certificate completed by Mia C. Mahedy-Sexton, P.E. on April 4, 2018 (Exhibit A.11). As described by the applicant the proposed impervious surfaces (single family dwelling roof and driveway) are collected in a private storm system, which is piped and routed through a detention pipe to provide flow control for the 10-year storm event. The system discharges on private property through a “down spout” system consisting of a 4” perforated pipe enclosed within a rock trench. This design returns the stormwater to a natural sheet flow condition (not concentrated) and maintains the natural course of drainage. The Storm Water Certificate and plan (Exhibit A.11) shows the recommended stormwater treatment to be constructed on the property to ensure that storm water is collected and disposed at a 10-year design frequency. The system shows as 297 cu 2 drain area and indicates that the system is 92’ from the creek. Condition Number 11 requires the stormwater system to be constructed as proposed or as otherwise amended by the applicant’s engineer. Any amendment to the proposed stormwater system must also be reviewed and approved by the Planning Director. *As conditioned, this criterion is met.*

6.03 MCC 39.4390 OFF-STREET PARKING AND LOADING.

Off-street parking and loading shall be provided as required by MCC 39.6500 through 39.6600.

Staff: The proposed parking is provided in the attached one-car garage. The proposed driveway will also be used for parking, which meets the second parking space required in MCC 39.6590(A)(1) for a single family dwelling (minimum dimensions 9’ by 18’) as the driveway is located on site. *This criterion is met.*

6.04 MCC 39.4395 ACCESS

All lots and parcels in this district shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 39.3090(B).

Hearings Officer: This code section does not apply to the review of this application because the subject property has been determined to be a Lot of Record. This means that the applicant does not need to establish that access will be safe and convenient for pedestrians and passenger an emergency vehicles in order to obtain approval to construct a home on the subject property.

6.05 MCC 39.6525 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.

Staff: The submitted site plan shows the parking areas. The parking areas are located north of the dwelling and in the garage accessory structure (Exhibit A.3). *These criteria are met.*

6.06 MCC 39.6565 DIMENSIONAL STANDARDS

(A) Parking spaces shall meet the following requirements:

(1) At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.

(2) Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.

(3) For parallel parking, the length of the parking space shall be 23 feet.

(4) Space dimensions shall be exclusive of access drives, aisles, ramps or columns.

(B) Aisle width shall be not less than:

(1) 25 feet for 90 degree parking,

(2) 20 feet for less than 90 degree parking, and

(3) 12 feet for parallel parking.

(4) Angle measurements shall be between the center line of the parking space and the center line of the aisle.

Staff: The site plan submitted (Exhibit A.3 and Exhibit A.26) shows that a single car can be parked on the driveway bridge at 9' by 18' and that another car can be parked in the garage structure. However to ensure that the requirements of MCC 39.6565 are met, condition of approval will be included requiring that the parking spaces be delineated with markings, planting or other measures to ensure compliance with MCC 39.6565 (A) & (B). *As conditioned, these criteria are met.*

6.07 MCC 39.6570 IMPROVEMENTS

(A) Surfacing

(1) Except as otherwise provided in this section, all areas used for parking, loading or maneuvering of vehicles, including the driveway, shall be surfaced with at least two inches of blacktop on a four inch crushed rock base or at least six inches of Portland cement, unless a design providing additional load capacity is required by the fire service provider, building official or County Engineer, as applicable.

Staff: The applicant has proposed a concrete driveway "bridge" that will be structurally designed to address loading capacity. *This criterion is met.*

(B) Curbs and Bumper Rails

(1) All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.

(2) The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height and at least three feet from the lot line or any required fence except as provided in (3) below.

(3) Except for development within the BRC, CFU-1, CFU-2 and CFU-5 zones, the outer boundary of a parking or loading area with fewer than four required parking spaces may use a five foot wide landscape strip or yard planted with a near-continuous number of shrubs and/or trees. If the outer boundary of the parking area is within 50 feet of a dwelling on an adjacent parcel, the plant materials shall create a continuous screen of at

least four feet in height except at vision clearance areas where it shall be maintained at three feet in height.

Staff: To ensure that the requirements of MCC 39.6570 (B) are met, a condition of approval Number 3(d) will be included requiring that the parking space on the bridge be delineated with either curbs, bumper rails or other permanent landscape barriers. *As conditioned, these criteria are met.*

(D) Drainage – All areas for the parking and maneuvering of vehicles shall be graded and drained to provide for the disposal of all surface water on the lot.

Applicant: The applicant’s stormwater plan and Stormwater Certificate (Exhibit A.11) include a dry well/soakage trench to support the run off past the gutters, downspout extension and rain barrels. The applicant states ‘the right of way work is designed to maintain as much of the natural vegetation as possible and to reduce the impact on the current state while providing for increase road space.

The applicant further states that “to minimize erosion due to water on disturbed ground, construction work will be based on a clear timeline (Exhibit A.15) that works with local weather patterns and provides a construction schedule that focus cut, fill, and foundation work in the driest months allowing time to mulch and stabilize the disturbed areas. The applicant proposed to create a construction entrance and walking pathways that use the smallest surface area possible to allow for construction movement around development site. After the foundation is done we will move on to address other development tasks, one at a time, to ensure that we are exposing the smallest areas possible.”

According to the applicant “The right of way work will also follow the natural topography, we have planned the widening of the road and ditch to ensure that we do not create increase erosion potential. On the south side of the road we will not be using the V ditch to accommodate the surface run off. The turnout is placed specifically where we do not have to remove significant foliage and trees on the north side of the road which will reduce both the changes to topography and potential for erosion.

The applicant explains in the HDP Application (Exhibit A.15) outlines that to keep run off velocities low, we will locate and create sediment basins at the low point of the disturbed area, and/or sediment fences if it appears necessary to accommodate the runoff. Sediment could potentially runoff from rain event, to address this we will create maintenance tracking forms that will stay at the site. They will be sued to check our erosion control methods. This will include ensuring that fences are intact, bags are secure on the ground, and that the protected areas are remaining untouched. We will also be looking for indicators that any of the methods are failing and need re-assessment and potential replacement.

Staff: The area for the parking and maneuvering of vehicles is a concrete surface. The site plan (Exhibit A.26 and Exhibit A.25) submitted as well as the drainage plan (Exhibit A.19) includes a dry well/soakage trench to support the run off past the gutters, downspout extension and rain barrels. The applicants plan (Exhibit A.19) includes a soaking trench consistent with riprap design based on plans in Erosion and Sediment Control Planning and Design Manual, 2008 pg 4-60 and shows that adequate drainage of all surface water on the lot has been properly disposed of on site. *With a condition of approval, this criterion is met.*

6.09 MCC 39.6590 MINIMUM REQUIRED OFF-STREET PARKING SPACES

(A) Residential Uses

(1) Single Family Dwelling – Two spaces for each dwelling unit.

Staff: The proposal is for a new single-family dwelling with attached garage that will have one parking space along the driveway bridge and one in the garage. *This criterion is met.*

7.0 Dark Sky Requirements

MCC 39.6850 DARK SKY LIGHTING STANDARDS.

(A) The purpose of the Dark Sky Lighting Standards in this Section is to protect and promote public health, safety and welfare by preserving the use of exterior lighting for security and the nighttime use and enjoyment of property while minimizing the obtrusive aspects of exterior lighting uses that degrade the nighttime visual environment and negatively impact wildlife and human health.

Staff: No lighting locations or details have been provided. Staff recommends condition of approval 3 (b) so that the applicant is aware of the Dark Sky Lighting Standards and can prepare the information as necessary. *Through a condition, this criterion can be met.*

(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

Staff: No lighting locations or details have been provided. Staff recommends a condition of approval 3 (b) so that the applicant is aware of the Dark Sky Lighting Standards and can prepare the information as necessary. *Through a condition, this criterion can be met.*

(1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. “Fully shielded” means no light is emitted above the horizontal plane located at the lowest point of the fixture’s shielding. Shielding must be permanently attached.

(2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.

Staff: Condition 3(b) requires that lighting will be shielded to meet criteria. *With condition of approval, criteria can be met.*

8.0 Variance Criteria

8.1 § 39.8205 SCOPE

(A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of resource protection set-back requirements within the Significant

Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts are prohibited. Additionally, reductions to the fire safety zones in the Commercial Forest Use zones are not allowed under the Adjustment process; and

(2) Reduction of yards and setback requirements within the Geologic Hazards Overlay (GH) shall only be reviewed as a Variance; and

(3) Reduction of yards/setback/buffer/resource protection setback requirements within the Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and

(4) Minor modification of yards and set-backs in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.

