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MULTNOMAH COUNTY  
PLANNING SECTION



Multnomah  
County

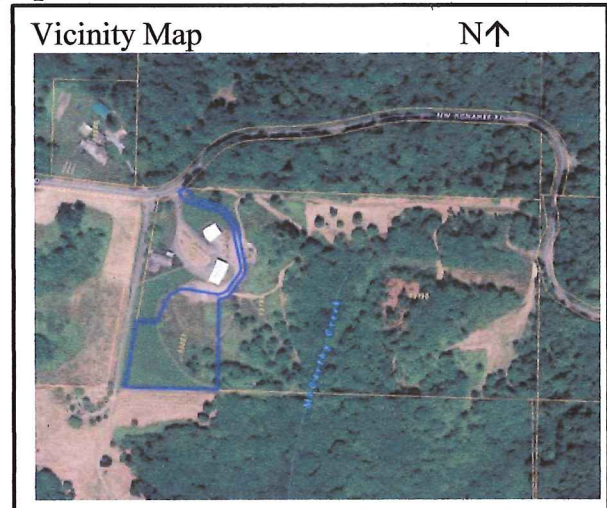
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## Hearings Officer Decision

### Modification of Conditions for Case T3-2012-2097 and Variance to reduce forest practice setbacks

Case File: T3-2015-3856

Hearing Date, Time, & Place:  
**June 26, 2015, at 10 am**  
Room 124,  
1600 SE 190th Avenue, Portland, OR 97233



Location: 13221 NW McNamee  
Tax Lot 00702, Section 32B, Township 2 North, Range 1 West, W.M.  
Tax Id. R652210, Alt. Tax Account R649631860

Applicant(s): Matt Newman      Property Owner(s): Larry and Laura Luethe

Summary: A request for a Modification of Conditions for Case T3-2012-2097, and a Variance request for reduction of the Forest Practices Setbacks for a new dwelling. The request to modify Case T3-2012-2097 approval includes: Administrative Decision for Implementing State Measure 49 Approval, Significant Environmental Concern for Wildlife Habitat Permit, Hillside Development Permit, Exception to Secondary Fire Safety Zone, and Forest Practices Standards.

Base Zone: Commercial Forest Use - 2

Overlay Zones: Significant Environmental Concern for Wildlife Habitat

Site Size: 2 acres

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**Hearings Officer:** Dan R. Olsen

**Decision:** The variance to reduce the southern setback is DENIED.

The western setback is reduced to 40 feet; the exception to reduce the secondary fire setback to 10 feet is APPROVED. The approval granted in Case T3-2012-2097 is modified accordingly.

**Background:** At the outset of the hearing, the Hearings Officer announced that there had been no ex parte contacts and he had not visited the site. An opportunity to raise objection to the hearings officer's participation, to jurisdiction or to an alleged procedural error was provided but none were raised. At the conclusion of the hearing, the option of a continuance was explained but was not requested.

The following persons testified orally in favor of the application: Matt Newman, Kristiann Roggendorf (counsel for the applicant) Roger Morse, Larry Luethe and Laura Luethe. No persons spoke in opposition.

Two exhibits were received at the hearing:

- H.1. Drawing 4a showing existing and proposed buildable area.
- H.2. Sign in sheet

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 33.7601 -7616: Variance, MCC 33.2200-33.2310: Commercial Forest Use Zone, MCC 33.2310: Exceptions for Secondary Fire Safety Zones, MCC 33.4500-33.4550, 33.4570: Significant Environmental Concern for Wildlife Habitat, MCC 33.5500-33.5525: Hillside Development Permit, Administration and Procedures: MCC Chapter 37 Measure 49: Oregon Administrative Rules (OAR) 660-041-0000 – 660-041-0530.

**Findings and Conclusions:** The findings and conclusions set forth in the Staff Report are adopted and incorporated herein except as supplemented or revised below:

**Western Setback:** Modification of the existing setback to the west (which previously was modified) involves a variance to the forest practices setback and modifying the decision in T3-2012-2097 including an exception to the secondary fire safety zone.

The staff report concludes that the applicant has met its burden of justifying a modification to the west of the proposed buildable area. The issue is, what is the "minimum necessary variation" to "alleviate the difficulty", which includes considering the impact of the setback on the property owner's ability to secure a reasonable building site against the impact of the modification. The uncontroverted testimony was that the original 60 X 60 foot essentially square building site will not work due to steep slopes. The proposed variance would shift the site to the west and increase its area to an approximately 5000 sq. ft. irregular shaped building footprint. Staff's recommendation would result in a 2900 sq. ft. parcel.

The applicant argued that the variance is necessary in part to establish the size and style of residence desired by the applicant and consistent with other new homes in this relatively rural area. The Hearings Officer agrees with staff that those desires are not particularly relevant to the applicable criteria. There was testimony, however, that the size, shape and location of the buildable site as proposed by staff would create significant design and functional issues associated with parking, including a garage, and the front access to the residence. Staff clarified, however, that parking could be located within the primary fire setback in the area of the hammerhead. The applicant concurred that this afforded additional flexibility and useable site area but that 30' of "frontage" on the access road still posed significant design and functional issues for a garage and entrance. A 40' frontage could be made to work, necessitating a 10' variance.

