

CITY OF MILWAUKIE  
PLANNING COMMISSION MINUTES  
TUESDAY, June 27, 2006

**COMMISSIONERS PRESENT**

Jeff Klein, Chair  
Lisa Batey  
Teresa Bresaw  
Scott Churchill

**COMMISSIONERS ABSENT**

Catherine Brinkman  
Dick Newman, Vice Chair

**STAFF PRESENT**

Katie Mangle,  
Planning Director  
Brett Kelter,  
Assistant Planner  
Zachary Weigel,  
Engineering Dept.  
Shirley Richardson,  
Hearings Reporter

1.0 CALL TO ORDER

The meeting was called to order at 6:32 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 CONSENT AGENDA

3.1 Planning Commission Minutes -- None

4.0 INFORMATION ITEMS -- City Council Minutes

City Council minutes can be found on the City web site at  
[www.cityofmilwaukie.org](http://www.cityofmilwaukie.org)

5.0 PUBLIC COMMENT

Speaking: David Aschenbrenner, 11505 SE Home Avenue, Milwaukie

**Mr. Aschenbrenner** stated that he wanted to voice his concerns regarding the left turn lane signal at Highway 224 and Oak Street. He attended a City Council meeting and several other neighborhood meetings to ask for support for a left turn light at 224 and Oak Street. Oregon Department of Transportation (ODOT) does not feel the intersection needs the light. He feels this is an important issue for Milwaukie. Having six lanes of traffic as proposed, and no left-turn light for the left-turn lane is not safe for pedestrian crossing. Tonight, driving down here at two lanes, there was almost an incident in front of him. He sees this as an issue

that needs to be addressed; and the more people who tell ODOT that this is an issue, the better. This issue will not come before the Planning Commission as it was dealt with as part of the approved Gramor proposal.

**Gary Firestone** stated that Gramor was required to make street improvements and how they impacted the intersection. There was no requirement to install a signal.

**Ms. Mangle** stated that she met with Mr. Shirey and the staff at ODOT to discuss this issue. ODOT indicated that Gramor developers were interested in supplying a left turn lane and signal as part of the project. The signal phasing will be determined by a study planned to review this intersection. The City will work with ODOT to understand the problems with this intersection. The left-turn pocket alone may alleviate the problems.

**Mr. Aschenbrenner** stated that he is trying to get the people of Milwaukie to come out and have ODOT address this issue now, not in the future after a study is done. Harrison, Oak and Monroe Streets will all be affected by this left turn signal.

**Commissioner Churchill** asked if there should be a letter from the Planning Commission in support of the signal or if this is something to be handled by the Planning Department. **Ms. Mangle** stated that the Planning Department would like to be a part of the solution to issues that concern the community; however the Planning Commission is the one that represents the community regarding traffic issues and development. The Transportation System Plan is planned to address this issue this fall, which will include the 224 Corridor in the study. She noted that Paul Shirey is in the process of drafting a memo to the City Council regarding this issue and suggested that the Planning Commission wait to see the memo so that all the facts are in front of them.

6.0 Public Hearings

6.1 Applicant: RHL Design Group  
Owner: Dieringer's Properties, Inc.  
Location: 10550 SE 42<sup>nd</sup> Avenue  
Proposal: New Safeway Fuel Station  
File Numbers: TAR-06-01/TPR-06-05  
NDA: Hector Campbell

**Chair Klein** opened the hearing on consideration of redevelopment of a site to establish a Safeway retail fuel station, Transition Area Review 06-01 and Transportation Planning Review 06-05. The criteria to be addressed can be found in the Milwaukie Zoning Ordinance Section 19.313, General Commercial Zone; Section 19.416, Transition Area Measures; Chapter 19.500, Off-Street Parking and Loading; and Subsection 19.1011.3, Minor Quasi-Judicial Review; and Chapter 19.1400, Transportation Planning, Design Standards and Procedures.



**Chair Klein** asked if there were any conflicts of interest or ex-parte contacts to declare. Commissioner Brinkman was not present but had previously submitted a letter excusing herself from this issue as the firm she works for has had business dealings with some of the applicants or a representative involved in this hearing. **Gary Firestone** read the statement into the record.

**Chair Klein** stated that he talked with the former Chair Hammang in reference to why the gas station was not included in the original proposal. Mr. Hammang stated that he did not know why it was not included and that it was noted in the original application. There were no other conflicts of interest or ex-parte contacts declared.

**Chair Klein** asked if there was any rebuttal on the ex-parte contact. There was no response from the audience. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

#### STAFF REPORT

**Mr. Kelter** reviewed the staff report with the Commission. He showed overheads of the subject site and the surrounding area.

Changes of the overall proposal since the 2003 approval:

- The Safeway store is now proposed to be about 3,000 sq.ft. smaller. It opens up a little more area for landscaping and reduces the required parking for the store.
- The proposal is to redevelop the entire site at 10550 SE 42<sup>nd</sup> Avenue; demolish and remove the existing structures (fuel-pump canopy, service station building and pole sign), install new underground tanks, a new concrete pad, fuel dispensers, build a new canopy and 300 sq.ft. kiosk to serve the fuel station with a parking space that is compliant with Americans with Disability Act (ADA), landscaping and frontage improvements.
- There are currently two driveways on the site; two on Harrison and two on 42<sup>nd</sup> Avenue

**Mr. Kelter** introduced **Zachary Weigel**, City of Milwaukie Development Engineer and **Chris Maciejewski**, with DKS & Associates who are here tonight to answer any specific questions regarding the traffic study.