Staff: This variance request is to reduce the required 30 foot setback to the north property line, where the subject property abuts the SE Red Elder Drive right of way. The applicant has proposed a 40% reduction to the street front yard for the dwelling and a 100% reduction to the street front yard to zero feet for the driveway bridge structure and associated support structures and retaining wall. *This criterion is met.*

8.2 (B) Dimensional standards that may be modified under a Variance review are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, building height, sign height, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts; and

(2) Modification of fire safety zone standards given in Commercial Forest Use districts; and

(3) Increase to any billboard height or any other dimensional sign standard.

(C) The dimensional standards listed in (A) and (B) above are the only standards eligible for Adjustment or Variance under these provisions. Adjustments and Variances are not allowed for any other standard including, but not limited to, minimum lot area, modification of a threshold of review (e.g. cubic yards for a Large Fill), modification of a definition (e.g. 30 inches of unobstructed open space in the definition of yard), modification of an allowed density in a Planned Development or houseboat moorage, or to allow a land use that is not allowed by the Base Zone.

Staff: The applicant has requested a variance to reduce the 30-foot front yard requirement under MCC 39.4375(C). The applicant is requesting a variance rather than an adjustment because the applicant is proposing to reduce the front yard by more than 40 percent, from 30’ to 18’ for the dwelling and zero feet for the driveway bridge. Yards are one of the dimensional requirements that can be modified under Variance Review. *This criterion is met.*

8.3 MCC 39.8215 VARIANCE APPROVAL CRITERIA

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (G) are met:

(A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to:

- (1) The size, shape, natural features and topography of the property, or**
- (2) The location or size of existing physical improvements on the site, or**
- (3) The nature of the use compared to surrounding uses, or**
- (4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district, or**
- (5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.**
- (6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.**

Applicant: “The condition of our lot that meets the variance criteria is specifically related to (A)(1) and evident in the topography site plan that is submitted. The natural topography creates a steep slope that hugs the access road side of the lot. This steep slope that is naturally occurring results in a need to adjust the standard of house placement to 18’ from the property line. In addition to the slope that natural feature of a stream that runs through the middle of the property presents a unique barrier to placing the house any farther than 18’ from the property line. The request for a variance is not made without careful consideration of placement of septic and the house in relation to both the stream and the slope of the property which demands that the house be placed with this setback to allow access to Red Elder and sufficient distance from the advance technology septic system.”

Staff: The applicant must demonstrate that a circumstance or condition applies to the property that does not apply generally to other property in the same vicinity or zoning district, and, as noted in MCC 39.8215(A)(6), that circumstance or condition need not be listed in County Code. The subject property is 1.00 acres and located in the RR zone. Here, as the applicant points out, and staff concurs, the circumstance on the subject property is unique because the subject property was lawfully created through a subdivision, and yet despite those lawful actions, this circumstance most likely would not occur today because partition laws would prevent a division of land that did not meet current zoning requirements. While it appears that the circumstance might apply to the property to the west of subject property; the subject property is much steeper with the stream in the middle of the property. As a result, this circumstance does not apply generally to the RR zoning district. *This criterion is met.*

The applicant states that the unique or unusual circumstances of the site are a steep topography and a stream that cuts through the middle of the property which presents a unique barrier to placing the house any farther than 18’ from the property line. The applicant states “The request for a variance is not made without careful consideration of placement of septic and the house in relation to both the stream and the slope of the property which demands that the house be placed with this setback for access to SE Red Elder Drive and sufficient distance from the advance technology septic system”.

Staff notes that all of the properties in the vicinity are undeveloped. The Minimum Yard Dimensions of the RR zone are the same as those that are applicable to all base zones except the Commercial Forest Use zones. The subject property has a condition (the steep slope and the

stream) that could impact the use of the subject property. The applicant has made arguments in support of this finding in their narrative (Exhibit A.2) that by constructing the garage within the yard setback will not impact the neighboring properties because it will not be more visible than if it were setback by 30'. *This criterion is met.*

(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

Staff: The applicant states that "The condition presented in (A) was not created by the homeowners as the land has not been developed or changed at all. In no way has the natural feature of topography were created by either current or previous homeowner. No personal circumstances are present in this variance request."

The applicant notes that the challenges of the site are because of the existing conditions on the property which was created as part of a subdivision. The lot creation as submitted by the applicant were not self-imposed by the applicant.

Staff notes that the impetus for the Variance request is a desire by the property owner to make improvements to the property including the building of a new single family residence and attached garage.

This criterion is met.

Hearings Officer: The hardship created here is imposed by the actions of the developer who subdivided the subject property in 1958 and chose not to improve roads for the use by future residents within the platted rights-of-way and who created a one acre lot bisected by a stream. County septic requirements also make it difficult to develop the property in compliance with setback rules. These requirements are not the result of actions by the applicant. The steep grade of the property, also, is not a condition of the applicant's making.

(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

Applicant: The applicant presents that "the practical difficulty is that the placement of the house being moved to the dimensional standard would require such significant augmentation to the land at the base of the slope that it would become unpractical to complete. In addition, it would create an unnecessary hardship in creation of a practical design. The design of the home was done in a thoughtful way to merge and flow with the natural topography including with 18' setback that was originally calculated as an adjustment from the standards. We have designed all the other development around the originally calculated measure and changing the existing full site development plans would create unnecessary hardship."

Staff: In general, the purpose of variances is to provide relief from strict application of development standards in cases where lawful development of a property may not be otherwise feasible due to site or other conditions and where the proposed variation from the standards(s) does not adversely impact adjacent uses or conflict with the purpose for the standard.

The applicant has provided a written narrative to explain why a variance should be granted to reduce the required setback from public rights-of-way for garages facing a street in the Rural Residential zone (Attachment A.21) In this case, the purpose of the yard between the buildings and the property lines is to provide space, light, air circulation, and safety from fire hazards as in MCC 39.2000 Definitions. Staff interprets the general purpose of the garage setback as multi-faceted: To

create separation between traffic and structures, to protect public rights-of-way from vehicles encroaching into streets, and to accommodate parking of vehicles in driveways.

The applicant presents arguments in support of this finding in their narrative (Exhibit A.2) and site details (Exhibit A.21) that the requested reduction in the required setback for garages facing the street from 30' to 18' "is the minimum variance required to permit the off-street parking requirements and intended residential use of this property in a safe and aesthetically acceptable way" and "to build a bridge to an at grade garage" (Attachment A.20). As described in the application narrative (Exhibit A.2), the applicant ruled out building the single family house and garage elsewhere on the site because of the stream that runs through the middle of the property and the fact that the access to the site is from Red Elder not from the access which is shown on the lower portion of the property off "Red Fern Road" because it is not improved at all.

This criterion is met.

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

Applicant: "The area that this could impact include, the road and the property across the street. We believe it will equally provide privacy for the Oregon Metro owned land if they were to develop across the street because the reduction of space has the same visibility impact as it would if we used the full setback, we would still have a front facing garage, and driveway, due to the slope and proximity to the creek on the other side. If future development would occur on the county owned road, the setback would still allow for reasonable distance from that development, as there would still be ample space for road widening, curbs, and/or sidewalks."

Staff: The adjoining properties are currently undeveloped. Staff concurs with the applicant's assertion that the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zoning district. The subject property was lawfully created over 40 years ago. There is no indication that the property, as currently configured, has created or will create negative impacts to the public or surrounding properties, including the ability to use those properties as Commercial Forest Use or as residential uses. The requested variance will not alter that existing configuration, and instead will serve to allow the property to be developed.

There is also no indication that the variance would negatively impact the adjoining properties or their ability to develop. The applicant has made the argument that should SE Red Elder Drive be widened in the future due to future development needs, that widening is proposed on the Roadway Improvement Plan (Exhibit A.20) that shows improvement of Emergency Vehicle Pullout Turnout across the road from proposed concrete driveway on the opposite side of SE Red Elder. The hearings officer will need to judge whether the authorization of the variance will be injurious to any of the surrounding properties. The applicant has made arguments in support of this finding in Exhibit A.2.

Staff notes that all of the properties located on the south side of SE Red Elder Drive on this road (between Hemlock and 65 SE Red Elder Drive) are steep lots.

Lot 1 which west of subject property is not developed and it appears as if it could be accessed off of SE Hemlock due to double frontage of property.

Lot 3 to the east of subject property is not developed and it appears to have similar topography as subject site.

Lots 6 North of property is owned by Metro – across the road on SE Red Elder is not developed, is

zoned Commercial Forest Use -4 (CFU-4) and is approximately 30 acres in size.

