

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF MULTNOMAH COUNTY, OREGON

IN THE MATTER OF THE APPEAL	)	
FROM THE DECISION OF THE	)	FINAL ORDER
PLANNING COMMISSION DENYING	)	
APPLICANT'S APPLICATION FOR	)	89-210
A LOT OF EXCEPTION, PLANNING	)	
FILE NO. LE - 10-89	)	

This appeal challenges the October 9, 1989 decision of the Planning Commission denying a lot of exception application in a rural residential zone. The Board of County Commissioners held a de novo hearing on November 28, 1989 and affirmed the Planning Commission's denial of the application.

Appellants, David Moir and Christine Moir, are represented by Larry Epstein, 1020 S.W. Taylor Street, Suite 370, Portland, Oregon 97205. Opponents, Sandra J. Mershon and Al Brenaman, are represented by Edward J. Sullivan, Mitchell, Lang & Smith, 101 S.W. Main, Suite 2000, Portland, Oregon 97204. Other neighbors appeared on their own behalf.

APPLICABLE CODE PROVISIONS

The Board decides this case solely on the access issue pursuant to Multnomah County Code ("MCC") 11.15.2228 and applicable access requirements under MCC 11.15.2220 (A) (5) and (6). MCC 11.15.2228 requires that the Board find that the applicants have provided sufficient evidence to demonstrate that the proposed use satisfies the following criterion:

Any lot in this district shall abut a street,  
or shall have such other access determined by

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the Hearings Officer to be safe and convenient for pedestrians and passenger and emergency vehicles.<sup>1</sup>

In reaching its decision, the Board has considered the dimensional requirements for accessways and local roads under sections 05.220 (b) and Table 5.3 of MCC 11.60, respectively.

BACKGROUND AND NATURE OF PROCEEDING

The Board finds that:

The applicants, David and Christine Moir and Frank A. Windust, Jr., have applied for approval of a lot of exception under section 11.15.2220 of the Multnomah County Code ("MCC"). The Board notes that the property is located in a rural residential zone with minimum lot sizes of five acres.

The proposed lot of exception would allow the creation of a 2.14-acre flag lot in the rural residential zone. The legal description of the property to be divided is Tax Lot 19, Section 27, 1N-4E, Except that portion lying south of the section line for section 34, 1N-4E, 1989 Tax Assessor's Map.<sup>2</sup>

After providing public notice as required by law, the Multnomah County Planning Commission held a hearing on the proposal on October 9, 1989. The application was denied by

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1. This standard is framed in discretionary terms, allowing the Hearings Officer, and, on appeal, this Board, to make the determination of safety and convenience.

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2. The excepted portion of Tax Lot 19 is south of the subject property and is zoned rural center.

order of October 9, 1989, and filed with the clerk of the Board on October 19, 1989. This appeal was timely filed on November 6, 1989. Notice of the appeal hearing has been given, and the appeal hearing conducted, in accordance with law.

#### STANDING OF THE PARTIES

The applicants have standing by virtue of having been entitled to notice and hearing in these proceedings, having been parties before the Planning Commission, and having an interest in the property which is the subject of these proceedings. Applicants also appeared personally before the Planning Commission and this Board.

Opponents, Sandra J. Mershon and Al Brenaman, reside on property adjacent to the subject property and were entitled to notice of these proceedings. Opponents would be affected by the grant of this lot of exception because of the access impact and land use conflicts created by the proposed use. Opponents appeared personally before the Planning Commission and this Board. The standing of other opponents was not raised.

The Board concludes that both applicants and opponents have standing in these proceedings.

#### ISSUES NOT REACHED BY THIS BOARD

The Board decides this case solely on the issue of access and specifically reserves decision regarding compliance of the application with other provisions of the Multnomah County Comprehensive Plan or Multnomah County Code.

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### APPLICATION OF THE CRITERIA

The Board concludes that applicants have failed to meet their burden to demonstrate adequate access to the proposed lot of exception. The proposed access has not been shown to be safe and convenient for pedestrians and passenger and emergency vehicles. The Board concludes that MCC 11.15.2228 provisions relating to safe and convenient access are applicable to these proceedings, either directly under MCC 11.15.2220(5) or indirectly through the additional public services provisions of MCC 11.15.2220(6) in that improvement of the unnamed county road providing access to the subject property would be required to be improved beyond the level of existing access or levels of access programmed for the area. The Board finds no such access programmed for this area.

Applicants admit they do not intend to use the 50 foot frontage on Chamberlain Road<sup>3</sup> as access to the flag lot, but would create an easement over the one-acre parcel to the south of the subject property, which is still part of tax lot 19. The Board construes MCC 11.15.2228 to presume that access to a public road for 50' of frontage is safe and convenient if such access be used. Where, as in this case, the access be unused, as admitted by the applicant, the remaining provisions of that section must be met.

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3. The 50 foot wide strip which constitutes the pole of the flag pole lot ends at Chamberlain Road.

MCC 11.15.2220 (A) sets forth the approval standards for lots of exception. Subsections (5) and (6) of that section include consideration of access:

Any exception shall be based on findings that the proposal will:

(5) Satisfy the applicable standards of water supply, sewage disposal and minimum access; and

(6) Not require public services beyond those existing or programmed for the area.

Applicants' proposed access is via a 12 foot strip (rather than a 28 foot strip as originally claimed in the application) connecting the flag lot to the unnamed, unimproved and publicly unmaintained county road which empties into Crown Point Highway, a relatively heavily travelled road in the Corbett community, directly across from a heavily used high school and community center. See also letter submitted by Corbett School District Superintendent Dale Ness of November 21, 1989, which was submitted by Donna Blanc.

The Board believes the written testimony of Tom Lancaster, PE, a professional transportation engineer, who was present at the hearing, to the effect that the current sight distance to the entrance on Crown Point Highway at the unnamed county road was less than required under AASHTO standards (1984) and that the width of the road was insufficient to permit free passage of opposing vehicles, potentially resulting in congestion at the intersection and along the county road. The Board concludes that the access is not safe and convenient as

required by MCC 11.15.2228, and thereby does not satisfy minimum access standards under MCC 11.15.2220(A)(5).

The county access standards show that driveway widths must range from 12 to 25 feet. Multnomah County Street Standards section 5.220(b). The driveway is to serve at least two residences and is immediately adjacent to opponents' driveway. The Board also finds that the grade of the accessway of up to 17% for their own access and for emergency vehicles and altitude of the immediate area renders the site difficult to access and requires more than the 12 foot minimum access allowable under the aforementioned section 5.220. The Board also believes the testimony of Mr. Meinecke regarding the narrowness of the access, and inability of emergency vehicle access in inclement weather. The Board finds that a 12 foot driveway in this case is not sufficient.

Moreover, the unnamed County road to which the driveway would be connected does not meet the minimum right-of-way and improvement standards for rural roads.<sup>4</sup> The Board finds that there is no prospect of the unnamed county road voluntarily being brought into compliance with the rural road standards in the near future and that new development would require public services beyond those existing or programmed for the area in

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4. Table 5.2, MCC Chapter 11.60, requires that local roads have a 50 foot right of way, 24 foot paved surface, and two travel lanes.

violation of MCC 11.15.2220 (A) (6).

CONCLUSION

Based on the above findings, together with the findings of the Planning Commission's decision, the appeal is denied and the Planning Commission denial is affirmed.

DATED this 12th day of December, 1989.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

By: Gladys McCoy

Gladys McCoy  
Multnomah County Chair

(SEAL)

REVIEWED:

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