

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY

ORDER NO. 99-223

Affirming the Hearings Officer Decision to Deny HV 16-98 and WRG 6-98.

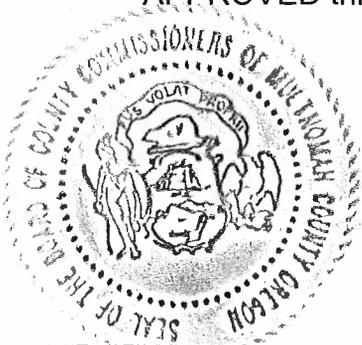
The Multnomah County Board of Commissioners Finds:

- a. On September 1, 1999 the Multnomah County Hearings Officer denied the Major Variance, HV 16-98, and the Willamette River Greenway, WRG 6-98, applications for the retroactive request to have structures located within the required 30-foot rear yard setback of the Multiple Use Agriculture (MUA-20) zone on the subject parcel.
- b. On October 28, 1999, the Multnomah County Board of Commissioners held a De Novo Hearing regarding the appeal of the Hearings Officer's Decision denying HV 16-98 and WRG 6-98.

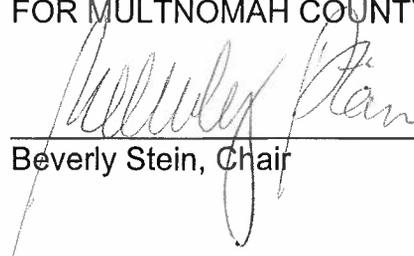
The Multnomah County Board of Commissioners Orders:

1. The Hearings Officer's findings of fact and conclusions in the decision dated September 1, 1999 denying the Major Variance, HV 16-98, and the Willamette River Greenway, WRG 6-98, are hereby UPHELD and AFFIRMED, except that "Finding and Conclusion" no. 21 (page 8) of the Hearings Officer Decision is stricken from the Decision.
2. The findings of fact and conclusions in the Staff Report issued June 29, 1999 and the Supplemental Staff Report issued August 11, 1999 are AFFIRMED and ADOPTED by reference as specified in the Hearings Officer's Decision issued September 1, 1999.

APPROVED this 16th day of November, 1999.



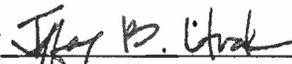
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By 

Jeffrey B. Litwak, Assistant County Counsel



HEARINGS OFFICER'S DECISION ON APPEAL

Major Variance and Willamette Greenway Permit

File Number: HV 16-98 & WRG 6-98
Applicant: Bayard Mentrum, Architect
Appellant: Karen Carey, Owner Sauvie Island Moorage by Bayard Mentrum
Location: 17505 NW Sauvie Island Road, Portland, Oregon
Zoning: Multiple Use Agriculture (MUA-20) and Willamette River Greenway (WRG)

PLANNING SECTION

09 SEP - 7 PM 1:28

APPEAL

On June 29, 1999, the Planning Director issued a decision denying an application for approval of encroachments for approval of a Major Variance and Willamette River Greenway permit. On July 9, 1999, Bayard Mentrum filed an appeal of the Planning Director's decision. The Notice of Appeal indicates that Mr. Mentrum filed the appeal on behalf of the property owner, Karen Carey. The grounds of appeal, as summarized by the Hearings Officer are:

1. **Trash Enclosures/Portals.** Staff erred in finding that the trash enclosures are within 30 feet of the ordinary high water mark. While the portal and trash enclosures are 15 feet from the property line they are more than 30' from the high water mark. The trash enclosures adjoin the portals, as shown on the prior, approved plan and allow easy access by trash haulers and residents of the moorage. The owners have improved the appearance of the trash enclosures and the enclosures are screened from the river. It is logical to leave the portals where they are based on its relation to the pedestrian bridges and trash enclosures. The owners obtained a building permit for the portals and enclosures before they were constructed and thought this was all they needed.
2. **Stone Monument Sign.** "The site is narrow and the entry drives drop off quite steeply. The sign was located within the front yard setback so it could be seen from Sauvie Island Road rather than down the hill and obscured. There is a wide shoulder on the

road and I again drove out of the road by the sign and could easily see both directions down the road without sticking out into the pavement. The owners have stated that no one has complained about not being able to see both directions because of the curves in the roadway. The owners have again improved the appearance of the project without endangering the life and safety of anyone. We feel that if anyone from planning drove up the driveway by the sign they would see it does not block any vision clearance areas. Drivers used to go off the road on the curve going southeast on Reeder Road and now they see the sign and avoid this danger.”

3. Driveway to Storage Units. “A 10-foot wide asphalt drive was changed from the original 4-foot wide sidewalk to allow trucks to back down the drive to load and unload in the storage areas over the garages. This driveway will only be used when someone is moving in or out of the storage units and there is clear visibility to the entry drive. Staff states in there [*sic*] administrative decision, that hazard conditions may exist, but no one has complained to the owners about a problem and I personally drove through the sign and could easily see both directions and I suggest someone from planning do the same before passing judgment.”

Under the County’s procedures ordinance, the hearings officer’s review is limited to the issues set forth in the notice of appeal.

NATURE OF DECISIONS APPEALED

The WRG permit application is essentially a request for the approval of a site plan that would replace the site plan approval granted in 1997 in Case DR 7-96/WRG 8-96/HV 21-96.

The Major Variance application is a request for permission to place structures within 15’ of the rear property line. Approval of the request would effectively modify Condition of Approval 7 of DR 7-96/WRG 8-96/HV 21-96 to allow the trash recycle area to be located within the 30-foot rear yard.

DECISION

The hearings officer **AFFIRMS** the administrative decision issued by the Planning Director, with the following modifications:

1. Approve a modification of the 1996 site plan, WRG 8-96, as proposed by the site plan for WRG 6-98, to allow the Appellant to retain the existing 10’ wide boat garage access driveway and monument signs in their current location. All other modifications proposed by the WRG 6-98 site plan are denied.
2. Approve a modification of the 1996 site plan, WRG 8-96, as proposed by the site plan for WRG 6-98, to allow the applicant to retain the monument sign and walls in the clear vision area triangle in its current location. Both walls must, however, be reduced

in height so that they are less than three feet in height. The sign height must be lowered no later than sixty days after this decision becomes final.

The listed modifications are the only modifications allowed. All other revisions proposed in WRG 6-98 to the site plan and design review application approved in Multnomah County Case WRG 8-96/DR 7-96/HV 21-96 are DENIED.

FINDINGS AND CONCLUSIONS

The hearings officer makes the following findings and conclusions of law in support of the above decision:

Monument Walls

1. The portion of the appeal that requests a variance to place the monument sign within the 30' front yard setback was withdrawn by attorney Larry Epstein on behalf of Grant Johnson and Sauvie Island Moorage Company, Inc. in a letter dated August 17, 1999. County Staff Planner Tricia R. Sears and the applicant have agreed that a variance is not necessary as signs may be placed in the 30' front yard of the subject property due to the provisions of MCC .7964(F). This means that it is possible for the hearings officer to allow the applicant to leave the entrance monument sign in its current location, provided both monument walls (one on each side of the driveway) are lowered to comply with County site distance regulations. Those regulations require that both walls must be less than three feet in height.
2. In the current case, Sauvie Island Moorage, Inc. proposes that the County approve a new site plan for the moorage to replace the moorage site plan approved by the County in 1997 (WRG8-96/DR7-96/HV21-96). The County denied that request. The 1997 approved site plan, however, shows the monument walls in a different location on the moorage property than agreed to by the moorage and County staff. The hearings officer, therefore, approves that portion of the current site plan (WRG6-98) that shows the monument walls in their current location. The hearings officer does not, however, approve the current height of the structures and will require that the walls be lowered, as promised by the applicant. As the walls pose potential conflicts with vehicle sight distance, the applicant lower the wall no later than sixty days after this decision is final.

Driveway

3. The applicant built a driveway between the boat storage buildings and Sauvie Island Road, in a location where the 1997 site plan called for the construction of a pedestrian walkway. In the current matter, County staff denied approval of an amendment to the 1997 plan due to safety concerns. Thereafter the applicant obtained a professional engineering analysis of site safety from the MacKenzie Group. The engineer's report found that the driveway would not pose a safety hazard due to the low volume of

traffic that will use the entry, the even more infrequent use of the storage building driveway and the fact that there is good visibility at the intersection of the driveways. Based upon the engineering report, County staff recommended that the applicant be allowed to retain the driveway, as presently constructed. As the conclusions of the engineering report were not rebutted, the hearings officer accepts the finds and will allow a modification of the approved site plan to include the 10'-wide, boat storage building driveway.

Impact of 1997 Approval

4. The appellant argued that the 1997 County approval of DR 7-96/WRG 8-96/HV 21-96 allowed it to site the portals and trash enclosures in their current location and that the site plan showed a 30-foot setback between the shoreline and "the structures." The appellant's attorney further claims "one finger needs to be wagged in the direction of staff who failed to undertake a sufficiently thorough analysis of the 1997 application to identify the setback problem before the structures in question were built, only to spring the issue on the applicant during the inspection process. The appellant and his attorney are clearly in error on this point. Condition 7 of the 1997 decision specifically required that the trash enclosures comply with the 30-foot setback. The 1997 site plan also clearly shows that the gate/portal will be located 30' from the property line, not 30' from the river. The site plan plainly shows a 30' setback and uses the property line to calculate setbacks. The appellant's architect used the same type of line on all four of the property boundaries making it clear that the line on the site plan near the river is the property line. The 1997 site plan shows a line between the property line and at the gate/portal. The line includes a crosshatched line at the property line and gate/portal structure and the notation "30' SETBK" and "30'" immediately adjacent to the crosshatched line. The plan also plainly shows that the portal was intended to be located at the back of the parking spaces, not at the front of the spaces where the portal and trash enclosure are currently located.

Variance Arguments

5. Mr. Epstein provided the County with a number of very well presented arguments to support approval of a variance to the 30' rear yard setback requirement imposed by the MUA-10 zoning district. Variance applications are, however, disfavored by the law and the facts of this case simply do not fit the requirements for variance approval. As a result, the hearings officer must uphold staff's denial of the variance application.
6. The appellant offers two circumstances or conditions to justify approval of the variance: the narrowness of the Sauvie Island Moorage property and the fact that the use is a moorage. Under the County's approval criteria one or the other must present "practical difficulties" in complying with the County's setback requirements for the MUA-10 zoning district. The conditions must also "not apply generally to other property in the same vicinity or district."