Lot 3 South of property (across Red Fern) is not developed.

There is no indication that this variance will negatively impact those adjoining properties. *This criterion is met.*

Hearings Officer: Neighbors testified about their concerns about the narrow width of the road and difficulties in clearing snow in the winter. This is an existing condition. Its negative impacts were not shown to be exacerbated by the proposed location of the home and driveway. It was explained that the subject property has been used as a location to pile snow in the winter and that the driveway would interfere with that use. The need to remove snow from the road would be impacted in much the same way as it would be by a standard driveway built without a support structure. In neither case would a considerate neighbor fill the driveway with snow from the road. The narrow public road itself only occupies a relatively small portion of the 50'-wide right-of-way. This means that there should be room within the right-of-way to pile snow.

The proposed single-family dwelling is located on a vacant lot that constitutes a Lot of Record in MCC 39.3090 (B). The lot abuts SE Red Elder Road, which is a public street. The Roadway Improvement Plan (Exhibit A.20) shows an "Emergency Vehicle Pullout Detail" on the north side of SE Red Elder Drive across from the Wallace's proposed driveway. Fire Department has reviewed and has no concerns. No changes are required as Corbett Fire District (Exhibit A.9) and the Multnomah County Transportation Division (Exhibit B.2) have reviewed the proposal and find that the proposal is in compliance with adopted Fire District standards and will be result in access as further described in the Variance findings in Section 8 of this report. No parking shall be allowed in the right of way known as SE Red Elder Road. These restrictions and improvements all help assure that the approval of the variance will not be detrimental to the public welfare. *As conditioned, these criteria are met.*

(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.

Applicant: "The design team has reviewed the house plans, topography and explored all feasible options to change the setback. The 18' requested is an absolute minimum necessary that would allow for temporary parking in front of the garage to open the door while maintaining a flat driveway and not overly disrupt the existing topography and native flora at the back of the house."

Staff: The granting of the variance for the SFD would be the minimum necessary variation which would alleviate the difficulty. The applicant has made arguments in support of this finding in Exhibit A.3; we concur with the applicant for the reasons stated above. *This criterion is met.*

(F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

Applicant: "In reviewing the approval criteria, we also see if in a RR zone, which this property is, we are to ensure that the adjustment doesn't detract from the livability or appearance of the residential area. We have designed the home to have very little visibility from Red Elder Drive, it will follow the contour of the land and so most of the house will be out of line of sight, maintain the natural view of trees for the other property owners. We cannot see any impact of this adjustment on livability, if anyone wanted to walk down this road to enjoy the surrounding property we still will be providing sufficient space and view to do so.

Still allow for adequate parking: Our plans include a driveway and garage that would allow for visitor and owner parking. The current land and road conditions do not allow for street side parking, the setback variance would still allow for future development of parking if/when that is developed. Given the rural nature of this location it is not expected that there are high parking needs on the access road where the setback is being requested. The increased need for parking by building of home would be addressed through the condition of the driveway and garage. These are the reasons that we believe that the adjustment equally meets the intended element of this regulation.

We believe that the impact from the variance will positively affect the area. For example; the house starting closer to the road allows for a more natural placement of the house on the unique topography of the land, minimizing alteration of existing vegetation.

The 18' setback will ensure that the house stays adequate distance from the creek to support maintaining the natural flow of water and allowing for native plants and wildlife to thrive undisturbed from development.”

Hearings Officer: The impacts that could be created would be to the future expansion of the SE Red Elder Road; however, the current right-of-way provides a standard width for the construction of a County-standard road. *This criterion is met.*

(G) The variance must be in support of a lawfully established use or in support of the lawful establishment of a use.

Staff: The intent of the variance is “in support of the lawful establishment of a use.” A single family dwelling is an allowed use in the Rural Residential zone. *The criterion is met.*

8.0 GEOLOGIC HAZARDS PERMIT:

8.1 MCC 39.5070- PURPOSES.

The purpose of this Subpart 5.B is to regulate ground disturbing activity within the Geologic Hazards Overlay in order to promote public health, safety and general welfare and to minimize the following risks potentially arising from ground disturbing activity or the establishment or replacement of impervious surfaces: public and private costs, expenses and losses; environmental harm; and human-caused erosion, sedimentation or landslides.

Staff: The proposed single-family dwelling is located on a 1 acre parcel that has topography greater than 25%. The applicant has applied for a GH Permit to authorize the proposed development. *This criterion is met.*

8.2 MCC 39.5075 PERMIT REQUIRED Unless exempt under this code or authorized pursuant to a Large Fill permit, no development, or ground disturbing activity shall occur: (1) on land located in hazard areas as identified on the Geologic Hazards Overlay map, or (2) where the disturbed area or the land on which the development will occur has average slopes of 25 percent or more, except pursuant to a Geological Hazards permit (GH).

Staff: The application is being triggered by number 2) above because the land on which the development will occur has average slopes of 25 percent or more; thus the Geologic Hazard permit criteria must be addressed and met. The applicant submitted a topographic site plan (Exhibit A.3 and Exhibit A.24) that describes the development including Road improvements – driveway bridge, single family dwelling, septic system and well. The applicant has a Hillside Development Permit Worksheet (A.15) completed by Mia C. Mahedy, P.E., Registered Professional Engineer and a

Geotechnical Report which satisfy the requirements above. *These criteria are met.*

8.3 MCC § 39.5085 GEOLOGIC HAZARDSPERMIT APPLICATION INFORMATION REQUIRED. An application for a Geologic Hazards Permit shall include two copies of each of the following:

(A) A scaled site plan showing the following both existing and proposed:

- (1) Property lines;**
- (2) Building structures, driveways, roads and right of way boundaries;**
- (3) Location of wells, utility lines, site drainage measures, stormwater disposal system, sanitary tanks and drainfields (primary and reserve);**
- (4) Trees and vegetation proposed for removal and planting and an outline of wooded areas;**
- (5) Water bodies;**
- (6) Boundaries of ground disturbing activities;**
- (7) Location and height of unsupported finished slopes;**
- (8) Location for wash out and cleanup of concrete equipment;**
- (9) Storage location and proposed handling and disposal methods for potential sources of non-erosion pollution including pesticides, fertilizers, petrochemicals, solid waste, construction chemicals, and wastewaters;**
- (10) Soil types;**
- (11) Ground topography contours (contour intervals no greater than 10-feet); and**
- (12) Erosion and sediment control measures.**

Staff: The applicant's site plan includes erosion and stormwater treatment management control plans (Exhibit A.3 and A.11). The plans indicate that there will be construction fencing, bio-filter bags and silt fencing and a 3' x 36' storm soakage trench installed prior to land disturbing activities. To ensure that these actions occur, a condition will be required that erosion control measures be installed prior to construction or land disturbance.

The applicant has also provided a Storm Water Certificate completed by Mia C. Mahedy-Sexton, PE on April 4, 2018 (Exhibit A.11). The Storm Water Certificate discusses the current conditions and recommends a detention pipe and a flow control structure along with a level spreader stormwater outflow (Exhibit A.24) be constructed on the property to ensure that storm water is collected and disposed at a 10-year design frequency. Additionally, there is a stream in the middle of the project site, so a buffer of 50' on each side is needed. *As conditioned, this criterion is met.*

(B) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). For purposes of this subsection, the term "site" shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

Staff: Based on site visit dated July 11, 2019, and based on Hillside Development Application Worksheet (Exhibit A.15), there has been no ground disturbance, excavation or fill deposited over the 20-year period preceding the date of application, and existing and proposed slopes in areas to

be disturbed (percent slope) at the subject property. *This criterion is met*

(C) Written findings, together with any supplemental plans, maps, reports or other information necessary to demonstrate compliance of the proposal with all applicable provisions of the Geologic Hazards standards in MCC 39.5090. Necessary reports, certifications, or plans may pertain to: engineering, soil characteristics, stormwater drainage control, stream protection, erosion and sediment control, and replanting. The written findings and supplemental information shall include:

(1) With respect to fill: (a) Description of fill materials, compaction methods, and density specifications (with calculations). The planning director may require additional studies or information or work regarding fill materials and compaction.

(b) Statement of the total daily number of fill haul truck trips, travel timing, loaded haul truck weight, and haul truck travel route(s) to be used from any fill source(s) to the fill deposit site.

(2) A description of the use that the ground disturbing activity will support or help facilitate.

(3) One of the following: (a) Additional topographic information showing the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or (b) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or, (c) A GHP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with their stamp and signature affixed indicating that the site is suitable for the proposed development.

