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July 17, 2020

Multnomah County Dept of Community Services
 Land Use Planning Division
 Attn: Chris Liu

Re: Case #T3-2019-12724 – Addendum
 Post-Hearing Response

Dear Mr. Liu:

At the public hearing for this application held on July 10, 2020, the Hearings Officer left the record open 7 days until July 17, 2020 at 4:30 pm to allow the applicant and anyone else time to submit additional findings/exhibits in response to the proposal for an M49 dwelling. Specifically, the applicant is requesting that the proposed east setback be reduced from 85-ft. to 75-ft. to reduce grading and construction impacts due to significant site constraints as discussed in the application materials and during the hearing. The site plan has been revised to show the 75-ft. setback and reduced grading impacts to the west side of the building resulting from shifting it 10-ft. east. Additionally, applicable findings in MCC 39.4110, 4155, and 39.8215, have been provided in this Addendum. In summary, the Variance Approval Criteria can be made in support of the setback reduction due to special, unique circumstances regarding the site, and that the reduction is the minimum necessary to feasibly construct the dwelling. Additionally, any impact resulting from this 75-ft. east setback is mitigated by exceptional fire safety measures including interior fire sprinklers and exterior water cannons, in addition to other measures required by the fire code. The applicable findings are as follows:

39.4110 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Table 1.

Use Description of use and location	Forest Practice Setbacks		Fire Safety Zones	
	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements
Template Dwelling	N/A	30	130	Primary &Secondary required

COMMENT:

Although this is a Measure 49 dwelling rather than a template dwelling, the same setbacks apply.

- (A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.**

COMMENT:

The applicant requests approval of an adjustment to reduce the Forest Practices setback on the east side from 130-ft. to 75-ft. The building site is located as close to McNamee Road as possible and this reduction allows a safe encroachment into the 130-ft. setback.

- (B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 39.4155 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.**

COMMENT:

The 30-ft. Primary Fire Safety Zone is maintained on all sides. An Exception to the Secondary Fire Safety Zone is requested to 45-ft. on the east side (total 75-ft.).

- (C) The minimum forest practices setback requirement shall be increased where the setback 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 setback requirements in consultation with the Road Official.**

COMMENT:

This section is not applicable.

- (D) Fire Safety Zones on the Subject Tract.**

(1) Primary Fire Safety Zone.

- (a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**
- (b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended farther down the slope from a dwelling or structure as follows:**
- (c) The building site must have a slope less than 40 percent.**

COMMENT:

No trees are located within the 30-ft. Primary Fire Safety Zone on all sides. Slope of this area is adjusted as necessary demonstrating that it will be less than 10%.

(2) Secondary Fire Safety Zone.

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 39.4155.

COMMENT:

Tree are located downslope in all directions. They shall be limbed in accordance with these standards.

- (3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and**

COMMENT:

Trees will be managed within the firebreaks where proposed.

- (4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.**

COMMENT:

Required Primary and Secondary Fire Safety Zones are provided on the attached plans in accordance with the standards in Table 1 as modified by the adjustment request.

- (5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).**

COMMENT:

The property owner will maintain the firebreaks as required.

39.4115: DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES

All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A):

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

COMMENT:

This section is not applicable.

(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):

(1) The structure shall satisfy the following requirements:

- (a) To meet the Forest Practices Setback, the structure shall be located a minimum of 30-feet from a front property line adjacent to a county maintained road and 130-feet from all other property lines;
- (b) The structure shall be located in a cleared area of at least 10,000 square feet that meets the tree spacing standards of a primary fire safety zone;
- (c) The entirety of the development site is less than 30,000 square feet in total cleared area, not including the drive-way;
- (d) The structure is sited within 300-feet of frontage on a public road and the driveway from the public road to the structure is a maximum of 500-feet in length;
- (e) The local Fire Protection District verifies that their fire apparatus are able to reach the structure using the proposed driveway; or

COMMENT:

The proposed dwelling does not comply with the above standard (except d), therefore subsections (B)(2) and (B)(3) are addressed as follows:

(2) The structure shall satisfy the following requirements:

- (a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 39.4110;

COMMENT:

The proposed plan has the least impact on surrounding lands based on the location of the proposed dwelling. As shown on Exhibit 2, the proposed dwelling is adjacent to forest lands in all directions. The proposed dwelling complies with the primary fire break standards of MCC 39.4110 which includes 30-ft. in all directions with a modified secondary firebreak to the east. The proposal has the least impacts to surrounding farm and forest uses since no farm use exists within well over 1,000-ft. to the west since this area is the access used by METRO to service the property.