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7. The main obstacle that prevents approval of the variance application is the fact that the unusual conditions and circumstances cited by Mr. Epstein do not prevent the property owner from complying with the law. As documented by County staff and conceded by the applicant/appellant, there is room on the subject property to place the portal and garbage structure enclosures in a location that complies with the County setback rules. Multnomah County interprets its variance criteria to require the denial of variances to allow development in the most suitable area of a property where it is possible to develop in another less convenient area of the property, absent a showing the alternate location is “unduly restrictive.” Evans v. Multnomah County, 34 Or LUBA _____ (LUBA No. 96-198)(1997).
 8. The rejection by the County of “convenience” as a reason for the approval of a variance is consistent with the reasoning of Oregon Court of Appeals decisions that hold that “[v]ariations traditionally have been considered escape valves to allow property owners relief from zoning restrictions which, when applied to particular land, have the result of making that land completely unusable, or usable only with extraordinary effort.” Erickson v. City of Portland, 9 Or App 256, 261, 496 P2d 726, 729 (1972). In the case of the Sauvie Island Moorage, the property is usable without “extraordinary effort.” The structures can be placed in the locations required by the County code and this may be accomplished with about the same amount of effort that the structures can be placed in the current, nonconforming location.
 9. A portal and trash enclosure 15’ closer to Sauvie Island Road than where presently located is, admittedly, less convenient a location for the structures from the point of view of the moorage owner and moorage residents. Moving the structures will make it difficult or impossible for the moorage users to use the area between the portal and trash enclosure for parking and driving uses. It will also require residents to walk an additional 15’ to dispose of their garbage. This does not, however, make the setback requirement “unduly restrictive” or capable of compliance only with “extraordinary effort.” It also does not make the portals “functionless,” as claimed by the appellant’s attorney. The portals were originally designed and planned for a site further inland. Certainly the appellant’s architect would not have shown the portals in such a location if such a location is, in fact, functionless.
 10. The specific needs of marinas make it logical and efficient to apply different setbacks to the rear yards of a property, adjacent to the river, when the distance between the property line and riverbank is small. The “practical difficulties” requirement is not, however, met when the purpose of the variance is facilitate the best and most efficient and complete utilization of a property. Lovell v. Planning Commission of City of Independence, 37 Or App 3, 5-7, 586 P2d 99 (1978)(better utilization of a site is not a practical difficulty).
 11. The portals identify the entrances to the gangways. By placing the portals as close to the edge of the bank as possible, it is possible for residents to begin descending immediately after passing through the portal and this is certainly most convenient and

efficient. As argued by Mr. Epstein, this arrangement “makes sense.” Portals may, however, be located further back in the parking area (15’ more is needed), behind the setback line. The area between the portal and the top of the gangway may be fenced to provide a walkway area between the portal structure and the top of the gangway. This arrangement will, in the opinion of the hearings officer, be less attractive but not infeasible.

12. The narrowness of Sauvie Island Moorage lot and the County’s yard requirements present physical limitations upon the amount of development that may occur on the moorage property. The narrowness does not, however, prevent the applicant from meeting the rear yard setback requirements of the MUA-20 zone. The narrowness of the moorage lot also has a much lesser impact on a moorage use than on any other use in the zoning district. The moorage owner uses the river, not the lot, as the location for homes and is not required to locate homes behind the required yards. This conclusion is illustrated by the following facts: The moorage lot is only 5.56 acres, far smaller than the 20-acre minimum lot sized required by the MUA-20 zone but supports 46 home sites. A similarly situated property owner who wished to place a single family dwelling on such a small site would be limited to a maximum of one or two dwellings (two dwellings if each of the two parcels that make up the 5.56 acres were qualified as a lot of record). The siting of the one or two houses would be strictly limited by the 30’ setbacks that apply to both the front and rear of the lot, in parts of the lot to a 30’ wide area.¹
13. The fact that the use proposed is a moorage use does not prevent compliance with the yard requirements of the MUA-10 zoning district. The moorage’s use of the river as for home sites simply makes a riverside trash and portal location logical, appealing and convenient for owners of floating homes.
14. A marina use has not been proven to be a circumstance or condition “that does not apply generally to other property in the same vicinity or district.” The appellant’s own evidence shows that there are at least two other moorages (Channel Island Marina and Bridge View Marina) in close proximity of the subject property.
15. The specific needs of marinas may justify an exception to the rear yard setbacks of the County’s zoning ordinance. The proper avenue for making such a change is, however, through the legislative process. Lovell v. Planning Commission of City of Independence, 37 Or App 3, 586 P2d 99 (1978); Hill v. Marion County Board of Commissioners, 12 Or App 242, 506 P2d 519 (1973). This is particularly true, where as here, the difficulties posed by the rear yard setback apply to an entire class of land use (marinas).

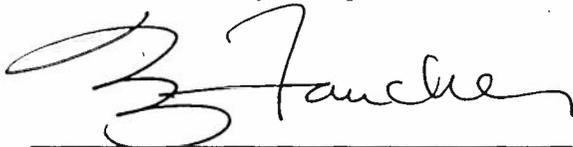
¹ These findings assume that a variance to the 150’ setback would be granted. Otherwise, no home could be sited on the subject property.

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16. Mr. Epstein has argued that the County has adopted an interpretation of the term “practical difficulties” in its recent decision of the Protassy appeal (HV 7-98, CU 4-98) and that the staff decision is inconsistent with that approval. Mr. Epstein insists that the County must provide a reasonable basis for imposing an inconsistent interpretation. The reasonable basis for reaching a different conclusion in the Protassy case, however, is that the facts of that case are distinguishable from the moorage case. In the Protassy case, the location of mature walnut trees and the location and width of the right-of-way made it impossible to build the 20’ roadway required by County codes. In the moorage case, the setback requirements do not prevent the applicant from building a portal and a trash enclosure and meeting the 30’ setback.
 17. The findings adopted by the Board of Commissioners in the Protassy matter indicate that self-created difficulties (planting new walnut trees) and difficulties that are capable of correction (moving telephone poles) are not “practical difficulties” that support approval of a variance. The Board found that cut and fill activities related to roadway construction merited a greater variance than approved by the hearings officer but did not undercut these findings.
 18. The applicant’s attorney has argued that the hearings officer should adopt an interpretation of the “practical difficulties” requirement that allows the hearings officer to approve a variance when physical conditions make it more safe and “convenient” to apply a lesser legal requirement. The gist of the attorney’s argument is that it is more convenient and logical for the marina and its users to place the trash enclosures and portals in their existing location than in the location required by the County code. This is clearly not the interpretation adopted in the Protassy decision.
 19. Mr. Epstein has argued that the hearings officer must approve the variance with conditions of approval if it is possible to do so. This argument is based upon SB 1184, a bill that was passed by the 1999 Oregon Legislature. That law is not effective until October 23, 1999. It, therefore, does not apply to this decision. Furthermore, even if SB 1184 were effective, it would not require approval of the variance application. SB 1184 requires the County to approve a land use application if the application can be made to be consistent with County land use regulations by the imposition of conditions of approval. Clearly, no condition of approval would change the fact that the moorage application does not qualify for approval of a variance. Additionally, a variance is, itself, a request to be allowed to disregard the County’s land use regulations. Approval of the variance would result in noncompliance with the MUA-20 zoning district’s 30’ rear yard requirement.
 20. Mr. Epstein asked that the hearings officer interpret the term “practical difficulties.” Such an interpretation is not needed, however, because the hearings officer has determined that neither of the practical difficulties asserted by the appellant (narrow lot width and marina use) meet other critical requirements of the variance approval criteria or require the siting proposed by the applicant.

Impact of Hearings Officer's Decision

21. The denial of the variance application and modified site plan application leave the appellant with an approved site plan that requires that the portals and trash enclosures be located where required by the 1997 site plan. It is not permissible for the applicant to leave the trash enclosure in its current location and to simply remove the roof. The current location is not the location authorized by the 1997 decision. The prior site plan made specific provisions regarding the appropriate location for the trash/recycling enclosure and those requirements continue to apply. The 1997 decision included a design review process, as well as a WRG review. The approval relied upon the fact that the trash enclosure would be placed at least 30' from the property line to determine compliance with design review criteria. The 1997 decision also specifically prohibited the appellant from placing the trash recycle area within the 30-foot setback area. Given the fact that the WRG setback is 150 feet, a 30-foot setback already marks a significant departure from the standards that would otherwise apply to the subject property.
22. The approval of portions of the appellant's 1998 site plan modification, as outlined in the Decision section above, does not relieve the appellant of its obligation to comply with the landscaping requirements of the 1997 decision and to otherwise comply with the requirements of the 1997 decision.

DATED this 1st day of September 1999.



Liz Fancher, Hearings Officer

NOTICE -- Appeal to the Board of County Commissioners:

The Hearings Officer's Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the Transportation and Land Use Planning division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal must comply with all procedural requirements prescribed by the Multnomah County Code, including completion of a Notice of Review and payment of a fee of \$500.00 plus a \$3.50 per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the Planning Office at 1600 SE 190TH Avenue, Portland, Oregon, or you may call 503-248-3043 for additional instructions.



Multnomah County
Land Use Planning Division
1600 SE 190th Avenue
Portland, OR 97233

Phone: (503)248-3043 Fax: (503)248-3389
E-mail: land.use.planning@co.multnomah.or.us

PUBLIC NOTICE AND ADMINISTRATIVE DECISION

June 29, 1999

MAJOR VARIANCE and WILLAMETTE RIVER GREENWAY

File Nos. HV 16-98 and WRG 6-98

- PROPOSAL:** The applicant has requested retroactive approval for Major Variance and Willamette River Greenway applications. The applicant has built structures in violation of the previous approvals granted for the site under case files HV 21-96, WRG 8-96, and DR 7-96 in a March 28, 1997 decision issued by Multnomah County. First, the applicant requests approval for encroachment into the required 30-foot front yard setback of the MUA-20 zone. The applicant has constructed a sign within 15 feet of the property line. Second, the applicant also requests approval for encroachment into the required 30-foot setback from the property line for the trash enclosures and portals. Third, the applicant has violated other provisions of the original plans and those are detailed within this decision document.
- LOCATION:** 17505 NW Sauvie Island Road, Portland.
T2N, R1W, Section 17, Tax Lots 40 and 42.
R#97117-0400 and R#971770420.
See attached map.
- ZONING:** Multiple Use Agriculture (MUA-20) and Willamette River Greenway (WRG).
- APPLICANT:** Bayard Mentrum, Architect
503 NW Irving, #210A
Portland, OR 97209
- OWNER:** Karen Carey, Sauvie Island Moorage
P.O. Box 10858
Portland, OR 97296-0858
- DECISION:** **DENY THE REQUEST** for retroactive approval of the encroachments into the required 30-foot front yard setback of the MUA-20 zoning district and into the 30-foot rear yard setback. The applicant has not carried the burden for meeting the Variance Approval Criteria in Section .8505 et seq. and the Willamette River Greenway criteria in Section .6301 et seq.

FINDINGS AND CONCLUSIONS:

Applicant:

Letter from applicant dated November 16, 1998 and submitted to Multnomah County March 17, 1999.

Enclosed please find the documents requested for the inventory and reconciliation process. As you may know, Sauvie Island Moorage was constructed nearly forty year (sic) ago, and reached its present configuration thirty-six years ago. Documents from that period are difficult to come by, reflecting an era before the Department of Environmental Quality, LCDC, and the Willamette River Greenway.

You will find a Department of State Lands lease, but the Corps of Engineers permits were not required in the 1950's for conversion log rafts to floating homes. Included is a permit for the update of our piling. The permit clearly presented them with the opportunity to review our existence (the piling work stretched the entire length of the moorage). They and the other necessary agencies all approved.

We have operated our own wastewater treatment plant under the National Pollutant Discharge Elimination System, which is administrated in Oregon by the Department of Environmental Quality. Our permit number is 2958-J.

Likewise, our water system is regulated under Federal Clean Drinking Water Act, but is administered by Multnomah County's Health Department. It is a public water system – PWS number 4101209. I could find no representative documents in our files, other than extensive testing results. Verification of our compliance is only a department away.

These documents have been requested as part of other activities at the planning office. We have received emergency services from Fire District #30 since its inception, and Willamette River Greenway issues where addressed during our recent construction (sic). Documentation for both will be found in those files.

Of great concern to us is the question of how many structures Sauvie Island Moorage will be said to contain. We have had as many as fifty-five homes here at the moorage, but on the statutory inventory date, we had considerably less.