Staff: A Geotechnical Reconnaissance and Stability Preliminary Study (Exhibit A.16) and Geotechnical Report (Exhibit A.17) completed by Mia Mahedy-Sexton, P.E., of Rapid Soil Solutions Inc. is included in the application materials.

The Geotechnical Engineering Report completed by Mia Mahedy-Sexton, Registered Professional Engineer and Geotechnical Engineer outlines and details specific information to ensure reasonable safety from earth movement hazards (Exhibit A.4). The Report discusses the regional geology, seismic setting, and specific site characteristics. According to the report: the underlying geologic unit at the subject property is mapped as late Miocene and Pliocene) – sand, gravel, sandstone, conglomerate, siltstone, and mudstone derived from the Cascade Range and the Columbia River drainage. A total of two (2) borings were excavated with the locations of the boring shown on Figure 3 in the appendix of the Geotechnical Report. Based on the results of those test, Mia Mahedy-Sexton, Registered Professional Engineer found that the proposed development is feasible. The conclusions also recommended action items that should be done prior, during, and after development. To ensure that those recommendations are met, a condition will be required. *These materials have be provided, the criteria are met.*

(i) If the GHP Form– 1 indicates a need for further investigation, or if the director requires further study based upon information contained in the GHP Form– 1, a geotechnical report as specified by the director shall be prepared and submitted.

[a] A geotechnical investigation in preparation of a geotechnical report shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The report shall include specific investigations required by the director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable

safety from landslide hazards.

Staff: Mia Mahedy-Sexton, P.E., completed a Geotechnical Report that found the proposed development site suitable for the development of the proposed single family residence and proposed right-of-way improvements (Exhibit A.17). *This criterion is met.*

[b] Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the geotechnical report to ensure safety of the proposed development.

Staff: Based on a site visit by Katie Skakel, Senior Planner on July 11, 2019 there has been no development related manipulation of the site. *This criterion is met.*

[c] Observation of work required by an approved geotechnical report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the director prior to issuance of the permit.

Staff: The applicant has provided a Hillside Development Permit Work Sheet (Exhibit A.15) Nov 09, 2018, Geotechnical Reconnaissance and Stability Preliminary Study (Exhibit A.16), a Hillside Development Permit Worksheet, and a Geotechnical Report completed by Mia C. Mahedy, Registered Professional Engineer on February 18, 2019 (Exhibit A.17). The Geotechnical Report details specific site characteristics that will need to be considered as part of this project.

In preparing the site, Mia Mahedy, PE states that the contractor should locate the test pits, excavate to the depths shown on the test pit logs, and backfill each excavation with structural fill under the observation of the Geotechnical Engineer. Topsoil, vegetation, roots, undocumented fill (construction/demo debris) and any other deleterious soils will also need to be stripped from the proposed development area. Mia Mahedy, P.E. recommends that the foundation bear entirely on the firm, and unyielding native, undisturbed silt soils encountered as 3 feet below the fill soils. The Geotechnical Report (Exhibit A.17) also discusses the structural fill that could also be used- placed atop the stiff native subgrade. The report states that foundation must be installed into the stiff silt that is found at 3.5 to 4ft below grade. This will give the required slope setback based upon the below figure. It states that the depth may be locally variable and should be confirmed by geotechnical engineer at the time of construction and a condition of approval will be required that requires monitoring by P.E. of construction and final sign off that constructed pursuant to P.E. recommendations. *As conditioned, this criterion is met.*

[d] The director, at the applicant's expense, may require an evaluation of GHP Form- 1 or the geotechnical report by another Certified Engineering Geologist or Geotechnical Engineer.

Staff: This does not appear to be required based on stamped plans and report by P.E. *This criterion is met.*

(4) Documentation of approval by each governing agency having authority over the matter of any new stormwater discharges into public right-of-way.

Staff: Not applicable as stormwater is not being discharged into right-of-way, rather it is required to be addressed on site. *This criterion is met.*

(5) Documentation of approval by the City of Portland Sanitarian and any other agency having authority over the matter of any new stormwater surcharges to sanitary drainfields. (Ord. 1271, Amended, 03/14/2019)

Staff: The City of Portland Sanitarian has reviewed site conditions and provided installation evaluation (Exhibit A.8) and has no concerns. *This criterion is met*

MCC§ 39.5090 GEOLOGIC HAZARDS PERMIT STANDARDS.

A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

Staff: According to MCC 39.6210, no ground disturbing activity shall occur except pursuant to a Geologic Hazards (GH) Permit because the site has slopes greater than 25% which triggers the GH permit.

§ 39.6210 PERMITS REQUIRED.

(A) Unless exempt under this Code, whether under MCC 39.6215, 39.5080, 38.5510 or otherwise, no ground disturbing activity shall occur except pursuant to one of the following permits: a Minimal Impact Project (MIP) permit, an Erosion and Sediment Control permit (ESC), an Agricultural Fill permit (AF), a Geologic Hazards permit (GH), or a Large Fill permit (LF).

Staff: The applicant has submitted a Hillside Development Permit with supporting documentation which staff has accepted as the Geologic Hazard (GH) permit as the same criteria are addressed. An Erosion and Sediment Control permit will be required as a Type 1 permit as a condition of approval for Building Permit, if Hearings Officer approves variance.

(B) The permits referenced in subsection (A) are required in addition to and not in lieu of any other local, state or federal permit, including but not limited to permits required for ground disturbing activities within a water body regulated by the Oregon Department of State Lands, the U.S. Army Corps of Engineers or the Oregon Department of Fish and Wildlife.

Staff: As indicated above, any other local, state or federal permit are still applicable. The applicant will need to submit required permit to Oregon Department of State Lands for the wetland near the waterbody on subject property. *With condition of approval, that applicant receives any other local, state or federal before final Land Use sign off on Building Permit.*

(C) No ground disturbing activity shall occur except in support of a lawfully established use or in support of the lawful establishment of a use.

Staff: The use is authorized in the Rural Residential zone if approved with requested Variances.

(D) No permit identified in subsection (A) shall be issued in any case where the planning director or a building official determines that the proposed ground disturbing activity will be hazardous by reason of flood, geological hazard, seismic hazard, or unstable soils; or is liable to endanger any other adjacent property; or result in the deposition of debris on any public right-of-way or property or water body; or otherwise create a nuisance.

Staff: In this particular case based on record we do not find that site is hazardous for proposed use.

(E) Responsibility. For any ground disturbing activity authorized under a permit listed in subsection (A):

(1) Whenever sedimentation is caused by ground disturbing activity, the person, corporation or other entity shall be responsible to remove that sedimentation from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project.

Staff: The site plan includes erosion control devices and measures which indicate that there will be construction fencing, bio-filter bags and stormwater trench installed prior to land disturbing activities (Exhibit A.11). These erosion measures will ensure that pollution discharges will be prevented. *This criterion is met.*

(2) It is the responsibility of any person, corporation or other entity doing ground disturbing activity on, in, under or around a water body, or the floodplain or right-of-way, to maintain as nearly as possible in its present state the water body, floodplain, or right-of-way during such activity, and to return the same to a functional condition equal to or better than the condition existing immediately prior to the ground disturbing activity.

Staff: Due to the proximity of the creek (92 feet) from proposed single family residence as shown on (Exhibit A.26); the site has been evaluated and based on record staff find that the function of the stream with the property owner taking responsibility throughout the entire project that the functional condition of the water body can remain the same. *This criteria is met.*

(F) Implementation.

(1) Performance bond. A performance bond may be required in the amount of the full cost of the establishment and maintenance of all erosion, sedimentation and stormwater control measures for activity authorized through any permit listed in subsection (A). The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. The bond may be waived if the director determines the scale and duration of the project and the potential problems arising therefrom will be minor.

Staff: In this particular case a performance bond is not being required as conditions of approval have included measure to provide protection from potential problems. *This criteria is met.*

(2) Inspection and enforcement. The director may take steps to ensure compliance with the requirements of Part 6, Geologic Hazards permit requirements, and Large Fill permit requirements, including but not limited to, inspections, peer review of engineering analysis (at the applicant's expense), post construction certification of the work, and the posting of a notice providing County contact information in the event that questions arise concerning work occurring on-site. The requirements of this subpart of MCC Chapter 39 shall be enforced by the planning director. If inspection by county staff reveals erosive conditions which exceed those prescribed by the permit, work may be stopped until appropriate correction measures are completed.

Staff: With conditions of approval; compliance can be satisfied.