Regarding the adjacent METRO property to the south, the proposed home is located 130-ft. from the property line and at a higher elevation. Any future farm or forest uses would be located at a lower elevation since this area slopes away from the house at 10% or greater. Application of pesticides or other chemicals typically used in managed farm or forest uses would be at a lower elevation than the residence – thus limiting impacts to the adjoining forest lands. Additionally, fire danger risks to adjacent forest and agricultural lands are minimized since proposed home will install an enhanced 13 D (fire sprinkler) system and provide the Class A envelope, as required by the Fire Marshal (See Exhibit 15). Additionally, the applicant is proposing to install exterior fire cannons to protect vegetation surrounding the home for fire.

- (b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

COMMENT:

The proposed plan preserves all forestlands on-site for future operations. There are no farm uses on the parcel. The proposed dwelling is located on the only buildable portion of the parcel away from the steep, natural portion of the site.

- (c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

COMMENT:

The plan minimizes impacts due to road construction to the extent practicable. No impact to forestland is expected due to road construction for the Parcel 3 private road/driveway access. The permit for access construction was issued by Multnomah County on September 12, 2019. A copy of the permit is attached as Exhibit 19. The proposed private road route was constructed/repared in 2012 as part of the slide repairs. No impacts to forestland is proposed with this plan.

- (d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

COMMENT:

The access road on Parcel 3 is approximately 200-ft. in length.

- (3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

- (a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access;**

- (b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code**

with permanent signs posted along the access route to indicate the location of the emergency water source;

COMMENT:

The site is within the TVF&R District. A water supply shall be provided on-site adjacent to the driveway access (if determined to be required). At a minimum, a reserve tank is proposed to provide water supply for the interior sprinklers. Additionally, the interior swimming pool will provide emergency water supply for the exterior water cannons. Preliminary approval from Drew Debois, Deputy Fire Marshal, is attached as Exhibit 15.

(C) The dwelling or structure shall:

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;
- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;
- (3) Have a fire retardant roof; and
- (4) Have a spark arrester on each chimney.

COMMENT:

The proposed site-built home will be built in accordance with these standards.

(D) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 1 stream as defined in the Forest Practices Rules.

- (1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.
- (2) Evidence of a domestic water supply means:
 - (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
 - (b) A water use permit issued by the Water Resources Department for the use described in the application; or
 - (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

COMMENT:

The applicant has installed a well. The well is exempt from permitting requirements under ORS 537.545. The well contractor's report will be filed upon completion of the well.

39.4155 EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES.

(A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of MCC 39.4155 (B) when:

- (1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or
- (2) The dwelling or structure will be located within 130 feet of the centerline of a public or private road serving two or more properties including the subject site; or
- (3) The proposed dwelling or structure will be clustered with a legally existing dwelling or structure.

COMMENT:

Subsection 3 above is applicable to this application since there is an existing house on the property to the east. The house cannot be constructed within 130-ft. from the centerline of McNamee Road due to site constraints. The homesite is located as close as possible to the east property line and NW McNamee Road.

(B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:

- (1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban/Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or

COMMENT:

The secondary fire safety zone is 45-ft., therefore subsection (2) is applicable.

- (2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and

COMMENT:

The secondary fire safety zone is 45-ft., therefore this section is applicable and the dwelling shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended. As proposed, the residence is designed to meet or exceed this standard with 13D fire sprinkler system and additional fire safety provisions including the

aforementioned exterior water cannons and emergency water supply provided by the interior swimming pool.

- (3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and

COMMENT:

No fences are proposed within 12-ft. of the dwelling.

- (4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of subsection (B) (1) above are utilized, or

- (5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of subsection (B) (2) above are utilized. Exception: Expansions of existing single family dwellings as allowed by MCC 39.4075 (A) shall not be required to meet this standard, but shall satisfy the standard of MCC 39.4115(C)(3).

COMMENT:

A 13D sprinkler system is required (See Exhibit 15).

- (6) All accessory structures within the fire safety zone setbacks required by MCC 39.4110, and all accessory structures within 50 feet of a dwelling, shall have a central monitored alarm system.

- (7) All accessory structures within 50 feet of a building shall have exterior walls constructed with materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.

- (8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban/Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication. Exception: The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour-rated fire-resistive construction or heavy-timber construction

COMMENT:

No accessory structures are proposed with this application.

SECTION 39.8200 ADJUSTMENTS AND VARIANCES

39.8200- ADJUSTMENTS AND VARIANCES; GENERALLY.