We have had fifty numbered spaces at the moorage since the mid 60's. They have not always been full, but as you can see from the accompanying photo (Northern Lights, PO90 6-29-CE from 1987) there are fifty homes. Forty-eight can be counted along the front, and two on the back (one at the end and one near the center). There are two boat wells visible as well.

Also to be considered:

Fire District #30 was providing emergency services to the moorage when the photo was taken.

At the request of the Department of Environmental Quality, our sewerage facilities where serving not only our own needs but of two additional moorages. Sixty-seven homes were on the system, in addition to the bath, toilet and laundry facilities for a neighboring sail boat moorage. Fifty homes is not a challenge.

The Division of State Lands characterizes Sauvie Island Moorage as a "Floating Home Residential Community Moorage 55 Homes + boat moorage." (See chart Exhibit 'A').

Staff:

Definitions:

Major Variance: A request to modify a dimensional requirement by more than 25 percent. A Major Variance requires the applicant to demonstrate compliance with the approval criteria, plus consent from all property owners within 100 feet of the subject property. A request for a variance where the applicant is unable to obtain the necessary property owner consent *must* be considered by the Hearings Officer at a Public Hearing.

Lot Lines: The lines bounding a lot, but not the lines bounding the private driveway portion of a flag lot.

Related cases:

GEC 25-96, WRG 8-96, DR 7-96, HV 21-96, GEC 19-97, AR 1-98.

Exhibits:

- #1: Applicant Site Plan for HV 16-98 and WRG 6-98.
- #2: Applicant Site Plan for DR 7-96, WRG 8-96, and HV 21-96.
- #3: Vision Clearance Area diagram from Section .7982 (NN).
- #4: Multnomah Channel Moorage/ Marina Inventory 1997/98 for Sauvie Island Moorage.
- #5: Letter from the City of Portland to Karen Carey of Sauvie Island Moorage, dated February 25, 1999.

Comment:

Zoning:

The subject parcels, R#97177-0400 and R#97177-0420, are zoned Multiple Use Agriculture (MUA-20). The two parcels total 5.56 acres in size. The site is zoned with a Willamette River Greenway designation. In addition, the subject parcels contain a pre-existing Community Service designation. The use of the subject parcels as a houseboat moorage occurred prior to the establishment of zoning on the site. The existing use at the time was thus indicated on Multnomah County maps as "CS". This mark distinguishes parcels with pre-existing (to zoning) uses on the site. Parcels with the "CS" mark are considered non-conforming use parcels unless otherwise noted. Please see the History section of the Staff Comment section for additional information. The previous land use cases for this site have been noted above.

Variance:

The applicant has provided a completed copy of the Property Owner Consent of Variance Request as required by Section .8515(A)(1)(a). Pursuant to Section .8515, "All owners of record of property within 100 feet of the subject property grant their consent to the variance according to the procedures of MCC .8515(B)(1) and (2)." The signatures on the form indicate that adjacent property owners "acknowledge that we have been informed of a variance request regarding the subject property" and "that we have reviewed a site plan which shows the development as proposed." In addition, persons signing the consent form agree to the following statement, "By signing this document, we hereby give our consent for approval of the requested variance."

When the completed copy of the Property Owner Consent of Variance Request is submitted with the variance application, the Major Variance decision is an administrative process. In this case, the applicant has submitted a photocopy of the Property Owner Consent of Variance Request dated December 19, 1996. The applicant also submitted a Property Owner Consent of Variance Request form to Multnomah County on October 5, 1998. 1996 form was the consent form the applicant submitted for the case files DR 7-96, WRG 8-96, and HV 21-96 (issued as one decision by Multnomah County on March 28, 1997). In October 1998, shortly after the submittal of WRG 6-98 and HV 16-98, Staff verified the "owners of record within 100 feet of the subject property" were the same property

owners as identified on the Owner Consent form. The site plan submitted for HV 16-98 and WRG 6-98 is different than the plan submitted in 1996 for DR 7-96, WRG 8-96, and HV 21-96. The applicant is thus providing the form as proof the adjacent property owners have reviewed the new plan for the retroactive approval request for the 1998 applications. Further Staff comments are located in the Variance criteria.

History:

The Sauvie Island Moorage is a houseboat moorage established prior to 1977. A Houseboat moorage is a listed use under Section .2132 (B)(9) of the MUA-20 zoning district. Section .2150 states that a Conditional Use listed in MCC .2132, legally established prior to October 6, 1977, shall be deemed conforming and not subject to the provisions of Section .8805, provided that "Any alteration of such Conditional Use not listed in MCC .2132 shall be subject design review pursuant to the provisions of MCC .7805 through .7865."

The property owner of Sauvie Island Moorage has provided documents in an effort to comply with the Houseboat Moorage and Marina inventory and reconciliation process with Multnomah County Land Use Planning.

Policy 10 of the Sauvie Island/ Multnomah Channel Rural Area Plan (SI/ MC RAP) establishes the process for determining the status of existing moorages and marinas in Multnomah County. Under Policy 10, "That area occupied by Happy Rock Moorage, Sauvie Island Moorage, Parker Moorage and Mayfair Moorage by included within the area where houseboats are currently permitted under Policy 26." In addition, "That the moorages within Policy 26 and the existing Happy Rock, Sauvie Island, Parker and Mayfair moorage sites are to be treated as permitted (permitting continuation of the use and level of intensity in existence as of the Multnomah County Moorage Report Listing of Floathouses and Watercraft as of July 1, 1997 produced by the Department of Assessment and Taxation and reconciled through supplemental information provided by the moorage owner if..."

The Houseboat Moorage/ Marina Inventory on file with Multnomah County Land Use Planning lists Sauvie Island Moorage with 46 houseboats. The physical inventory of Sauvie Island Moorage occurred on January 5, 1998. The property owner, Grant Johnson, submitted a letter dated November 16, 1998 and it was received at the County on March 17, 1999. The letter stated the number of houseboats on the site as 50. Mr. Johnson does not specify that 50 houseboats were in existence at the site on July 1, 1997. Mr. Johnson states, "We have as many as fifty-five homes here at the moorage, but on the statutory inventory date, we had considerably less."

At this time, Staff makes the finding that 46 houseboats were in existence as of the July 1, 1997 deadline established by Policy 10 of the SI/ MC RAP. The applicant has not provided detailed information to show the exact number of houseboats in existence on the site on July 1, 1997. *Therefore, Sauvie Island Moorage can be deemed in compliance with Policy 10 of SI/ MC RAP with 46 houseboats established as the use and intensity of the site.*

The applicant received approval for changes to the existing Sauvie Island Moorage in a decision issued March 28, 1997 for DR 7-96, WRG 8-96, and HV 21-96. Under that decision that applicant proposed to construct a pump house, two two-story garage/ storage buildings, and other structures such as trash facilities. The findings within the March 28, 1997 decision state the structures (described above) were considered "accessory and incidental to the use of the site for a houseboat moorage." A Condition of Approval, #1, was established in that decision to require the property owners to place a deed restriction on the property for the use of the garage/ storage facilities for the tenants of the moorage only. The structures cannot be rented or leased for mini-storage facilities, such an action would be a separate, new use to the site and would require a Conditional Use application.

Subsequent to the issuance of building permits for the approval granted under DR 7-96, WRG 8-96, and HV 21-96, the property owner (or person representing the property owner) violated the Conditions of Approval and the approved site plan. The following items are found to be in violation of the approved site plan and land use approval issued March 28, 1997.

- Two trash facilities are shown on the site plan (referred to as the east and the west trash areas). The east facility was not approved under the March 28, 1997 decision.
- Both the trash facilities are located 15 feet from the property line. The required setback for a structure in the MUA-20 zone is 30 feet. In the 1997 decision, the applicant showed the west trash facility as a small, attached portion to the west portal. That area was shown 30 feet from the property line.
- In addition, Condition of Approval #7 in the 1997 decision specified “The trash recycle area shall not be located within the 30-ft. setback or required landscape area. The area may be relocated to within the gate portal/ trash enclosure or adjacent to the pump house. Prior to issuance of a building permit, the applicant shall submit a revised site plan showing the new proposed location for the trash recycle area for staff review and approval.” The trash recycle area is currently located 15 feet from the property line.
- The property owner has constructed a free-standing sign 15 feet from the front property line. The approved plans from the 1997 decision show the proposed sign to be constructed 30 feet from the front property line in accordance with the required MUA-20 setback standard. The sign is in a different location than the approved site plan shows from the March 28, 1997 decision. The 1997 decision included plans that showed the vision clearance triangle for the proposed sign. The 1998 case files submitted by the applicant include a site plan showing vision clearance for the now existing sign. In both sets of case files, the sign is shown to be outside of the vision clearance triangle. The existing sign, located 15 feet from the front property line, is located within the vision clearance triangle.
- The site plan submitted for HV 16-98 and WRG 6-98 illustrates a 10-foot driveway adjacent to the two garage structures (the garages were built in accordance with the approved 1997 plans). The approved site plans from 1997 show a 4-foot wide asphalt walk.
- The landscape plan has not been fully implemented as shown on the approved plans.

Staff has denied the applicant’s request to reduce the front yard setback from the required 30-foot setback from the property line to 15 feet. The request to exceed the required setback by more than 25% is considered a Major Variance. According to Section .8505, “A Major Variance shall be granted only when all of the following criteria are met.” The Variance Approval Criteria #1-4 have been addressed by the applicant. Criteria #1, #2, and #3 have not been met, hence the request for the Variance is denied. Please see Staff comments for further evaluation of the Variance Approval Criteria.

Staff has denied the applicant request to reduce the rear yard setback from the required 30-foot setback. Again, Staff has made findings that the Major Variance criteria of Section .8505 have not been met.

The applicant provided a very brief narrative addressing the Comprehensive Plan Policies 13, 14, 22, 37, 38, and 40 as required. The applicant submitted all of the required Service Provider forms. Staff requested the applicant address the Comprehensive Plan Policies under Item #14 of the October 27, 1998 letter of incompleteness from Staff to the applicant and to the property owner.

Staff is appalled by the property owner’s and applicant’s disregard for compliance with the plans as approved under the March 28, 1997 decision for DR 7-96, WRG 8-96, and HV 21-96. The applicant has already received a Major Variance, primarily based on site constraints. Subsequently, the plans were not completed as approved. Staff points out that a variance an exception to the rule. The variance application is a request for an exception to a rule in the Multnomah County Code. Staff has additional comments under the criteria.

Staff conducted a site visit to Sauvie Island Moorage on March 17, 1999. Site photos are in the case file for HV 16-98. The applications for HV 16-98 and WRG 6-98 were deemed incomplete on October 27, 1998. The applicant submitted additional materials on March 4, 1999 and March 17, 1999. The applications were deemed complete on June 22, 1999.

Please see the Staff responses to the criteria below.

Multnomah County Code:

Multiple Use Agriculture (MUA-20)

11.15.2122 Purposes

The purposes of the Multiple Use Agriculture District are to conserve those agricultural lands not suited to full-time commercial farming for diversified or part-time agriculture uses; to encourage the use of non-agricultural lands for other purposes, such as forestry, outdoor recreation, open space, low density residential development and appropriate Conditional Uses, when these uses are shown to be compatible with the natural resource base, the character of the area and the applicable County policies.

11.15.2124 Area Affected

MCC .2122 to .2150 shall apply to those lands designated MUA-20 on the Multnomah County Zoning Map.

Staff: The subject parcels, R#97117-0400 and R#97117-0420, are zoned MUA-20 and designated as part of the Willamette River Greenway.

11.15.2126 Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2128 through .2136.