(G) Final approvals. A certificate of occupancy or other final approval shall be granted for development subject to the provisions of this subpart of MCC Chapter 39 only upon satisfactory completion of all applicable requirements. (Ord. 1271, Amended, 03/14/2019)

Staff: With conditions of approval, compliance can be satisfied.

MCC§ 39.5090 GEOLOGIC HAZARDS PERMIT STANDARDS.

(A) The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. For purposes of this provision, the term "site" shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

Staff: The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. The proposed fill for the entire project is a net fill of 5,340 cubic feet. Based on a site visit dated July 11, 2019 and applicants Hillside Development Permit, Grading and Erosion Control worksheet dated 12/5/18 and Geotechnical report dated February 13, 2018, completed by, Registered Professional Engineer Mia C. Mahedy (Exhibit A.17) it has been verified that the submittal will not exceeded 5,000 cubic yards.

The applicant has submitted, a Hillside Development Permit dated 05/30/2019 to authorize the proposed development. The applicant has provided a Geotechnical Report. Mia C. Mahedy P.E. states, “the project should use Fill that are placed on level benches in thin lifts and compacted to dry density of at least 92% of its Maximum Dry Density (MDD) as determined by the Modified Proctor Test (ASTMD-1557), if using rock and 95% of Standard proctor test (ASTM D-698) if using soil.” The “site” is 1 acre and the approximate ground disturbance is 14,230 sq ft/0.32 acres with a fill volume of 5,340 cubic feet (CF) to create a “flatter spot on the existing slope; leveling soil removal and fill with ¾ minus gravel that follows (Exhibit A.17) Geotech report pg. 8 “free-draining, well-graded, crushed aggregate base with a minimum particle size of ¾ inch. The rock shall not contain more than 5% fines (materials passing the No. 200 sieve, as tested by ASTM D-1140). The rock shall be compacted to a dry density of at least 92% of its MDD.” All of the construction for will be done in the Right of way of SE Red Elder and Tax Lot 1000. *Criterion is met.*

(B) Fill shall be composed of earth materials only.

Applicant: Fill materials to be used that will support the foundation include ¾ -crush rock that will be compacted using a gas-powered walk behind compactor. We will use approximately 500 cubic feet that is intended to cover 24’ x 24’ x 8’. There is no other fill being used to support the structure, the other noted area of fill is for raising the grade height only.

Staff: As described and shown in Exhibit (A.15) fill will be composed of earth materials only. A Geotechnical Report, completed by Mia C. Mahedy PE, dated October 13, 2018 shows the geology and subsurface conditions of the site to evaluate seismic design criteria (Exhibit A.17). The only fill area is near the proposed foundation meets setback on other properties. The applicant describes that fill material will support the foundation, include ¾ crush rock that will be compacted using a gas-powered walk behind compactor. They will use approximately 500 cubic feet that is intended to cover 24’ x 24’ x 8’. There is no other fill being used to support the structure, the other noted area of fill is for raising the grade height only. All of the construction is on Tax Lot 1N5E35CC-Tax Lot 1000. Condition 5 requires compliance with this standard. *As conditioned, this criterion is met.*

(C) Cut and fill slopes shall not exceed 33 percent grade (3 Horizontal: 1 Vertical) unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in excess of 33 percent is safe (including, but not limited to, not endangering or disturbing adjoining property) and suitable for the propose development.

Staff: Applicant has submitted Geotechnical Engineering analysis as there is a 25% slope or greater on subject property The Geotechnical Engineering Report completed by Mia C. Mahedy, PE, Registered Professional Engineer outlines and details specific information to ensure reasonable safety from earth movement hazards (Exhibit A.17). The Report discusses the regional geology, seismic setting, and specific site characteristics. According to the report the geologic unit includes the Boring volcanic Field and Field Exploration and Test using 3 test pits (HA-1 through HA-3) within the assumed house footprint which were dug on the site on January 22, 2018. Based on the

results of those test, Mia C. Mahedy, Registered Professional Engineer found that “a structure with typical foundation into competent native soil at least 4ft would be relatively stable. In my opinion, the proposed development will not significantly increase slope instability on or adjacent to project site.” The conclusions also recommended action items that should be done prior, during, and after development. To ensure that those recommendations are met, a condition will be required. *As conditioned, this criterion is met.*

(D) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property.

Staff: The applicant has provided a Hillside Development Permit Application (Exhibit A.15) November 9, 2018, a Geotechnical Reconnaissance and Stability Preliminary Study, a Hillside Development Permit Worksheet, and a Geotechnical Engineering Report completed by Mia C. Mahedy, Registered Professional Engineer on November 09, 2018 (Exhibit A.16), The Geotechnical Engineering Report details specific site characteristics that will need to be considered as part of this project.

In preparing the site, Mia C. Mahedy, PE stated that the contractor should locate the test pits, excavate to the depths shown on the test pit logs, and backfill each excavation with structural fill under the observation of the Geotechnical Engineer. Topsoil, vegetation, roots, undocumented fill (construction/demo debris) and any other deleterious soils will also need to be stripped from the proposed development area. Mia C. Mahedy, P.E. recommends that the foundations “must be installed into the stiff SILT that is found at 3.5ft to 4ft below grade. This will give the required slope setback based upon the below figure (Exhibit A.17, pg 6). It further states that the depth should be confirmed by a geotechnical engineer at time of construction. The report states, “Footings placed into the SILT shall be designed for an allowable bearing capacity of 2,000 pounds per square foot (psf). The recommended allowable bearing pressure can be doubled for short-term loads such as those resulting from wind and seismic forces. The report describes the foundation design requirements. None of the reports or worksheets indicate that cut and fill slopes will disturb adjoining properties.

The applicant has also provided a Storm Water Certificate completed by Mia C. Mahedy on April 4, 2018 (Exhibit A.11). As described by the applicant the proposed impervious surfaces (roof and driveway) are collected in a private storm system, which is piped and routed through a detention pipe to provide flow control for the 10-year storm event. The system discharges on private property through a “level spreader” system consisting of a perforated pipe (laid flat) enclosed within a rock trench. This design returns the stormwater to a natural sheet flow condition (not concentrated) and maintains the natural course of drainage. The Storm Water Certificate discusses the current conditions and recommended stormwater treatment management be constructed on the property to ensure that storm water is collected and disposed at a 10-year design frequency *This criterion is met.*

(E) Fills shall not encroach on any waterbody unless an Oregon licensed Professional Engineer certifies in writing that the altered portion of the waterbody will continue to provide equal or greater flood carrying capacity for a storm of 10-year design frequency.

Staff: No fill will encroach on any waterbody. There is an intermittent stream that runs across the entire property from the East side of property and heads West at 100 feet deep into the property and the proposed site plan shows that the single family dwelling is 92' from the proposed structure. The PE report certifies that fills shall not encroach on the waterbody. *This criterion is met.*

(F) Fill generated by dredging may be deposited on Sauvie Island only to assist in flood control or to improve a farm's soils or productivity, except that it may not be deposited in any SEC overlay, WRG overlay, or designated wetland.

Staff: The proposal does not involve dredging spoils. *The criterion is not applicable.*

(G) On sites within the Tualatin River drainage basin, erosion, sediment and stormwater drainage control measures shall satisfy the requirements of OAR 340-041-0345(4) and shall be designed to perform as prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. Ground-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340-041-0345(4) is approved for alterations within the buffer area.

Staff: The site is not within the boundaries of the Tualatin River drainage basin, which is located in western portions of Multnomah County. *The criterion is not applicable.*

(H) Stripping of vegetation, ground disturbing activities, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction.

Staff: The Hillside Development Permit Worksheet indicates that the stripping of vegetation, grading, and other soil disturbance shall be limited to an area near the proposed single-family dwelling (Exhibit A.15). The site plan illustrates the location of construction fencing, bio-filter bags, and stormwater trench (Exhibit A.3). To ensure that erosion control is managed on the property, a condition will be required that these measures be installed prior to land disturbing activities. *As conditioned, this criterion is met.*

(I) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff.

Staff: The site plan and Grading and Erosion Control worksheet indicates that the proposed development will result in approximately 14,230 sq ft of cut and 5,340 cubic feet (including road) of fill, for a net fill of 8,890 cubic ft. The total impervious area (roof and driveway) is approximately .32 acres in the area surrounding the proposed single-family dwelling (Exhibit A.3 and A.11). To ensure that bare soil is stabilized, a condition will be required that temporary vegetation and/or mulching shall be used to protect exposed areas during development. *As conditioned, this criterion is met.*

(J) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.