This would result in a 10' secondary fire safety setback and a forest practices setback of 40' vs the staff recommended 20' and 50' respectively.

To the west, the property is bordered by a 60' access and utility easement, including an existing gravel road. Essentially, this is the flag for the area to the south owned by Metro. There was no testimony suggesting that this portion of the Metro site likely would be forested in the future, although Metro could elect to put a buffer of trees along applicant's western property line. It does appear, however, that the 60' easement would serve much of the same function as the secondary fire and forest practices setbacks.

Accordingly, on balance, the Hearings Officer concludes that the applicant has met its burden of demonstrating that the hardship to the property owner outweighs the risk of any material detrimental impact on public welfare, other properties or the zoning district, MCC 33.7616 (C) and (D), and that a 10' variance/exception is the minimum necessary to "alleviate the difficulty" MCC 33.7616 (E).

**Southern Setback.** The applicant's justification for a variance/exception to the south appears to rest largely on the desires found above to not be particularly relevant or persuasive. There is no evidence of a significant functional impediment such as is present on the north where the dwelling meets the driveway. There was testimony that Metro likely is using the portion of its property abutting the subject property to the south as a "buffer" with native non-timber species rather than forest. But there also was testimony that the area had been logged in roughly 1990 and replacement trees planted that apparently did not significantly survive. More importantly, there was no testimony demonstrating Metro's long term plans for the area. Accordingly, it is at least theoretically much more likely and feasible that over time the area could become forested – in contrast to the 60' easement to the west. As staff noted, it is the applicant's responsibility – not Metro's - to establish the "buffer" afforded by the secondary fire protection and forest practices setbacks.

Accordingly, the Hearings Office concurs with staff that the applicant has not met its burden of justifying a variance/exception on the southern portion of the subject property.

**Decision:**

1. A variance reducing the setback from 130 feet to 40 feet and a 10 foot secondary fire safety zone exception APPROVED along the western boundary of the buildable area. Note that this runs slightly west to east as the line moves north, i.e. does not "square up" the building site. A 10' secondary fire safety setback and 40' forest practices setback applies from the property line to the western line of the proposed buildable area, effectively making the western line of the buildable area fall between that desired by the applicant (Exhibit A.10) and shown by staff (Exhibit B.6).

2. The request for a variance/exception to the secondary fire safety setback and forest practices setback to the south is DENIED.

**Conditions of Approval:**

This decision is conditioned as set for the below; these conditions provide necessary support and are an integral component of the approval granted herein:

1. This case approval does not fully supersede Case T3-2012-2097 (Exhibit A.5.15), but only modifies aspects and findings of the previous case as set for the herein relating to the previously approved building envelope. Case T3-2012- 2097 continues to apply, including the conditions, except as expressly provided for in this decision.
2. The approved buildable area for the dwelling shall have the following setbacks measured from the eaves of the dwelling to the property at closest point (Exhibit B.6) :
  - Western yard minimum setback of -40 feet,
  - Southern yard minimum setback of 80 feet,
  - Northern yard minimum setback of 80 feet, and
  - Eastern yard minimum setback of 160 feet
3. The property owners shall establish and maintain surrounding the dwelling a Primary Safety Zone and a Secondary Fire Safety Zones within the subject property according to the following (Exhibit B.5):
  - A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a structure unless there is down-slope of 10 to 20 percent within the first thirty feet. Were the down-slope from the building is between 10 and 20 percent, the primary fire break must be expanded out to a minimum of 80 feet all directions around a structure as shown on Exhibit B.5 staff amended site plan showing the expanded primary fire break. Trees within the primary fire 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.
  - A secondary fire safety zone is a fire break extending in all directions around the primary safety zone on the property as shown on Exhibit B.5. 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 re-moved 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. [MCC 33.2256(D)]
4. The property owners shall ensure that the dwelling be built to meet International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended. The dwelling shall have a central station monitored 13D sprinkler system MCC 33.2310(B)(2) and (5)]
5. There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure. [MCC 33.2310(B)(3)]

6. The property owner shall ensure that the conditions required by Tualatin Valley Fire and Rescue listed in Exhibit A.2.16 in a letter dated January 2, 2015 signed by Drew DeBois, Deputy Fire Marshall be met or met as modified by a fire district official confirmed by the fire district official in writing and a copy provided to the County.
  
7. The dwelling or structure shall:
  - Comply with the standards of the applicable building code;
  - Or comply as prescribed in ORS 446.002 through 446.200 relating to mobile homes;
  - Have a fire retardant roof;
  - Have a spark arrester on each chimney; and
  - If a mobile home, it shall have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained. [MCC 33.2261(C)]

Done and dated this 10th day of July, 2016



Dan R. Olsen, Hearings Officer