Staff: The property owner and applicant, for case files HV 16-98 and WRG 6-98, have submitted these applications with a request for retroactive approval for the site work described herein. The construction of the sign in violation of the required setback; the construction of two rather than one trash facility; the construction of the trash facilities and the portals within the required setback; and the construction of a 10-foot driveway rather than a 4-foot walkway, are considered actions that violate the approved site plans for the March 28, 1997 decision for DR 7-96, WRG 8-96, and HV 21-96.

11.15.2134 Accessory Uses

(A) Signs, pursuant to the provisions of MCC 11.15.7902-.7982. *[Amended 1986, Ord. 543 § 2]*

Staff: The applicant received approval for a free-standing sign on the site. The approval was granted as follows in the March 28, 1997 decision document under Condition of Approval #9, "The proposed signage for Sauvie Island Moorage shall be consistent with the design details submitted and

comply with the vision clearance requirement as shown on the revised site plan stamped December 31, 1996.”

The site plan referenced is in case file HV 21-96 and shows a free-standing sign located outside the vision clearance area (as drawn by the architect) of the entry way at that time (the 1997 plan shows the sign on the one way entrance to the site). The 1997 approved plan shows the one way entry to the site and that lane is now the exit from the site (marked egress on the March 17, 1999 plan). The applicant states, as written on the site plan submitted March 17, 1999, “If we moved signs 30’ from the property line they would be too far downhill to be seen by vision clearance.”

Staff notes that the plan submitted for the 1996 for DR 7-96, WRG 8-96, and HV 21-96 also shows the vision clearance triangle with the sign outside of the vision clearance area. In summary, the applicant showed in the original plans that the sign would be outside of the vision clearance area. Then the applicant submitted a 1999 plan that shows the now existing sign as outside of the vision clearance area. Staff has measured the vision clearance area triangles for each side of the intersection of the driveway and NW Sauvie Island Road. Neither the original drawing nor the 1999 drawing would put the sign outside of the vision clearance area. Section .7982 (NN) is the vision clearance area diagram. It is included in this report as Exhibit #3.

The site plan drawing, attached as Exhibit #1, shows the road and the property line inaccurately drawn for the site. For example, NW Sauvie Island Road is shown as 65 feet wide from edge to edge of the pavement. The site plan also illustrates an area 30 feet wide from the edge of the road pavement to the property line.

The applicant has constructed the free-standing sign in a different location than approved, located the sign within the vision clearance area of the entry way, and built at a distance in violation of the required 30-foot front yard property line. The sign is 15 feet from the front property line. See also the Staff and applicant narrative for the Variance criteria.

A copy of the site plan for HV 16-98 and WRG 6-98 is attached as Exhibit #1. A copy of the site plan approved under DR 7-96, WRG 8-96, and HV 21-96 is attached as Exhibit #2. A copy of the Vision Clearance Area definition and diagram is shown as Exhibit #3.

The application does not meet the criterion.

(B) Off-street parking and loading;

Staff: The applicant site plan show, dated March 17, 1999, does not show the required amount of parking has been provided for the site. The site plan submitted by the applicant shows that 27 parking spaces have been provided on the west portion of the site plan; the area adjacent to the parking garages. The applicant shows the east portion of the site with a box entitled “existing parking” but does not state the current number of parking spaces. The applicant narrative does not address the amount of parking available on the entire site. Staff visited the site on March 17, 1999 but did not count the number of existing parking spaces. In the Staff letter to the applicant and to the property owner dated October 27, 1998, regarding the incompleteness of the application materials, Staff requested additional information on the number of parking spaces under Item #11. Because of the lack of information from the applicant, Staff cannot make the finding the application meets the requirement for parking standards. Since Staff cannot make the finding the application meets the parking standards, the application does not meet the standards.

The application does not meet the criterion.

(C) Type A home occupations pursuant to the definition and restrictions of MCC 11.15.0010; and [Amended 1990, Ord. 900 § III]

Staff: A home occupation application has not been submitted by the applicant. As was stated under the Staff comment section, the Sauvie Island Moorage is a houseboat moorage established prior to 1977. A Home Occupation permit is not required for this site, thus the criterion is not applicable.

(D) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district; and

Staff: The applicant proposed accessory structures under the previous applications for DR 7-96, WRG 8-96, and HV 21-96. Such structures included trash facilities and portals. Also, in accordance with provisions of Section .2150, the moorage is considered conforming and not subject to the provisions of Section .8805. Alterations to Conditional Uses listed in .Section .2132 are subject to the provisions of .7895 to .7865. See also the History section of the Staff Comment section of this report. The retroactive applications, HV 16-98 and WRG 6-98, are for the sign, the trash facilities, and the portals. Also, a 10-foot wide driveway was constructed instead of the 4-foot wide walkway shown on the 1996 plans. Based on the Staff findings in the 1997 decision, structures are accessory and incidental to the houseboat moorage. The structures are located on the site in violation of the required 30-foot front yard setback and the required 30-foot rear yard setback of the MUA-20 zone. Other sections of this decision include additional Staff findings as required by the applicable criteria.

* * *

11.15.2138 Dimensional Requirements

(A) Except as provided in MCC .2140, .2142, .2144 and .7629, the minimum lot size shall be 20 acres.

Staff: The two parcels of the subject applications, HV 16-98 and WRG 6-98, total 5.56 acres in size. The subject parcels are smaller than the required minimum lot size of the MUA-20 zone. Section .2142 (B) provides the standard for the Lot of Record and the parcels of the Sauvie Island Moorage meet the Lot of Record requirements. See also Section .2142 (B). The application meets the criterion.

(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: The Right-of-Way division does not require additional dedication at this time. For questions regarding street dedication, contact Alan Young at (503)-248-3582.

(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.

[Amended 1984, Ord. 428 § 2]

Staff: The applicant has constructed the trash facilities and the portals on the subject parcel in violation of the required 30-foot rear yard setback. The applicant has constructed the free-standing sign in violation of the required 30-foot front yard setback. The applicant did NOT construct the structures in accordance with the approved site plan from the decision document and case file materials from DR 7-96, WRG 8-96, and HV 21-96. The applicant did receive approval under HV 21-96 to not meet the 150-foot required setback from the ordinary low waterline. See also the Variance criteria and the Willamette River Greenway criteria.

The application does not meet the criterion.

- (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 Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.**
- (E) **Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**
- (F) *[Added 1990, Ord. 643 § 2; Repealed 1994, Ord. 804 § III]*

11.15.2142 Lot of Record

* * *

- (B) **A Lot of Record which has less than the area or front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.**

Staff: According to maps on file at Multnomah County, the existing lot has remained been in the same shape and size since at least 1977. The zoning designation of the parcel in 1977 was EFU-38/ WRG/ CS. The lot is 5.56 acres in size and thus would be smaller in size than required by the zoning designation. At the current time, the parcel is zoned MUA-20/ WRG/ CS. The parcel is considered a Lot of Record in accordance with this requirement.

* * *

11.15.8505 Variance Approval Criteria

- (A) **The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall met criteria (3) and (4).**
 - (1) **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 district. The circumstance or condition 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: A building setback of 150 feet from the ordinary waterline of the Willamette River shall be provided in all rural and natural resource districts, except for non-dwellings provided in conjunction with farm use and except for building and structures in conjunction with water related or a water dependent use. The variance is requested for the trash and recycle enclosures, which were originally attached to the entry portals to the floating homes. The easterly trash enclosure was detached from the portal because of the rise in the grade. The portal needs to remain at the existing level to connect to the bridge to the floating homes and there is not enough room at the hill to build the trash enclosure. The portals and trash enclosure are located outside the 30 foot setback to the ordinary water level line and are still convenient to the home owners.

The original plan showed smaller trash enclosures but the requirements from the Trash and Recycle company requires the size now shown to meet the number of residences. The trash enclosure is screened completely from the river and most of the parking lot. The separation from the entry portal to the trash makes a more pleasing entrance to the homes for residences and visitors. See photos 9, 17, and 18 to view the portals and enclosures.

Staff: The applicant discusses the site constraints of meeting the 150-foot building setback from the ordinary low waterline of the Willamette River. The applicant mentions the trash enclosures and the portals are within the 30-foot setback "to the ordinary water level line". The applicant and property owner obtained the approval to construct structures within the 150-foot ordinary low waterline from the river. That approval was obtained under the March 28, 1997 decision for DR 7-96, WRG 8-96, and HV 21-96. It is clear that the applicant has not fully addressed the circumstances as to why the 30-foot rear yard setback cannot be met. Staff notes the applicant has already constructed the structures such as the trash enclosures and portals in violation of the required setback and in violation of the previously approved setbacks granted under the March 28, 1997 decision for DR 7-96, WRG 8-98, and HV 21-96.

In addition, the applicant has constructed a free-standing sign within 15 feet of the front property line. This is in violation of the 30-foot front yard setback requirement of the MUA-20 zone. The sign is located within the vision clearance area as defined by Section .7982 (NN). See Exhibit #3. The sign was constructed in a different location than the location approved under DR 7-96, WRG 8-96, and HV 21-96.

A 10-foot wide driveway was constructed on the site adjacent to the garages while the site plan approved in the March 28, 1997 decision shows a 4-foot wide asphalt walkway was supposed to be constructed.

The applicant has not demonstrated that a condition or circumstance applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. Note that the criteria states, "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 district" (emphasis added). The applicant narrative provides a brief comment "there is not enough room at the hill to build the trash enclosure" as justification for locating the structures within the required setbacks. Other locations on the site could accommodate the trash enclosure and the free-standing sign. Staff points out that a variance application is a request for an exception to a rule; a rule in the Multnomah County Code. Sauvie Island Moorage was granted approval for a Major Variance in the March 28, 1997 decision for DR 7-96, WRG 8-96, and HV 21-96.

Structures were then built in violation of the approved plans. Staff finds the applicant has not established a condition or circumstance on the land that does not apply to other properties and that limits the site to the extent that an alternate location, within the required setbacks, could be used.

The application does not meet the criteria.

- (2) The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.**

Applicant: A variance is also required for the project entry stone monument sign is designated as entry only and is located within the property line and within the 30 foot front yard setback. Because the monument is entry only the site visibility zone is not required. See photos 1, 2, and 5 to view the sign monument which creates a strong presence to the project and a quality project first impression. The grades of the hillside would not allow the sign setback 30 feet and still be viewable as the entry way from Sauvie Island Road.

Staff: Staff points out that the applicant has constructed the sign 15 feet from the front property line rather than 30 feet as required as the front yard setback of the MUA-20 zone. In addition, the location of the sign is shown on the existing site plan and the photos at the entry way. The previously submitted site plan, as the approved site plan from the March 28, 1997 decision document on DR 7-97, WRG 8-96, and HV 21-96, illustrates the sign to be located on the now exit (previous entry) lane. The site plan also showed the vision clearance area of the driveway and showed the sign to be located outside of that area, as required in Section .7964. The applicant states that the "site visibility zone" does not need to be included on the site plan for the entry lane. Multnomah County Code does not specify exemptions for the entry and exit lane vision clearance areas. Section .7964 (C) states, "No sign may be located within a vision clearance area defined in subsection C.2." Subsection (C)(2) states, "Vision clearance areas are triangular shaped areas located at the intersection of any combination of rights-of-way, private roads, alleys or driveways."

The applicant constructed the trash facilities and the portals in violation of the approved site plan from DR 7-96, WRG 8-96, and HV 21-96 issued on March 28, 1997. The structures were constructed 15 feet from the rear yard property line. The required setback from the rear property line to a structure is 30 feet in the MUA-20 zone as established in Section .2138, Dimensional Requirements.