Staff: This standard can be met with a condition that will require that temporary vegetation and/or mulching be used to protect exposed areas during development. *As conditioned, this criterion is met.*

(K) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

(1) A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;

(2) The buffer required in subsection (K)(1) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment, and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041-0345(4).

Staff: The site plan (Exhibit A.26) indicates that the proposed development is approximately 92 feet from the top of the bank of a stream, waterbody, or wetland; therefore, the standard in (K)(1) is met and the standard in (K)(2) does not apply. *The applicable criterion is met.*

(L) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical.

Staff: This standard can be met with a condition that will require that temporary vegetation and/or mulching be used to protect exposed areas during development. *As conditioned, this criterion is met.*

(M) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary.

Staff: The site plan includes erosion control devices and measures which indicate that there will be construction fencing, bio-filter bags and stormwater trench will be installed prior to land disturbing activities (Exhibit A.3). These erosion measures will ensure that pollution discharges will be prevented. *As conditioned, this criterion is met.*

(N) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized.

Staff: A condition will be required that disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures. *As conditioned, this criterion is met.*

(O) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding.

Staff: The Hillside Development Permit Worksheet (A.15) and Geotechnical Report (Exhibit A.17 page 8) indicates that the stripping of vegetation, grading, and other soil disturbance shall be limited to an area near the proposed single-family dwelling (Exhibit A.3) and that they will use proactive methods to ensure that soil erosion is minimized. These include sediment fencing, adding mulch to disturbed area immediately after ground disturbance, and bio bags at base of slopes. Fiber mulch mats will be considered as a back up plan if regular inspection shows need during high precipitation months and will be integrated into the plan as needed. Bio bag guidance to be implemented was found on page 4-78 of Erosion Prevention and Sediment Control Planning and Design manual, 2008. To ensure that erosion control is managed on the property, a condition will be required that these measures be installed prior to land disturbing activities. *As conditioned, this*

criterion is met.

(P) All drainage measures shall be designed to prevent erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system.

Staff: The site plan includes erosion control and indicates that there will be construction fencing, bio-filter bags and stormwater trench installed prior to land disturbing activities (Exhibit A.3). To ensure that these erosion measures are in place, conditions will be added to ensure that, if necessary, additional provisions shall be made to structurally impede surface runoff through the use of debris basins, silt traps, and other measures to effectively accommodate increased runoff and prevent surface water from damaging the cut face of excavations. Permanent plantings and seeding of bare areas shall be done as soon as practical. *As conditioned, this criterion is met.*

(Q) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion.

Staff: The site plan includes erosion control and indicates that there will be construction fencing, bio-filter bags and trench be installed prior to land disturbing activities (Exhibit A.3). To ensure that these erosion measures are in place, conditions will be added to ensure that, if necessary, additional provisions shall be made to structurally impede surface runoff through the use of debris basins, silt traps, and other measures to effectively accommodate increased runoff and prevent surface water from damaging the cut face of excavations. Permanent plantings and seeding of bare areas shall be done as soon as practical. *As conditioned, this criterion is met.*

(R) Erosion and sediment control measures must be utilized such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to:

(1) Energy absorbing devices to reduce runoff water velocity;

(2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

(3) Dispersal of water runoff from developed areas over large undisturbed areas.

Staff: The site plan includes erosion control devices and measures which indicate that there will be construction fencing, bio-filter bags and stormwater trench installed prior to land disturbing activities (Exhibit A.3). These erosion measures will ensure that pollution discharges will be prevented. *As conditioned, this criterion is met.*

(S) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient distance from water bodies; or by other sediment reduction measures;

Staff: A condition will be required that disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures. *As conditioned, this criterion is met.*

(T) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring

and clean-up activities.

Staff: A condition will be required that non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. *As conditioned, this criterion is met.*

(U) On sites within the Balch Creek drainage basin, erosion, sediment, and stormwater control measures shall be designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. All ground disturbing activity within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

Staff: The subject property is not located within the Balch Creek Drainage Basin; therefore, this requirement does not apply. *This criterion is not applicable.*

(V) Ground disturbing activities within a water body shall use instream best management practices designed to perform as prescribed in the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual.

Staff: The applicant's site plan indicates that there will be no ground disturbing activities within a water body. *The criterion is not applicable.*

(W) The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes, unless mitigated as approved by the County Transportation Division.

Staff: The County Transportation Division has reviewed the proposed project and the proposal does not trigger a transportation impact as the number will average less than one a day. *This criterion is met.*

(X) Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way.

Staff: Not applicable.

(Y) No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill.

Staff: Property owner will not be compensated.

8.0 Transportation Standards

Hearings Officer: The Multnomah County Road Rules are administrative rules adopted by the Director of Multnomah County's Department of Community Services and its Transportation Director as authorized by MCC 29.500 et seq. The rules enforce the requirements of MCC 29.500 et seq. and also impose exactions on property owners in certain circumstances MCC 29.503(C). MCC 29.506 requires the applicant to obtain a permit in order to do any construction work in the public right-of-way that adjoins the subject property. Work is required to occur in the right-of-way to provide a connection between the existing road and the driveway structure proposed by the

applicant. The Director is authorized by MCC 29.507 to vary the requirements of MCC 29.500 et seq and road rules when written information is provided that substantiates that the variance is in keeping with the intent and purpose of MCC 29.500 et seq and the road rules and it is found that the requested variance will not adversely affect the intended function of the street or other related facility.

The Multnomah County Road Rules grant the authority granted by MCC 29.500 et seq to the Director to approve variances to the County's land use hearings officer when they related to land use applications in unincorporated Multnomah County. MCRR 16.100. Senior Assistant County Attorney Courtney Lords has advised that MCRR 16.100 refers to Chapter 37 but that said chapter has been replaced by Chapter 39.

MCRR 4.000 Access to County Roads

MCRR 4.100 Application for New or Reconfigured Access: Applicants for a new, altered or reconfigured access onto a road under County Jurisdiction are required to submit a site plan. Applicants may be required to provide all or some of the following:

- A. Traffic Study-completed by a registered traffic engineer;**
- B. Access Analysis-completed by a registered traffic engineer;**
- C. Sight Distance Certification from a registered traffic engineer; and**
- D. Other site-specific information requested by the County Engineer including a survey.**

Staff: The applicant has proposed creating a new access onto SE Red Elder Dr., shown on the applicant's site plan. *Criterion is met.*

MCRR 4.200 Number of Accesses Allowed: Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property is the standard for approval pursuant to the Multnomah County Code. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system. If more than one access is desired, a land use application must be submitted in compliance with applicable Multnomah County Codes.

Staff: This project proposes a single access point onto SE Elder Dr. *Criterion is met.*

MCRR 4.400 Width: Driveway, Private road and Accessway widths shall conform to the dimensions laid out in the Design and Construction Manual.

Staff: For a Residential use, a new or reconfigured driveway must be a minimum 12 feet wide and maximum 24 feet wide (MCDCM, Table 1.2.4, Private Access Driveway Width Standards) The proposed driveway is 24 feet wide at the edge of SE Red Elder Dr. and 15 feet wide within the property, thereby meeting the standard. *Criterion is met.*

MCRR 4.500 Sight Distance: All new or altered access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the Design and Construction Manual and AASHTO's A Policy on Geometric Design of Highways and Streets.

Staff: Multnomah County Road Rules Section 4.500 states that all new access points to roads under the County’s jurisdiction must have a minimum sight distance equal to the standards in the County Design and Construction Manual and AASHTO’s A Policy on Geometric Design of Highway and Streets. SE Red Elder Dr. is a Local Access Road and has a Design Speed of 20 mph, requiring 115 feet of sight distance per AASHTO standards. The proposed driveway has 120 feet of sight distance available in either direction on SE Elder Rd., thereby meeting the standard.
Criterion is met.

MCCR 5.000 Transportation Impact

MCCR 5.100 To determine if a Transportation Impact is caused by a proposed development, the County Engineer will determine the number of new trips generated by a site by one of the following methods:

- A. Calculations from the most recent edition of the Institute of Transportation Engineers’ Trip Generation (ITE); or**
- B. A site development transportation impact study conducted by a professional engineer registered in the State of Oregon and accepted by the County.**

MCCR 5.200 The County Engineer will use the information obtained pursuant to sub-section 5.100 and/or the frontage length of the subject property to determine the pro-rata share of the requirements set forth in Section 6.000. The County Engineer determination of pro-rata share of improvements will expire twelve months from the date of the County Engineer’s determination or after the associated land use permit is granted or closed. If expired, a review process and new determination will be required.