(A) MCC 39.8200 through MCC 39.8215 (Adjustments and Variances) are designed to implement the Policies of the Comprehensive Plan. However, it is also recognized that because of the diversity of lands and properties found in the county there should be a zoning provision that permits justifiable departures from certain Zoning Code dimensional standards where literal application of the regulation would result in excessive difficulties or unnecessary hardship on the property owner.

COMMENT:

The applicant requests a variance to the yards and setback requirements within the Geologic Hazards Overlay listed in Section 39.8215.

(B) To address those situations, modification of the dimensional standards given in MCC 39.8205 may be permitted if the approval authority finds that the applicant has satisfactorily addressed and met the respective approval criteria in MCC 39.8210, Adjustments, or 39.8215, Variances. If an Adjustment or Variance request is approved, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

COMMENT:

The request for a Variance is addressed in the approval criteria below.

(C) The Adjustment review process provides a mechanism by which certain dimensional standards may be modified no more than 40 percent if the proposed development continues to meet the intended purpose of the regulations. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the regulation.

(D) The Variance review process differs from the Adjustment review by providing a mechanism by which a greater variation from the standard than 40 percent may be approved for certain zoning dimensional requirements. The Variance approval criteria are based upon the traditional variance concepts that are directed towards consideration of circumstances or conditions on a subject property that do not apply generally to other properties in the same vicinity.

(E) All proposed modification of the dimensional standards given in MCC 39.8205(A)(2) shall be reviewed under the Variance review process regardless of the proposed percentage modification.

COMMENT:

Variance findings are as follows.

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 setback 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 setbacks in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.

COMMENT:

As noted above, the request is for a Variance to the forest practices setback.

- (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) overlays; and
 - (2) Modification of fire safety zone standards given in Commercial Forest Use base zones; and
 - (3) Increase to any billboard height or any other dimensional sign standard.

COMMENT:

The request is to modify the 130-ft. forest practices setback as authorized by this subsection.

- (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.

COMMENT:

The forest practices setback is a dimensional standard eligible for a variance.

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 base zone. The circumstance or condition may relate to:

(1) The size, shape, natural features and topography of the property, or

COMMENT:

The site is unique based on topography and natural features (McCarthy Creek). There is only one location for a building site on the entire 15-acre site. Almost all of the site has very steep terrain.

(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 base zone, or

COMMENT:

The proposed dwelling cannot comply with the 130-ft. setback requirement due to steep slopes on the west side of the building site. As shown on Exhibits 4 & 5, almost the entire dwelling is located within the 130-ft. setback. Without the proposed setback reduction, there would be no buildable area on the site.

(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.

(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.

COMMENT:

The need for the variance is not a result solely from the applicant/property owner. The approved M49 identified this site as the 3rd homesite since there was no other location on the entire site that was reasonably-sized for the homesite.

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

COMMENT:

As noted, there is no other location on the 15-acre site where a home can be built without the need for a variance or other adjustment which would result in greater impacts due to the GH and SEC Overlays.

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

COMMENT:

No impact to surrounding properties will result from the approval of this variance. The interior portion of the home, as well as exterior covered areas required by the Fire Code will be protected with a 13D fire sprinkler system. Additionally, the applicant will protect the exterior areas around the dwelling with the primary and secondary firebreaks and water cannons with back-up emergency water supply by the interior swimming pool.

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

COMMENT:

The variance is the minimum necessary to create a buildable site as shown on the attached Exhibits 4 & 5. This setback reduction results in a superior design from the earlier proposal with an 85-ft. east side setback due to reduced grading impacts on the west side of the homesite. As shown on the revised site plan, this proposal more closely “centers” the home on the very narrow building site and increases the distance from the break-in-slope on the west side of the building.

(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.

COMMENT:

Granting of the adjustment will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands since the forest lands are located at a lower elevation generally to the south and east (on-site, slightly higher off-site). Firebreaks will be in place to protect adjacent forestlands and mitigate any impacts.

Additionally, the home will be protected as follows:

- *A full primary fire break*
- *Class A fire retardant roof covering*
- *Class A fire retardant exterior siding-cladding*
- *An enhanced NFPA 13 D fire sprinkler system throughout the home inclusive of the garage with a minimum of a 500 gallon water supply.*
- *Exterior water cannons with emergency supply from interior swimming pool.*

Any future timber harvest on METRO lands will be at least 75-ft. from the proposed dwelling. Additionally, there are no nearby farmlands.

The required findings for approval of Case File T3-2019-12724 have been made addressing the additional criteria for a reduction of the Forest Practices setback on the east side of the proposed residence to 75-ft. based on the provision of exceptional fire safety measures. The applicant retains the right for final argument to be submitted no later than July 24, 2020 at 4:30 pm.

Sincerely,



Matt Newman
Manager