The applicant constructed a 10-foot driveway adjacent to the garages on the west side of the site. The approved site plan from the March 28, 1997 decision showed a 4-foot wide asphalt pathway instead of a driveway. This change violates the approved plan. In addition, the driveway intersects with the entry way to the site from NW Sauvie Island Road. Staff is concerned about the visibility of the site in this area.

To remain in compliance with the required 30-foot front yard and 30-foot rear yard setbacks does not restrict the use of the subject property to a greater extent than other properties in the vicinity or district. A variance is an exception to a regulation. The applicant has failed to demonstrate that the subject property is constrained to a greater extent than other properties in the vicinity by the zoning district requirement of a 30-foot front yard setback and a 30-foot rear yard setback. In addition, the applicant does not provide an explanation as to how meeting the 30-foot setback requirements from the front and rear yards would restrict or constrain the property to greater degree than it restricts other properties in the vicinity or district. The site

plan provides other places, for example, to locate the free-standing sign outside of the vision clearance area but visible from the public road. The site plan attached to the decision as Exhibit #1 illustrates the site abuts NW Sauvie Island Road for several hundred feet. The applicant does not provide evidence that this property is required to meet a setback that other properties in the vicinity are not required to meet.

The application does not meet the criteria.

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

Applicant: We have enclosed signed statements from all the required neighbors stating that they approve the project. We have also provided a letter from the Drainage Improvement Co. stating that the proposed structures do not adversely affect the levee. Therefore we feel this proves that the variance will not adversely affect the property or public welfare, including the neighbors.

Staff: The applicant has provided a copy of the Property Owner Consent to Variance Request form with the required property signatures. The decision for HV 16-98 and WRG 6-98 is an administrative decision process for the two cases. The applicant has submitted this form for HV 16-98 and WRG 6-98 as the proof of the adjacent property owners' consent to the variance request submitted September 30, 1998. The adjacent property owners should have seen the plan for HV 16-98 and WRG 6-98 and thus can be considered to have consented to the variance request. Section .8515 requires, "All owners of record within 100 feet of the subject property grant their consent to the variance."

Hazardous conditions may exist on the site. The monument sign is located 15 feet from the front yard property line (in a vision clearance area). A 10-foot driveway running east/ west exists and merges with the entry drive. The site has are unsafe conditions that may be materially detrimental to the public welfare or injurious to persons and property in the vicinity.

The authorization of this variance may be materially detrimental to the public welfare or injurious to the property in the vicinity or district in which the property is located, or adversely affect the development of adjoining properties. The applicant and property owners have shown a blatant disregard for the requirements of Multnomah County and in particular, the requirements established in the previously approved plan issued March 28, 1997 for DR 7-96, WRG 8-98, and HV 21-96. Major Variance requests are typically granted for projects with extraordinary on-site circumstances. The applicant obtained approval for an exception to the rule under the 1997 decision and subsequently violated the approved plans. Based on the application materials submitted and based on research of the parcels, Staff found the application has not met Variance Approval Criteria #1 and #2.

The application does not meet the criteria.

- (4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.**

Applicant: No statement submitted.

Staff: The granting of this variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone. The application has not met Variance Approval Criteria #1, #2, and #3. The application meets criterion (A)(4).

- (B) A variance shall be void if the Planning Director finds that no substantial construction or substantial expenditure of funds has occurred on the affected property within 18 months after the variance is granted. That determination shall be processed as follows:**
- (1) Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.**
 - (2) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:**
 - (a) Final Design Review approval has been granted under MCC .7845 on the total project, if appropriate; and**
 - (b) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025(A) or .9027(A).**
 - (3) Notice of the Planning Director decision shall be mailed to all parties as defined in MCC .8225.**
 - (4) The decision of the Planning Director shall become final at the close of business on the tenth day following mailed notice unless a party files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of MCC .8290 and .8295.**

[Amended 1990, Ord. 643 § 2]

[Amended 1985, Ord. 462 § 2]

Willamette River Greenway

11.15.6350 Purposes

The purposes of the Willamette River Greenway subdistrict are to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River; to implement the County's responsibilities under ORS 390.310 to 390.368; to establish Greenway Compatibility Review Areas; and to establish criteria, standards and procedures for the intensification of uses, change of uses, or the development of lands within the Greenway.

11.15.6352 Area Affected

MCC .6350 through .6374 shall apply to those lands designated WRG on the Multnomah

County Zoning Map.

Staff: The subject parcels, R#97117-0400 and R#97117-0420, are zoned with the Willamette River Greenway designation.

11.15.6354 Uses – Greenway Permit Required

All uses permitted under the provisions of the underlying district are permitted on lands designated WRG; provided, however, that any development, change of use or intensification of use, except as provided in MCC .6358, shall be subject to a Greenway Permit issued under the provisions of MCC .6362.

11.15.6360 Greenway Permit Application

An application for a Greenway Permit shall address the elements of the Greenway Design Plan and shall be filed as follows:

- (A) For a Permitted Use or a Use Under Prescribed Conditions, in the manner provided in MCC .8210(B);
- (B) For a Conditional Use as specified either in the underlying district or in MCC .7105 through .7640, or for a Community Service Use as specified in MCC .7005 through .7030, or for a change of zone classification, or for any other action as specified in MCC .8205, the Greenway Permit Application shall be combined with the required application for the proposed action and filed in the manner provided in subsections MCC .8210 and .8215.

11.15.6362 WRG Permit – Required Findings

A decision on a Greenway Permit application shall be based upon findings of compatibility with the elements of the Greenway Design plan listed in MCC .6372.

11.15.6364 Decision by Planning Director

- (A) A decision on a Greenway Permit application for a Permitted Use or a Use Under Prescribed Conditions shall be made by the Planning Director. The Director may approve the permit, disapprove it, or approve it with such modifications and conditions as may be consistent with the Comprehensive Plan or necessary to assure compatibility with the elements of the Greenway Design Plan. Such conditions may relate to the locations, design, and maintenance of existing and proposed improvements, including but not limited to buildings, structures and use areas, parking, pedestrian and vehicular circulation and access, natural vegetation and landscaped areas, fencing, screening and buffering, excavations, cuts and fills, signs, graphics, exterior colors, and lighting.
[Amended 1990, Ord. 643 § 2]
- (B) Within ten business days following receipt of a completed Greenway Permit application, the Planning Director shall file a decision with the Director of the Department of Environmental Services and shall mail a copy of the decision to the applicant and to other persons who request the same.
- (C) A decision by the Planning Director on a Greenway Permit application shall include written conditions, if any, and findings and conclusions. The conditions, findings, and conclusions shall specifically address the relationships between the proposal and the elements of the Greenway Design Plan.

11.15.6372 Greenway Design Plan

The elements of the Greenway Design Plan are:

- (A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and the river.**

Applicant: Large quantities of rock fill has left the bank nearly vertical from water to bank crest. Little vegetation survives on the bank beyond a few vines and scattering of small plants. At the top of the crest there is a row of trees including many hand planted maples and other non indigenous trees with the remainder being cottonwoods. This existing vegetation will not be modified. Perhaps 15 percent of the land is covered with trees and we intend to leave them in place. The same areas that have been used for parking and storage will continue to be used as such. The trash enclosures have not affected the bank vegetation as they were built very close to the old trash enclosures.

Staff: The applicant has submitted the same response for WRG 6-98 as was submitted for WRG 8-96. Staff made findings of compliance with the criteria in the March 28, 1997 decision issued for DR 7-96, WRG 8-96, and HV 21-96. Staff notes for the purposes of this application, the applicant has not established the landscape plan as shown in the 1997 decision. In that sense, the applicant has not provided the maximum possible landscaped are between the use of the site and the river.

Therefore, the application does not meet the criterion.

- (B) Reasonable public access to and along the river shall be provided by appropriate legal means to the greatest possible degree and with emphasis on urban and urbanizable areas.**

Applicant: Access to the recreational areas will be enhanced because of the better looking, safer structures that provide storage for water related private boats and household items. The terms of the State Wetlands lease under the moorage operate call for denying public access only for safety and security – a policy agreeable to the owners of the site.

Staff: The site of the Sauvie Island Moorage provides public access to the river. The site is zoned with a rural designation of Multiple Use Agriculture (MUA-20). However, the site contains many residences as noted by the Multnomah Channel Moorage/ Marina Inventory 1997/98 and the letter from Grant Johnson dated November 16, 1998. The application meets the criterion.

- (C) Developments shall be directed away from the river to the greatest possible degree, provided, however, that lands in other than rural and natural resource districts may continue in urban uses.**

Applicant: The new trash enclosures are completely screened from the waterway and are relatively small 10 foot by 16 foot.

Staff: The applicant has constructed the trash facilities and the portals within 15 feet of the rear property line and hence closer to the river. The applicant has built the structures in violation of the approved plans issued under the decision for DR 7-96, WRG 8-96, HV 21-96 on March 28, 1997. The applicant has not completed the landscape plan as shown in the 1997 decision. The applicant

has not directed the development activity away from the river to the greatest possible degree. Nor has the applicant provided the vegetative screening shown in the 1997 decision.

The application does not meet the criterion.

(D) Agricultural lands shall be preserved and maintained for farm use.

Applicant: This land is not agricultural and has not been for 50 years or more.

Staff: The subject parcels of the Sauvie Island Moorage are not used for agricultural activities. This criterion is not applicable to this application.

(E) The harvesting of timber, beyond the vegetative fringes, shall be conducted in a manner which shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent practicable or will be restored within a brief period of time on those lands inside the Urban Growth Boundary.

Applicant: There will be no harvesting of timber on the property.

Staff: The subject parcels of the Sauvie Island Moorage are not used for the harvesting of timber. This criterion is not applicable to this application.

(F) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflicts with farm uses.

Applicant: See B.

Staff: The site is not used for farm use and the continued use of the site as a houseboat moorage will not be in conflict with the use of adjacent parcels for agriculture activities. Recreational needs can be satisfied by the public and private use of the site to access the river. The applicant will comply with the criterion to satisfy recreational needs in a manner consistent with the carrying capacity of the land.

(G) Significant fish and wildlife habitats shall be protected.

Applicant: All existing fish and wildlife habitats will not be affected.

Staff: The subject parcels are not identified as part of the Sensitive Big Game Wintering Areas. The proposed alterations to the site, alterations in which the applicant requests retroactive approval for the work outlined within this decision, will not alter the existing impact to the fish and wildlife habitat areas on and adjacent to the subject parcels. The fish and wildlife habitat areas will be protected. The application meets the criterion.

(H) Significant natural and scenic areas and viewpoints and vistas shall be preserved.

Applicant: A residential floating home moorage fronts the entire site along the channel. As most of the homes are two story and the channel is somewhat narrow, the view from the ware consists largely

of the homes. Above and beyond the homes are the trees that line the bank, which in their season obscure the site based structures.

Staff: The proposed alterations that the applicant requests retroactive approval for include the new location of the free-standing sign, the trash facilities, and the portals. In addition, the applicant constructed a 10-foot wide driveway instead of the 4-foot wide asphalt walkway shown on the plans in the March 28, 1997 decision. The alterations to the site plan as described within this decision, will not alter the preservation of the significant natural and scenic areas, or the viewpoints and vistas. The application meets the criterion.

- (I) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

Applicant: No statement submitted.

Staff: The applicant has submitted completed Service Provider forms from the Sauvie Island Volunteer Fire Department and the Multnomah County Sheriff's Department. The application meets the criterion.