MCCR 5.300 Except where special circumstances require the County Engineer to make an alternate determination, any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour shall be found to have a Transportation Impact. A minimum increase of 10 new trips per day is required to find a Transportation Impact.

Staff: The Multnomah County Road Rules defines a Transportation Impact as the effect of any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour [MCCR 3.000]. A minimum increase of 10 new trips per day is required to find a transportation impact.

A typical new single-family detached house generates 10 trips per day, so this project will create a Transportation Impact.

As conditioned, this criterion is met.

MCCR 6.000 Improvement Requirements

MCCR 6.100 Site Development: All subject parties with respect to any property proposed for development, including but not limited to the owner of the site and the applicant (if different than the owner), will be responsible for improvements to the right-of-way for any said development of the property which is found to cause a Transportation Impact, those improvements shall include:

- A. Dedication of Right of Way Requirement: The subject parties are responsible for a pro-**

rata share, as determined by the County Engineer, of right-of-way and easement dedications necessary to bring the affected, existing, created or planned public streets and other facilities within and abutting the development to the current County standard. The dedication of the required easements and right-of-way may be conditions of approval of Design Review or any other development permit related to the proposal.

Staff: The County standard right-of-way for a Local Access Road is 50 feet, 25 feet from the road centerline to adjacent property lines, (DCM Table 2.2.5 Rural Cross Section). Currently, 25 feet of right-of-way exists between the site's property line and the centerline of SE Red Elder Dr. The total existing right-of-way width on SE Red Elder Dr. is 50 feet. *Criterion is met.*

B. Frontage Improvement Requirements: In addition to easement and right-of-way dedication requirements, a pro rata share may include half-street improvements along all of the site's County Road frontage(s). Right of Way improvements shall satisfy the standards of the County Design and Construction Manual based upon the functional classification of the road(s). The commitment to improve the affected streets or other facilities to the required standards shall be conditions of approval of Design Review or any other development permit related to the proposal. Half-street improvements can include all of the following:

Staff: The proposal for a new single family home constitutes a transportation impact as defined in MCRR 5.000 and thus improvements will be required. The existing gravel-paved width of SE Red Elder Dr. is 12 feet wide, less than the 22 foot wide standard (Multnomah County Design & Construction Manual, Table 2.2.5 Rural Cross Sections).

Hearings Officer: This code section requires road improvements along the length of the subject property's frontage with Red Elder Road. It does authorize any other road improvements. The applicant asked for approval to construct Red Elder Road to a width of 15 feet. This requires approval of a Road Rules Variance (RRV). County staff sought to impose a requirement to improve SE Red Elder Drive from the property frontage to the intersection of SE Red Elder Dr. and SE Hemlock Rd. and to widen the remaining portion of SE Red Elder Dr. to 20 feet wide between the SE Red Elder Dr./SE Hemlock Rd. intersection and SE Red Elder Dr.'s intersection with E. Larch Mountain Rd. This requirement makes sense from a public safety view point but the Hearings Officer is not authorized by the Road Rules to impose the exaction requested by County staff.

The applicant originally requested a road rules variance to construct SE Red Elder Drive to a width of 15 feet between the subject property and the intersection of SE Red Hemlock and SE Red Elder Drive. Applicant Juliana Wallace has, however, asked that she only be required to improve SE Red Elder Drive (other than the fire turn-out) if required to do so by the County code. The applicant must improve SE Red Elder Drive adjacent to the subject property but not elsewhere.

As conditioned per the RRV (see following page), this criterion is met.

C. Required Submissions by Subject Parties. Subject parties shall submit to the County Engineer the following: engineered plans, traffic studies, traffic analysis, reports, surveys or similar documents as requested or required by the County Engineer under this Subsection 6.100 or as may additionally be required under Section 18.

D. Transportation Demand Management Options that address strategies to reduce travel demand generated by the proposed development.

Staff: As determined in MCRR 5.000, a new single family detached house generates only ten (10)

trips per day. County Transportation finds that the proposal has submitted sufficient documentation related to the proposal, and does not warrant developing transportation demand management options. These criteria are not applicable.

Multnomah County Road Rules Variance

Variance Request Procedure

For the County Engineer to consider a variance request, it must be submitted in writing with the appropriate fee to the County prior to the issuance of any development permit. The written variance request shall be signed by a person with the authority to bind the applicant and shall include the following information as applicable:

A. Applicant name, telephone/fax number(s), email address, mailing address,

Applicant Response:

Juliana and Carl Wallace

Mailing Address: 4412 SE 75th Ave. Portland, OR 97206

Phone: 503-545-9110

Email: jwallacelove@gmail.com

B. Property location and zoning;

Applicant Response:

Property location: 65 SE Red Elder Drive Corbett, OR

The site is roughly 450 feet beyond the intersection of Red Elder and Hemlock Rd.

Zoning: RR-Rural Residential

C. Current or intended use of the property;

Applicant Response: Currently the lot is undeveloped. Intended use of the property is for a single-family dwelling that will be lived in year-round.

D. The nature and a full description of the requested variance;

Applicant Response: We are requesting a variance from the improvement standards for a Local Access Road in the Design and Construction Manual. The request is for the portion of SE Red Elder Drive that spans from the intersection with Hemlock to the corner of our property frontage to be developed from 12' (existing road width) to 15' (proposed road width). Details include: a 2% grade and 1' V ditch on the North side of widened road. A re-graded safety turn out/turn around will be a field fit 4:1 back that measures 89' x 12'. This would allow for ample room for the Fire Department to safely access the road and for cars to safely pass on this stretch of road.

E. Site plan, sight distance, pedestrian traffic, intersection alignment, traffic generation, vehicle mix, traffic circulation including impact on through traffic, and other similar traffic safety considerations;

Applicant Response: Site plan is attached. Updates above are included on updated site plan submitted 2/5/19.

Vehicle and Traffic considerations: The access point for our property is the first one on SE Red Elder Drive and the addition of our vehicles will not have any traffic impacts on the father parts of Red Elder where the rest of the homes are located. We measured the road at multiple points both along Red Elder and Hemlock and Fern Court noting that they are consistently at a maximum width

of 15' which is sufficiently and safely allowing current flow of traffic.

F. Existing right-of-way or improvement limitations, and utility considerations;

Applicant Response: Existing right-of-way is only 12' which does need improvements to support the addition of our property. Consideration to the improvement limitations include Red Elder Drive being hugged by both old growth trees and a hill, which would have significant disruption of the natural topography.

Hearings Officer: The right-of-way width is 50 feet. The improved roadway is 12 feet wide.

G. Adjacent land uses, their types, access requirements, and impact of traffic on them;

Applicant Response: All adjacent land parcels are currently undeveloped. As we understand it the land across from our property belongs to Metro. The lands on either side are privately owned and the development of those is not known at this time.

H. Topography, grade, side hill conditions, and soil characteristics;

Applicant Response: Geotechnical Report attached for detailed information. Topography has been added to the updated site plan.

I. Drainage characteristics and problems;

Applicant Response: Adequate ditch (proposing 1ft V Ditch on North side of the road) is needed to support road drainage and is included in our proposed improvement drawings. Additionally, we will need to place a culvert at the turn out to ensure adequate drainage. This is noted in the updated site plan.

J. Fire Department access requirements within a public right-of-way and their written approval of the proposed modification;

Applicant Response: Corbett Fire Chief Dave Flood had in person meeting with both of us (Carl and Juliana Wallace) on Friday 2/9/18 at 3:30pm in Corbett, OR. We reviewed our proposed road improvement drawings, looked up code to ensure compliance and discussed safety vehicles accessing both our property and the existing residences. Dave Flood requested that we create a turn out/turn around that would fit his safety vehicles at 30' by 8' anywhere along Red Elder Drive that would work with the topography of the land. Please see attached email print out for written approval of our proposed variance.

Hearings Officer: The County code does not authorize me to impose road improvement exactions in any location other along the frontage of the subject property. A 12-foot wide access road may not comply with the applicable fire code. If this is correct and the applicant decides to improve roads off-site, this decision authorizes improvements at the 15-foot width proposed the applicant along the entire route described by County staff in its description of required street improvements.

K. Natural and historic features including but not limited to trees, shrubs or other significant vegetation, water courses, wetlands, rock outcroppings, development limitation, areas of significant environmental concern, etc;

Applicant Response: Our goal with the development of our property is to limit all disruption to the trees on and near our proposed home. We feel very passionately that we do our best to provide livable space while preserving the natural land.

L. Multnomah County Comprehensive Plan policies applicable to the particular parcel or location.

Applicant Response: Not applicable.

