

POST-HEARING MEMORANDUM

To: Record in Hearing of T3-2019-12724
From: County Staff
Date: July 17, 2020
RE: Response to Modifications Proposed by the Applicant at July 10, 2020 Hearing

At the July 10, 2020 Hearing, the Applicant requested the Hearing's Officer ("HO") consider a modification to the proposed Variance which originally requested a reduction to the required forest practices setback from 130 feet down to 85 feet. The Applicant now desires a reduction to 75 feet. There are multiple Multnomah County Code ("MCC" or "Code") and procedural considerations for the HO to account for in their analysis.

CONSIDERATIONS

- 1. Public Notice:** County Staff sent the required Hearing notice to the Public containing a site plan with a specific location for the proposed dwelling. Interested parties chose not to participate in the Hearing based on the notice provided. Should there be a change to the proposal, interested parties and owners of record ("interested parties") are entitled to notice of such a change.

The Staff Report contained analysis for Staff's recommendation of approval for the specific proposal, including the Variance. Should the HO wish to consider the proposed modification to the Variance Request, the Code criteria noted below must be evaluated. Additional time must be provided to allow for notification of a proposed change to interested parties. Should the interested parties wish to respond, the record would need to be held open to allow such response time. [MCC 39.1150(C)]

- 2. Variance Criteria:** MCC 39.8215 contains the Variance Approval Criteria the HO must evaluate. Specifically, MCC 39.8215(E) requires that the requested variance is the minimum necessary variation from the Code requirement.

Staff requests that the HO consider if an additional reduction to the required setbacks would indeed be the minimum necessary variation from the Code requirement.

3. Exception the Secondary Fire Safety Zone: The proposal included an Exception to the Secondary Fire Safety Zone (“Secondary FSZ”) to allow a 55 feet Secondary FSZ. By allowing a 75 feet Forest Practices Setback through the Variance, the Secondary FSZ would be further reduced, which would require a different tier of building construction per MCC 39.4155(B).

As currently proposed, the applicant has a 30 feet Primary FSZ and 55 feet Secondary FSZ for the proposed dwelling. The FSZ’s must be located entirely within the subject tract per MCC 39.4110(D)(4). The HO may not consider NW McNamee Road as part of the FSZ as requested by the Applicant’s Architect. If the modification is allowed by the HO, the proposed dwelling would have a 30 feet Primary FSZ and 45 feet Secondary FSZ. Per MCC 39.4155(B)(2), the dwelling would then require construction 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.

If the HO allows the proposed modification. Condition no. 9 of the Staff Report [page 6] must be revised to ensure compliance with the relevant Code requirements for an Exception to the Secondary Fire Safety Zone.

4. Geologic Hazards Criteria: MCC 39.5090 contains the Geologic Hazards Permit Standards. The Geotechnical Investigation(s) prepared by GeoPacific Engineers (Exhibits A.32 – A.35) are specific to the original location proposed by the Applicant. Moving the location of the proposed dwelling would require a new Geotechnical Investigation.

If the HO allows the proposed change of location, a new Geotechnical Investigation by GeoPacific Engineers would be necessary. GeoPacific would need to determine that the new location would be “suitable” for the proposed dwelling and new site and grading plans would need to be drawn and reviewed by the Geotechnical Engineer [MCC 39.5085(C)(3)(b)]. This would be a fairly significant change and Staff would not have the time necessary to evaluate the new proposal and prepare a revised staff report.

CONCLUSION

While staff is not necessarily opposed to the proposed modifications, Staff asks that the HO carefully consider the Variance approval criteria, the need for a new Geotechnical Investigation, and the requirement for interested parties to be provided notice of proposals in their area. Per Oregon State Planning Goal 1, public involvement is a required part of land use planning and any changes to the proposal merits notice to interested parties. The modification may seem minimal from a distance standpoint (approximately 10 feet); however, when viewed holistically, such a change could be considered a significant modification requiring a new staff report and hearing to render a decision.