- (J) The natural vegetation along the river, lakes, wetlands and streams shall be enhanced and protected to the maximum extent practicable to assure scenic quality, protection from erosion, screening of uses from the river, and continuous riparian corridors.**

[Amended 1990, Ord. 643 § 2]

Applicant: See H similar.

Staff: Again, the applicant has provided the same narrative used in the application for the 1996 case file WRG 8-96. The proposed applications, HV 16-98 and WRG 6-98, submitted September 30, 1998 are for retroactive approval of the changes made to the site. The applicant's proposed changes have already been constructed on the site. The alterations will not impact the river or the natural vegetation on the site. The applicant has not fully implemented the landscape plan from the March 28, 1997 decision. However, the criterion is specific to the natural vegetation, the riparian corridor, and the protection of the site from erosion. The application meets the criterion.

- (K) Extraction of known aggregate deposits may be permitted, pursuant to the provisions of MCC .7105 through .7640, when economically feasible and when conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.**

Applicant: No existing aggregate deposits will be distributed on site.

Staff: The site does not contain aggregate deposits that will be extracted. The criterion is not applicable to this application.

- (L) Areas of annual flooding, flood plains, water areas and wetlands shall be preserved in their natural state to the maximum possible extent to protect the water retention, overflow and natural functions.**

Applicant: Areas of flooding will be preserved in their natural state including the existing rip rap and shoreline vegetation. The levee will not be affected by the new construction.

Staff: The applicant has used the 1996 narrative statement (as they have throughout the WRG criteria) to address the criterion. The site work accomplished by the applicant is in violation of the approved March 28, 1997 decision. However, the alterations to the plan are similar to the approved plans and with that in mind, the changes allow the site to maintain the preservation of the natural state of the site. The site will be preserved in the maximum possible extent to protect the water retention, overflow, and natural functions. The application meets the criterion.

(M) Significant wetland areas shall be protected as provided in MCC .6376.

[Amended 1990, Ord. 643 § 2]

Applicant: There are no significant wetland areas on the site.

Staff: Multnomah County maps show the parcel does not contain significant wetlands. The site does contain significant riparian corridor habitat, as noted under Section (J) above. The application meets the criterion.

(N) Areas of ecological, scientific, historical or archaeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible.

[Renumbered 1990, Ord. 643 § 2]

Applicant: Any artifacts have long been safely capped by the Army Corps of Engineers during construction of the Island dike and the site is not listed for Archaeological digs.

Staff: The applicant states the areas of archaeological significance will be protected. In addition, the applicant shall protect the ecological, historical, and scientific significance of the site to the maximum extent possible.

(O) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the character of the Greenway. *[Renumbered 1990, Ord. 643 § 2]*

Applicant: We intend to plant all areas of new excavation outside the buildings and paving with native plants to provide erosion control. All existing planting will remain intact.

Staff: The site work has already been done and the applicant received approval for two Grading and Erosion Control permits, GEC 25-96 and GEC 19-97. If the applicant is required to move the structures in order to comply with the 1997 decision then the installation appropriate erosion control measures will be required. The application meets the criterion.

(P) The quality of the air, water and land resources in and adjacent to the Greenway shall be preserved in development, change of use, or intensification of use of land designated WRG. *[Renumbered 1990, Ord. 643 § 2]*

Applicant: There is no change of use on the site and the runoff and rain drains will be installed in new City of Portland approved soakage trenches, which is a great improvement over the existing setup.

Staff: The applicant installed the surface water mechanisms as required. The quality of the air, water, and land resources in and adjacent to the Greenway will be preserved even with the alterations and hence violation, of the previously approved site plan. The application meets the criterion.

- (Q) A building setback line of 150 feet from the ordinary low waterline of the Willamette River shall be provided in all rural and natural resource districts, except for non-dwellings provided in conjunction with farm use and except for buildings and structures in conjunction with a water-related or a water dependent use. [Renumbered 1990, Ord. 643 § 2]**

Applicant: See the proposed variance information.

Staff: The applicant received approval under DR 7-96, WRG 8-96, and HV 21-96 for a Major Variance to the requirement to meet the 150-foot setback from the ordinary low waterline of the Willamette River to a building. The March 17, 1999 site plan illustrates the two garages on the west side of the site were built as approved and within approximately 100 feet of the ordinary low waterline of the Willamette River. The applicant's request for retroactive approval is for the structures (free-standing sign, trash facilities, and portals) constructed in violation of the 30-foot front yard and the 30-foot rear yard setback requirements. In addition, Staff has found other violations of the site plan approved in the March 28, 1997 decision. The application does meet the criterion of (Q) based on the prior approval as described above.

- (R) Any development, change of use or intensification of use of land classified WRG, shall be subject to design review, pursuant to MCC .7805 through .7865, to the extent that such design review is consistent with the elements of the Greenway Design Plan.**
[Renumbered 1990, Ord. 643 § 2]

Applicant: We are submitting for design review for the new replacement structures to an existing use.

Staff: The applicant has used the 1996 narrative for the 1998 land use applications. The applicant has submitted case files HV 16-98 and WRG 6-98 as requests for retroactive land use approval for the alterations to the site. The free-standing sign, the trash facilities, and the portals have been constructed in violation of the 30-foot required front and rear yard setbacks of the MUA-20 zone. The applicant has also built a 10-foot wide driveway instead of a 4-foot asphalt walkway shown as on the 1997 plans. The applicant has not submitted a Design Review application. The applicant will be required to submit for the application in accordance with the Code requirements.

The application does not meet the criterion.

- (S) The applicable policies of the Comprehensive Plan are satisfied. [Added 1990, Ord. 643 § 2]**

Applicant: The existing trash and entry enclosures meet the Comprehensive Plan guidelines.

Staff: The applicant did not submit a narrative to address the Comprehensive Plan policies. In the letter from Staff to the applicant and the property owner, Staff requested the applicant address Comprehensive Plan Policies 13, 14, 22, 37, 38, and 40. This was noted under Item #14 of the October 27, 1998 letter from Staff. The applicant has submitted the required Service Provide forms.

The application does not meet the criterion.

Flood Hazard

11.15.6301 Purposes

The purposes of the Flood Hazard District are to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas, all in accordance with ORS 215, LCDC Statewide Planning Goal 7 and Multnomah County Framework Plan Policy 14. The regulation of uses within this District is intended to:

- (A) Protect human life and health;**
- (B) Protect property and structures;**
- (C) Minimize public costs for flood control projects;**
- (D) Minimize public costs of rescue and relief efforts associated with flooding;**
- (E) Minimize business interruptions due to flooding;**
- (F) Minimize damage to public facilities and utilities including water and gas mains, electric, telephone and sewer lines, streets and bridges located in flood hazard areas;**
- (G) Maintain a stable tax base by providing for appropriate use and development of areas of flood hazard;**
- (H) Make the designation of property subject to flood hazards a matter of public record; and**
- (I) Qualify Multnomah County for participation in the National Flood Insurance Program.**

11.15.6303 Area Affected

The provisions of MCC .6301 - .6323 shall apply to all areas within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA). These maps may be periodically revised or modified by FEMA in accordance with prescribed procedures pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 92-234). These changes are technical in nature and are made in order to reflect new or revised data on base flood elevations, ground elevations, flood control structures or other factors. In order to employ the best available information and maintain compliance with Federal Flood Insurance Program regulations, Multnomah County shall utilize any such revisions or modifications upon their effective date.

Staff: Maps on file at Multnomah County include the FIRM maps and the Floodway maps produced by FEMA. The subject parcels of HV 16-98 and WRG 6-98 are shown on the FIRM maps, community panel #410179-0040B, with areas designated in Zone A and Zone B of the maps. Zone A is the area of 100-year flood and Zone B is the area subject to 100 to 500-year floods. The subject parcels are shown on the Floodway maps with areas in the 100-year flood and areas within the 500-year flood. Section .6317 of the Code applies to this site. The applicant shall provide a step backwater analysis done by a Registered Professional Engineer.

11.15.6305 Uses

In areas subject to the provisions of this Section, all uses permitted under the provisions of the underlying district may be permitted, subject to the additional requirements and limitations of MCC .6301-6323.

11.15.6315 Development Standards

The following standards shall apply to all new construction, substantial improvement or other development in areas within the 100-year flood boundary:

* * *

- (I) Land may be exempted from the requirements of MCC .6315 upon review and approval by the Director of an acceptable elevation survey, certified by a State of Oregon Registered Professional Engineer or Land Surveyor, which demonstrates that the subject land is at least one foot above the base flood level. *[Renumbered 1987, Ord. 549 § 2]*

Staff: The applicant has submitted a Floodproofing Certificate for Non-Residential Structures. The form is dated 12/2/96 and is the same form submitted for the case files DR 7-96, WRG 6-96, and HV 21-96. The Flood Certificate shows the base flood elevation at 26 feet. The applicant states the buildings are floodproofed to an elevation of 35.4 feet NGVD. The applicant also completed the portion of the Floodproofing Certificate with the following statement, "I certify that based upon development and/ or review of structural design, specifications, and plans for construction that the design and methods of construction are in accordance with accepted standards of practice for meeting the following provisions..." The application meets the criterion.

* * *

11.15.6317 Floodway Requirements

In areas identified as floodway on the Flood Boundary and Floodway Maps, the following restrictions, in addition to the requirements of MCC .6315, shall apply:

No development shall be permitted that would result in any measurable increase in base flood levels. Encroachment is prohibited, including fill, new construction, substantial improvement and other development, unless a detailed step backwater analysis, certified by a Registered Professional Engineer, is provided which demonstrates that the proposed encroachment will cause no measurable increase in flood levels (water surface elevations) during a base flood discharge.

Staff: The provisions of this Section apply to the subject parcels of HV 16-98 and WRG 6-98. The FEMA Flood Boundary and Floodway Map shows, on community panel # 410179-0040B, that the subject parcels contain areas within the 100-year and the 500-year flood boundary areas. The applicant shall provide a step backwater analysis from a Registered Professional Engineer. The applicant has not submitted a step backwater analysis.

The application does not meet the criterion.

Comprehensive Plan Policies

a. Policy No. 13, Air, Water and Noise Quality:

Multnomah County, ... Supports efforts to improve air and water quality and to reduce noise levels. ... Furthermore, it is the County's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to Air Quality, Water Quality, and Noise Levels.

Applicant: The project only provides noise from the cars and trucks moving about and the trash enclosure buffers the noise from the river by covering them much more properly than what existed before with just dumpsters sitting on the ground open to view.

Staff: During the time of construction of the addition noise may increase slightly and temporarily. No significant impact on air pollution, water quality and noise quality would result from the changes to the site plan, already done, and not in compliance with conditions of approval. Thus, the actions are not in compliance with applicable agencies (eg. Sanitarian, Building Codes).

b. Policy No. 14, Development Requirements:

The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

A. Slopes exceeding 20%.

Staff: The subject parcel is not identified on Multnomah County's Slope Hazard Map. The subject parcel contains soil types, Burlington fine sandy loam 0 to 8 percent slopes (6B), Sauvie Silt Loam (44) and Sauvie Silt Loam, protected (45) according to the Soil Survey of Multnomah County, Oregon. Slopes on the subject parcel, according to the soil types maps, do not exceed 20%.

B. Severe soil erosion potential.

Staff: The subject parcel soil is composed of three soil types according to the soils map on file at Multnomah County and identified in (A). Burlington fine sandy loam (6B) and Sauvie silt loam, protected (45) have a slight hazard of erosion and Sauvie silt loam (44) has a high hazard of erosion. The applicant is required to maintain Best Management Practices for erosion control before, during, and after construction.