Staff Response: The property is located within the East of Sandy River Rural Plan Area.

16.200 General Variance Criteria: In order to be granted a variance, the applicant must demonstrate that:

A. Special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. The circumstances or conditions may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses;

Applicant Response: As noted above, the road is currently no wider than 15' at any point on Red Elder Drive and our proposed development is approximately 450 feet to the end of Red Elder Drive. Red Elder is currently a dead end so we would not be increasing traffic to farther ends of Red Elder, as we would only travel from our access point/driveway out towards E Larch Mountain Road. We are proposing an increased width to 15' to be consistent with all other Local Access Roads that are currently developed in this neighborhood. We believe that the increase of use impact to the part of Red Elder and Hemlock will be supported by the road improvements that we proposed. The topography of a hill on one side of Red Elder and the old growth trees continue to be a consideration of development and what we propose will not have negative impact in those areas.

Staff Response: As identified in the applicant's response, they propose to widen SE Red Elder Dr. to a consistent width of 15' from their frontage to its intersection with SE Hemlock Rd. On a 7/30/18 site visit, Transportation staff confirmed the constraints of existing topography and old-growth trees that limit further widening of the road. Transportation staff noted that a 15' gravel-paved widening would provide an adequate travelway, and that a 20' gravel-paved widening (between intersection of SE Red Elder Dr./SE Hemlock Rd. and E. Larch Mountain Rd.) would improve access at the road's entry/exit section at E. Larch Mountain Rd.

Hearings Officer: The Hearings Officer finds that road widening is only required along the frontage of the subject property. A width of 15 feet is adequate with the exception of the part of the adjacent right-of-way that will be improved with a turnout as proposed by the applicant.

B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards;

Applicant Response: The preservation of the old growth trees as well as the topography of the land will be accomplished by approving the variance and using our proposal. This will not only provide enjoyment and property right for us but for all of our neighbors. This variance is necessary to find the balance with safety access and maintaining trees in the forest. Additionally, the extraordinary hardship that we would have if we were held to the strict compliance with road improvement standards includes; significant removal of trees, some of which are on Metro property which would be very challenging to obtain permission to do, significant cut and fill to the hillside including into the neighbor's property, and likely significant retaining wall needed if the trees/topography was significantly disturbed. This would be cost prohibitive for us as well as likely concerning for our neighboring land owners. Overall, if we were held strictly to the standards it is highly possible that we would not be able to complete the development of our family home.

Staff Response: As identified in the applicant's response, the property immediately north of the

road is owned by Metro, which has 200' vegetated buffers on both sides of E. Larch Mountain Rd. Any significant widening of SE Red Elder Rd. on its south side would require significant cut and fill onto neighboring properties, which would be an extraordinary property-impact hardship for neighbors and an extraordinary financial hardship for the applicant. *As conditioned, the criterion is met.*

C. The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties;

Applicant Response: We found no evidence that approval of this variance would have any detrimental impact to the public or any property in the vicinity. Dave Flood Corbett Fire Chief states he would have no issues with safety response given the improvements we are suggesting making in our variance request.

Staff Response: As identified in the applicant's response, they have noted that any significant widening of SE Red Elder Dr. would require significant cut and fill, in addition to removal of old-growth trees. Additionally, they have documented fire-access approval from Corbett Fire, showing an Emergency Vehicle Pullout Detail (230' long x 8' wide) on their site plans.

As conditioned, the criterion is met.

D. The circumstances of any hardship are not of the applicant's making.

Applicant Response: We have not created any of the circumstances noted in our hardships.

Staff Response: As identified in the applicant's response, existing site conditions surrounding their property prevent significant widening of SE Red Elder Dr.

As conditioned, the criterion is met.

MCRR 9.000 Compliance Method

MCRR 9.100 Once frontage or off-site improvement requirements have been established, one or any combination of the following methods must be used to satisfy those requirements:

MCRR 9.200 Construction Permit: Property owner/developer must obtain a County Permit under Section 18 to construct any of the required improvements.

Staff: As indicated above, this project creates a Transportation Impact and Construction Permits are the County's most common application of Transportation Impact-related requirements to new construction single-family detached house sites requiring road widening.

As conditioned, this criterion is met.

26.000 Stormwater and Drainage

26.100 Onsite management of Stormwater is a priority for County.

Staff: Multnomah County Transportation engineering staff will review any future Stormwater report and certificate associated with construction of a single-family house on this site. *Criterion is met.*

9.0 Conclusion

Based on the findings, recommended conditions of approval and other information provided above, the Hearings Officer approves the Variance, Geologic Hazards Permit and Road Rules Variance to authorize

the proposed new single family dwelling and associated access improvements in the Rural Residential Zone. This approval is subject to the conditions of approval established in this decision.

10.0 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Comments Received
- 'H' Hearing Exhibits
- 'I' Post-Hearing Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	Application Form with email from applicant	4.17.2018 7.25.2019
A.2	3	Narrative	5.18.2018
A.3	1	Preliminary Site Plan	5.18.2018
A.4	1	Preliminary Elevation Drawings	5.18.2018
A.5	1	Preliminary Floor Plans	5.18.2018
A.6	3	Septic Review Certification	5.18.2018
A.7	11	Septic System Design Details	5.18.2018
A.8	4	Septic Site Evaluation #17-128960 and report #SER 07-17	5.18.2018
A.9	6	Fire Service Agency Review	5.18.2018
A.10	1	Police / Sheriff Service Review	5.18.2018
A.11	2	Stormwater Certificate and plan	5.18.2018
A.12	1	Certification of Water Service	5.18.2018
A.13	3	Notice of Assignment of Address: Case #T1-2016-6240	5.18.2018
A.14	8	Applicant Email Response(s) to Incomplete Letter	1.28.2019
A.15	10	Hillside Development Permit (HDP) Work Sheet	11.9.2018
A.16	4	Geotechnical Reconnaissance and Stability Preliminary Study	11.9.2018
A.17	16	Geotechnical Report prepared by Mia C. Mahedy, P.E.	11.9.2018
A.18	2	Structural Engineering Details for proposed dwelling	11.9.2018
A.19	1	Revised Elevation Drawings	11.9.2018
A.20	4	Revised Existing Conditions and Roadway Improvement Plan	11.9.2018
A.21	1	Revised Preliminary Site Plan	2.5.2019

A.22	16	Geotechnical Report	2.22.2019
A.23	4	Foothills Ranch Subdivision and Property Deed	
A.24	2	Road Rules Variance	11.9.2018
A.25	1	Revised Elevation Drawings	7.16.2019
A.26	1	Revised Site Plan and driveway bridge	7.16.2019
A.27	1	Road Improvement Plan (birds eye view)	2.19.2018
A.28	11	Driveway bridge structure by Timothy Schweitzer, PE	4.30.2019
		Staff Exhibits	Date
B.1	2	A& T Property Information	5.18.2018
B.2	4	Road Rules Variance Findings	
B.3	1	Building Height Diagram	
B.4	7	Right of Way photos and emails	7.30.2018
B.5	1	Right of Way email on driveway bridge structure	7.22.2019
'C'	#	Administration & Procedures	Date
C.1	4	Incomplete Letter	5.15.2018
C.2	1	Complete Letter	5.22.2019
C.3	1	Notice of Public Hearing	7.19.2019
'D'	#	Comments Received (if needed)	Date
D.1	1	Comments from Carol Perry via Phone, Neighboring Property Owner	
'H'	#	Hearing Exhibits	
H.1	1	Aerial photo & google streetmap images in the vicinity of 65 SE Red Elder Dr submitted by staff	9.13.2019
H.2	1	Foothills Ranch subdivision map dated June 1958 submitted by Elda Urias	9.13.2019
H.3	1	Hearing sign-in sheet	9.13.2019
H.4	4	Photo 1 – From car door view of 65 Red Elder Drive w/temporary platform that depicts steepness of hill, submitted by Katie Skakel a. Photo 2 – Temporary platform shows steepness of property described as 65 Red Elder Dr, submitted by Katie Skakel b. Photo 3 – Temporary platform at 65 Red Elder Dr depicting view, submitted by Katie Skakel c. Photo 4 – Photo taken of forest from 65 Red Elder Drive, submitted by Katie Skakel	9.13.2019

‘I’	#	Post Hearing Exhibits	
I.1	1	Email dated 9.13.19 from Juliana Wallace re: Clarification for the record in relation to RRV road improvements	9.13.2019
I.2	1	Letter dated 9.19.19 from Mult Co Attorney Courtney Lords re: RRV rules	9.20.2019