C. Land within the 100 year floodplain.

Staff: According to the Flood Insurance Rate Maps (FIRM), the subject parcel is within the floodplain. Please see the Flood Hazard criteria within this decision document.

D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year.

Staff: According to the Soil Survey of Multnomah County, Oregon soil type 44 has a "water table within a depth of 12 inches during May and June."

E. A fragipan less than 30 inches from the surface.

Staff: The fragipan of the soils of the subject parcels is not identified in the Soil Survey of Multnomah County, Oregon.

F. Land subject to slumping, earth slides or movement.

Applicant: We are not building on unstable steep portions of the site and have planted the slopes with erosion control resistant planting. The buildings are located a minimum of one foot above the flood elevation.

Staff: According to the Soil Survey of Multnomah County, Oregon the soil type 6B is subject to slumping and soil type 44 is subject to flooding.

b. Policy No. 22, Energy Conservation:

The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. ... The County shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:

- A. The development of energy-efficient land uses and practices;**
- B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreation centers;**
- C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;**
- D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.**
- E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.**

Applicant: The project does not limit energy conservation.

Staff: The applicant is not intensifying the use of the site or increasing the density of the site. Sauvie Island Moorage is an existing moorage. Street layouts and lotting patterns are already in place and the applicant does not propose to change them. The applicant does not propose to use renewable energy resources.

c. Policy No. 37, Utilities:

The County's policy is to require a finding prior to approval of a legislative hearing or quasi-judicial action that:

WATER DISPOSAL SYSTEM:

- A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or**

- B. **The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
- C. **There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**
- D. **There is an adequate private water system, and a public sewer with adequate capacity.**

Applicant: All utilities have already been approved.

Staff: The applicant has submitted the Certification of Water Service form.

DRAINAGE:

- E. **There is adequate capacity in the storm water system to handle the increased run-off; or**
- F. **The water run-off can be handled on the site or adequate provisions can be made; and**
- G. **The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, and lakes or alter the drainage on adjacent lands.**

Staff: The applicant has not submitted a Certification of On-Site Sewage form.

ENERGY AND COMMUNICATIONS:

- H. **There is an adequate energy supply to handle levels projected by the plan; and**
- I. **Communications facilities are available.**

Staff: The application has met the criteria for communications facilities and energy supply.

c. Policy No. 38, Facilities:

The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

School

- A. **The appropriate school district has had an opportunity to review and comment on the proposal.**

Fire Protection

- B. **There is adequate water pressure and flow for fire fighting purposes; and**
- C. **The appropriate fire district has had an opportunity to review and comment on the proposal.**

Police Protection

- D. **The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.**

Applicant: The fire and police all approved the project on the certifications.

Staff: The applicant has submitted the Fire District Review Service Provider form signed by the Sauvie Island Volunteer Fire Department. The applicant has also submitted the Police Services form signed by the Multnomah County Sheriff's Department.

d. Policy No. 40, Development Requirements:

The County's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

- A. Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.**
- B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**
- C. Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

Applicant: The project allows for bicycle storage and access for pedestrians to the waters edge.

Staff: The subject parcel is zoned single-family residential and according to the 1997/98 Multnomah Channel Moorage and Marina Inventory. The applicant states the site has pedestrian and bicycle access.

Conclusion:

Based on the findings and conclusions noted above, the applicant has not carried the burden for the retroactive request for approval of a Major Variance to build within 15 feet of the front yard property line and to build with 15 feet of the rear property line at 17505 NW Sauvie Island Road. The applicant also constructed a 10-foot wide driveway instead of a 4-foot wide asphalt walkway. The applicant's request for a Major Variance is **denied**. The application for the Willamette River Greenway is **denied**. This notice was mailed June 29, 1999 in the manner required by ORS 197.763. Opportunity to appeal this decision and have the application considered at a public hearing will be provided until the close of business on July 9, 1999.

MULTNOMAH COUNTY LAND USE PLANNING CASE FILES WRG 6-98 and HV 16-98:

By: _____
Tricia R. Sears, Land Use Planner
For Kathy Busse, Planning Director

NOTICE:

State law requires that mailed notice and an opportunity to appeal an Administrative Decision be provided to the applicant and nearby property owners when discretionary or subjective criteria apply to a proposal. **The tentative decision above will become final unless an appeal is filed within 10 days of the date notice is mailed.** If appealed, a public hearing will be scheduled before a Hearings Officer pursuant to Multnomah County Code section 11.15.8290. If not appealed, the decision will become final on the day following the ten-day appeal period. An appeal requires a \$100.00 fee and must state the specific grounds on which it is based. To review the file, or obtain appeal forms or instruction, contact the Multnomah County Land Use Planning Division at (503)-248-3043, business hours are Monday through Friday, 8:00 AM to 4:30 PM. The Land Use Planning office is located at 1600 SE 190th Avenue, Portland, OR 97233.

Notice to Mortgagee, Lien Holder, Vendor or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.



DEPARTMENT OF ENVIRONMENTAL SERVICES
LAND USE PLANNING DIVISION
1600 SE 190th Avenue
Portland, OR 97233 (503) 248-3043

SUPPLEMENTAL STAFF REPORT

This notice concerns a public hearing scheduled to consider the land use case cited and described below.

Case File: HV 16-98 and WRG 6-98

Scheduled Before: One of the following three County Hearings Officer's:

Joan Chambers
Liz Fancher
Deniece Won

Hearing Date, Time, & Place: Wednesday, August 18, 1999, at 9:00 AM or soon thereafter
1600 SE 190th Avenue, Columbia Room, Portland, OR 97233.

WHAT: Bayard Mentrum has filed an appeal of case files HV 16-98 and WRG 6-98. The two land use applications were submitted as retroactive requests for approval of Major Variance and Willamette River Greenway permits. Mentrum's Notice of Appeal cites three points as the grounds for the appeal. Attorney Larry Epstein will represent the property owner and the applicant.

WHERE: 17505 NW Sauvie Island Road.
Tax Lots 40 and 42, Section 17, T2N, R1W, W.M.
Tax Account R#97117-0400 and R#97117-0420.

WHO: *Case File* Bayard Mentrum, Architect
Applicant/ 503 NW Irving, #210A.
Appellant: Portland, OR 97209.

Property Owner: Karen Carey
P.O. Box 10858
Portland, OR 97296-0858.

Approval Criteria: Multnomah County Code (MCC) MCC 11.WH.2122 et seq., Multiple Use Agriculture (MUA-20); MCC 11.15.6350 et seq., Willamette River Greenway; 11.15. 7902 et seq., Signs; MCC 11.15.8505 et seq., Variances; MCC 11.15.8290 et seq., Appeal of Administrative Decision.

Public Participation and Hearing Process:

Application materials are available for inspection at the Land Use Planning office 20 days prior to the hearing, at no cost. Copies may be purchased for 30-cents per page. A **Supplemental Staff Report** and recommendation to the Hearings Officer **will be available 7 days prior to the hearing**. For further information on this case, contact Tricia R. Sears, Staff Planner at (503)-248-3043.

To comment on this proposal, you may write to or call the Land Use Planning office or attend and speak at the hearing. **All interested parties may appear and testify or submit written comment to the Hearings Officer.** All comments should address the approval criteria applicable to the request (outlined below). The hearing procedure will follow the Hearing Officer's *Rules of Procedure* and will be explained at the hearing.

The Hearings Officer may announce a decision at the close of the hearing, or on a later date, or the hearing may be continued to a time certain. A written decision will be mailed to the participants and filed with the Clerk of the Board of County Commissioners usually within ten days of the announcement. A decision by the Hearings Officer may be appealed to the Board of County Commissioners by either the applicant or other participants at the hearing. Appeals must be filed with the Land Use Planning Division within ten days after the decision is mailed. A fee is charged for appeals. Appeal forms are available at 1600 SE 190th Avenue, Portland, OR 97233.

Failure to raise an issue in person, or by letter, or failure to provide sufficient specificity to allow the Hearings Officer an opportunity to respond to the issue precludes subsequent appeal to the State Land Use Board of Appeals on that issue.

Multnomah County Code Criteria Being Appealed:

The Notice of Appeal: Administrative Decision submitted by Bayard Mentrum on July 9, 1999 does not specifically cite criteria of the Multnomah County Code for grounds of reversal of the administrative decision. Mentrum, the appellant, provides a narrative to address the three points listed below. The applicant narrative and Staff responses are included within this document. Please see the original NOTICE OF DECISION from July 29, 1999 for all other Code provisions, applicant narrative, and Staff responses.

The appellant lists the following points of appeal:

- 1) Trash enclosures.
- 2) Stone Monument Sign.
- 3) Driveway to Storage Units.

Multnomah County Code Appeal Criteria

11.15.8290 Appeal of Administrative Decision by the Planning Director

(A) A decision by the Planning Director on an administrative matter made appealable under this Section by ordinance provision, shall be final at the close of business on the tenth calendar day following the filing of the written Decision, Findings and Conclusions with the Director or the Department of Environmental Services, unless prior thereto, the applicant files a Notice of Appeal with the Department, under subsections (B) and (C).

(B) A Notice of Appeal shall contain:

- (1) The name, address and telephone number of the person filing the Notice;
 - (2) An identification of the decision sought to be reviewed, including the date such decision was filed with the Director of the Department of Environmental Services; and
 - (3) The specific grounds relied on for reversal or modification of the decision.
- (C) A Notice of Appeal shall be accompanied by the required fee, pursuant to MCC .9020.
- (D) Failure to:
- (1) File a Notice of Appeal within the time limit prescribed by subsection (A) above, or
 - (2) Pay the required fee under subsection (C) above, shall be a jurisdictional defect and shall preclude review by the Hearings Officer.
- (E) On receipt of a Notice of Appeal, the Planning Director shall schedule a hearing on the agenda for the next meeting of the Hearings Officer, for which notice can be given under subsection (F), below.
- (F) Notice of hearing on an appeal filed under MCC .8290(A) shall be as required by MCC .8220(A)(1), (2), (3), (5), (6) and (C)(1).

11.15.8295 Procedure on Appeal

Except as otherwise provided in this Section, proceedings before the Hearings Officer on matters appealed under MCC .8290(A) and appeals therefrom to the Board of County Commissioners shall be conducted according to the provisions of MCC .8230 through .8290.

- (A) A hearing before the Hearings Officer on a matter appealed under MCC .8290(A) shall be limited to the specific grounds relied on for reversal or modification of the decision in the Notice of Appeal.
- (B) The provisions of subsection MCC .8230(D) and (E) shall not apply to hearings on appeals filed under MCC .8290(A).
- (C) The findings adopted by the Hearings Officer shall specifically address the relationships between the grounds for reversal or modification of the decision as stated in the Notice of Appeal and the criteria on which the Planning Director's decision was required to be based under this Chapter.

June 29, 1999 Decision – Applicable Criteria Found to be Non-Compliant:

Staff found the application did not meet the following Multnomah County Code (MCC) sections: .2134 (A); .2134 (B); .2138 (C); .8505 (A)(1); .8505 (A)(2); .8505(A)(3); .6372(A); .6372(C); .6372 (R); .6372 (S); and .6317 in the June 29, 1999 decision for HV 16-98 and WRG 6-98.

Staff Planner Site Visits to 17505 NW Sauvie Island Road:

- 1) March 17, 1999.
- 2) July 11, 1999.

List of Exhibits:

- 1) Reduced copy of applicant site plan from the June 29, 1999 decision on HV 16-98 and WRG 6-98.
- 2) Reduced copy of the applicant site plan for DR 7-96, WRG 8-96, and HV 21-96.
- 3) Same as #2 but with Staff notes.
- 4) Reduced copy of elevation drawings from DR 7-96, WRG 8-96, and HV 21-96.
- 5) Copy of photo of east and west portals and trash enclosures.
- 6) Letter from Larry Epstein faxed on July 29, 1999 to Staff.

Applicant Request for Reversal or Modification of the Decision:

As provided by the applicant, Bayard Mentrum, on July 9, 1999 in the Notice of Appeal: Administrative Decision.

1. Trash Enclosures

On page 10 the Staff comments that the applicant mentions that the trash enclosures and entry portals are within 30 feet of the ordinary water level, but in fact the drawing I, as the applicant, submitted shows that both portals are outside the 30 feet of the ordinary high water line but are 15 feet from the property line. The entry portals are located next to the bridges to the floating homes so people may be able to locate the homes more easily from the bank above. The westerly trash enclosure is located next to the portal as planned for easy access to the home owners without having to cross traffic. The trash enclosure is also located for easy access of the trash haulers. The easterly trash enclosure is detached from the portal because of the steep rise in the land at the bridge location. The owners have greatly improved the appearance of the original trash enclosures and they are screened from the river. No one from the river channel can see the enclosures through the floating homes and trees on the bank. It seems logical to leave the portals where they are if they relate to the pedestrian bridges and locate the trash for convenience to the home owners instead of across the parking lot. The owners did receive a building permit from the City of Portland for the new portals and enclosures before they were constructed and thought this was all they needed.

2. Stone Monument Sign

The site is narrow and the entry drive drop off quite steeply. The sign was located within the front yard setback so it could be seen from Sauvie Island Road rather than down the hill and obscured. There is a wide shoulder on the road and I again drove out of the road by the sign and could easily see both directions down the road without sticking out into the pavement. The owners have stated that no one has complained about not being able to see both directions because of the curves in the roadway. The owners have again improved the appearance of the project without endangering the life and safety of anyone. We feel that if anyone from planning drove up the driveway by the sign they would see it does not block any vision clearance areas. Drivers used to go off the road on the curve going southeast on Reeder Road and now they see the sign and avoid this danger.

3. Driveway to Storage Units

A 10 foot wide asphalt drive was changed from the original 4 foot wide sidewalk to allow trucks to back down the drive to load and unload in the storage areas over the garages. This driveway will only be used when someone is moving in or out of the storage units and there is clear visibility to the entry drive.

Staff states, in there administrative decision, that hazard conditions may exist, but no one has complained to the owners about a problem and I personally drove through the sign and could easily see both directions and I suggest someone from planning do the same before passing judgement.

We have asked for a variance because of the site narrowness and steepness which greatly restricts what may be done. We stated many reasons for the variance in our original application but these were ignored in the decision by stating that the applicant failed to show any reasons for the variance. The neighbors support the changes as a much needed upgrade to the neighborhood and an improvement to the safety and security to the moorage.

The owners realize that they had to adjust these structures on site to gain the most convenient and practical location and have tried hard to improve the moorage appearance and safety for the neighborhood and are disturbed that they are being unfairly punished for these improvements. The owners will be happy to add any more planting deemed necessary by the planning staff.

Staff Response to Applicant Points of Appeal:

Intro:

The Notice of Appeal: Administrative Decision submitted by Bayard Mentrum conveys the architect's frustration with Multnomah County Code requirements for the land use applications submitted by him on behalf of Sauvie Island Moorage. Staff agrees the "improvements" have improved the appearance of Sauvie Island Moorage. Unfortunately, the aesthetics of the structures and the site are only part of the criteria that are applicable to the subject land use applications for WRG 6-98 and HV 16-98. These two applications primarily involve clear and object standards such as setback requirements. For example, a structure in the MUA-20 zone is not allowed to encroach on a rear yard setback without approval of a variance.

The applicant and the property owner are not being "unfairly punished" for the construction actions. The land use decision issued March 28, 1997 for DR 7-96, WRG 8-96, and HV 21-96 was an approval for the application materials submitted at that time. Subsequent to the land use approval, the applicant states the "owners realize that they had to adjust these structures to gain the most convenient and practical location". These adjustments were not in accordance with the approved decision issued March 28, 1997, nor were the adjustments in accordance with the Multnomah County Code. Hence, the site has been considered under violation of the original land use approvals and the Multnomah County Code. Staff issued the administrative decision on for the Major Variance, HV 16-98, and Willamette River Greenway, WRG 6-98, as a denial on June 29, 1999. A copy of the decision may be obtained from the Multnomah County Land Use Planning office. The applicant submitted the Notice of Appeal: Administrative Decision on July 9, 1999.

Staff visited the site on March 17, 1999 and July 11, 1999. Two sets of site visit photos are located in the case file for HV 16-98. In addition, it should be noted that Staff and attorney Larry Epstein have had numerous phone conversations to work through the issues on the two cases.

1. Trash Enclosures and Portals

The site plan, drawn by Bayard Mentrum, for the decision issued March 27, 1997 in DR 7-96, WRG 8-96, and HV 21-96 illustrated the placement of the two "gate portals" 30 feet from the rear property line. The site plan from 1997 illustrates the east and west portals are on the sidewalks for which they serve as entryways. Exhibit #5 contains photos of the east and west portals from a July 11, 1999 site visit.

The Dimensional Standards of the MUA-20 zone, Section .2138, specifically subsection (C), establish the setback requirements for the front (30 feet), rear (30 feet) and side (10 feet) yard setbacks. In the decision issued June 29, 1999, Staff made the finding "does not meet the criterion" under Section .2138 for the application (see page 9 of the decision).

The Staff planner who issued the 1997 decision stated that the portal and the single trash container area were attached to each other, as a single structure, in the original site plan and the elevation drawings. This

statement is substantiated by the site plan from 1997, attached as Exhibit #2, and the elevation drawings, attached as Exhibit #4. The Staff planner stated that the walkway area leading to both structures (the attached portal and trash enclosure) was longer than it exists now. That distance is evident in the difference of placement of the original approved structures and the structures that were built on the site. The walkway would have been 15 feet further into the parking lot and the 1997 site plan illustrates this. The photographs of the site illustrate the current location of the portals and trash enclosures (built as separate structures); see Exhibits #5. The east portal is distinctly detached from the east trash enclosure. The trash enclosure is larger than the approved plan and it includes a roof. The west portal is detached from the west trash enclosure. The west trash enclosure is much larger than the original plan illustrates. The site plan also illustrates the landscape area that was to be established in the area in the front of the now existing west trash enclosure. The west portal was to be placed at the end of the landscaping area. Again, refer to Exhibit #2 and Exhibit #5 for a comparison of the original site plan and the photos of the site as it exists now.

Section .6372 (A) of the Willamette River Greenway application criteria states, "The maximum possible landscaped area, scenic and aesthetic enhancement, open space, or vegetation shall be provided between any use and the river". With the modifications made by the applicant to the site plan approved in the 1997 decision, much of the original landscape plan was not implemented. Exhibits #2 and #5 can be compared for this purpose.

Section .6372 (Q) of the Willamette River Greenway application criteria states, "A building setback line of 150 feet from the ordinary low waterline of the Willamette River shall be provided in all rural and natural resource districts, except for non-dwellings provided in conjunction with farm use and except for buildings and structures in conjunction with a water-related or a water dependent use."

In the 1997 case, the Staff planner granted approval of the applicant's request for a Major Variance to the 150-foot setback from the ordinary low waterline of the Willamette River. The two structures were placed, the east and west portal/ trash enclosure structures, to the furthest point possible to still make the rear property setback and have the structure function as an entryway. Now the structures are separate. The property owner's attorney, Larry Epstein, has proposed, via phone conversation, dismantling the trash enclosures and retaining the portals in their current location.

The Design Review criteria in Section .7850 (A)(7) states, "Buffering and Screening – Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties." Screening of the trash facilities is required under this criterion.

The addition of the roof to the trash enclosure makes that a structure that must comply with the 30-foot rear yard setback of the MUA-20 zone, as established in Section. 2318 (C). Dismantling part of it would make it a non-structure and thus it would not be required to meet the required 30-foot setback. One option would be to move the trash enclosure to another location on the site. The site plan illustrates several possible locations. The structure could be retained in its current form in another location that meets the 30-foot setback requirement. Staff notes that other possible locations for the trash enclosures include the pump house building area and other portions of the parking lot. These areas would be screened even more so from the Willamette River.

The variance criteria include the standard for "practical difficulties in the application of the Chapter". Staff believes the existing site includes alternative locations for the placement of the east and west portals and the east and west trash enclosures. As stated in the decision issued June 29, 1999 in Section (A)(1) (page 11), "Staff finds the applicant has not established a condition or circumstance on the land that does not apply to other properties and that limits the site to the extent that an alternative location, within the required setbacks, could be used".

Staff recommends the Hearings Officer deny the request for the retroactive approval of the Major Variance and Willamette River Greenway applications. Staff recommends the applicant and property owner comply with the 1997 decision and site plan (for the portals and the trash enclosures), or comply with alternatives as recommended by the Hearings Officer.

2. Stone Monument Sign

Pursuant to conversations with the property owner's attorney, Larry Epstein, and his written correspondence by fax and letter, Epstein proposes to alter the existing sign. See Exhibit #6 for a copy of the letter from Epstein. The property owner has hired Group Mackenzie to evaluate the vision clearance triangle for the existing sign. Epstein states the property owner is willing to alter the sign to comply with the provisions of MCC 11.15.7964 Sign Placement. Subsection (C)(2) includes the statement, "The height of the vision clearance area is from three feet above grade to ten feet above grade." This would render the violation by the existing sign, of Section .7982 (NN) not applicable. It should be noted that under Section .7964(F), "Signs may be erected in required yards and setbacks," a sign can be placed within a required setback. Staff regrets the error stated on page 10 of the June 29, 1999 decision.

Given the attorney's written and verbal statements offering to alter and relocate the existing free-standing sign, it is likely that for the purposes of the public hearing on the appeal the issue of the placement of the sign will have been resolved (or at least well underway to being resolved).

3. Driveway to Storage Units

The original 1997 site plan, attached as Exhibit #2, illustrates the sidewalk adjacent to the garages. The applicant built a 10-foot wide road inside of a 4-foot wide asphalt walk. Larry Epstein has stated, via phone conversation and by fax, that Group Mackenzie engineers will evaluate the traffic safety impact of the driveway's proximity to the entryway to the Sauvie Island Moorage. Based on the slope and the proximity Staff stated, in the June 29, 1999 decision, that hazardous conditions may exist. At the time, the applicant did not provide a statement regarding the level of safety of the intersection.

So long as the property owner can provide verification the intersection of the 10-foot wide driveway and the entryway to the site is not a hazardous intersection, Staff is has no issues with allowing the driveway to remain as it currently exists.

Staff recommends the Hearings Officer evaluate the level safety of the intersection and if it can be found to be a safe intersection, allow the intersection to remain as it currently exists.

Conclusion:

Staff: Staff recommends the Hearings Officer make findings on the three points listed above. Staff believes the sign issue discussed in item #2 will be a non-issue by the time of the public hearing. Staff believes the driveway issue can be resolved through an evaluation of the traffic impact of the intersection of the driveway and the entryway to the subject parcels of Sauvie Island Moorage. Staff recommends the Hearings Officer deny the request for the approval of the Major Variance for the portals and trash enclosures because the subject parcels provide alternative sites for placement of the structures and/ or modifications to the structures that would allow the structures to meet the applicable Code provisions. In addition, Staff recommends the Hearings Officer apply the landscaping requirements from the March 28, 1997 decision.