The key issues in this proposal are

- Are the proposed transition area measures adequate to minimize the gas station impacts to neighboring lower density use
- The applicant has requested adjustment to the Transportation Planning Design Standards

The request for adjustment is basically to match frontage improvements with the larger site. There are a total of five adjustments; three for 42<sup>nd</sup> Avenue (reduce the width of the bike lane landscape strip and sidewalk) and two for Harrison Street (eliminate landscape strip and reduce the width of the sidewalk). The recommendation of staff is to approve the five adjustments; they fit with the rest of the Safeway site.

There was an application for a variance with the original package asking to maintain open one of the driveways on the Harrison Street frontage. The need for a variance was prompted by the code standard to not have driveway approaches within 100 feet of the intersection. In reviewing the code and working with the Traffic Consultant, staff was recommending a denial of the variance because of public safety concerns. Subsequent conversations with the applicant resulted in their proposal to close the access on Harrison and to share access to the site onto Harrison with the adjacent Safeway property. The variance request has been withdrawn.

Staff is recommending approval of the adjustments because they fit with the larger site. **Mr. Kelter** showed slides of the site and pointed out the general commercial zoning and the residential (R-3) zoning in this area. There is a 15-foot front yard setback in the R-3 Zone and the applicant is proposing to match that on the site to address the transition requirement. Harrison Street will provide some buffer and landscaping will provide buffer as well.

Staff suggests an amendment to the site plan to include extending the landscape buffer at the northwest corner of the project to provide more safety and clearer delineation between the site and the roadway accessing the shopping center.

Staff is recommending approval of the amended findings and conditions. **Mr. Kelter** commended the applicant on the efforts and extra time spent to amend this application in response to staff comments. They have approached this whole process wanting to be a good neighbor on the site.

#### QUESTIONS FROM THE COMMISSIONERS

**Commissioner Batey** asked for clarification of the open spaces between the gas pumps and shopping center travel lane. **Mr. Kelter** stated that the proposal includes open space from the new curb at the landscape barrier to the curb by the service kiosk.

**Commissioner Batey** asked if there have been concerns raised about the open space. **Mr. Kelter** stated that there have been discussions about more clearly delineating the large open area for the safety of motorists accessing the larger shopping center and accessing the gas station site. **Zachary Weigel** stated that staff has recommended a condition that the applicant provide striping or raised markers that delineate the shopping center travel way from the open access way

into the gas station and indicate that the travel way has the right-of-way along the shopping center side.

**Ms. Mangle** asked **Mr. Kelter** to address lighting on the site. **Mr. Kelter** stated that the applicant is proposing five street lights that will illuminate the site as well as lighting under the canopy. The canopy lighting can be easily modified according to zoning requirements and neighborhood impacts. A photometric plan is being requested to review the impact on the residential area.

#### CORRESPONDENCE

**Chair Klein** asked if there had been any correspondence received since the mailing of the packet. **Mr. Kelter** stated that since the packet was mailed, the following correspondence has been received:

- A copy of the email from the applicant formally requesting removal of the variance request
- Exhibit 1 showing revised site plan with shared access onto the site.

#### APPLICANT PRESENTATION

Speaking: Duncan Wallace, RHL Design Group, 1550 140<sup>th</sup> Avenue NE, Suite 100, Bellevue, Washington

**Mr. Wallace** stated that he has reviewed the staff report and is in agreement with the report and the conditions of approval. He introduced Diane Phillips, Shawn Elton and Bill Jackson of Safeway; Steve Holberg, attorney of Perkins Coie; Mike Art, Traffic Engineer with Lancaster Engineering and representatives from Dieringer's Properties who are here tonight to answer any questions that may come up.

This project includes a 300-sq.ft. sales kiosk; there will be four fuel dispensers with a 45' x 62' canopy, two 20,000 gallon tanks, 1,794 sq.ft. of landscaping (exceeds required amount including the 15-foot transition buffer). They are in agreement that some delineation of travel lanes would be to everyone's best interest. They are open to striping, caution signs or raised elements (reflectors) to delineate the edge of the shopping center travel way and alert the traffic that they are yielding and entering into a path of travel. It is important to maintain that open area for large trucks.

It was a pleasure to work with staff; they were extremely helpful and responsive in revisions and modifications to the plans. Based on staff's comments they chose to withdraw the variance. They are in agreement with the conditions of approval including the modifications to the northern landscaping strip (a pork chop modification) and the modifications to the eastern side of property to delineate the difference between the travel way and the property.

## QUESTIONS FROM THE COMMISSIONERS

**Commissioner Batey** voiced concern with the open driveway and asked how the trucks will enter and exit. **Mr. Wallace** pointed out the truck pathway on the site map. The trucks will be coming eastbound on Harrison and making a sweeping left turn into the property, unloading off to the right and then proceeding to the west making a left onto 42<sup>nd</sup> Avenue and a right back onto Harrison Street towards the highway.

**Commissioner Batey** asked about possibly placing an island or curb between the open space and the shopping center travel way. **Mr. Wallace** explained that anything between the two access points would limit and distort the line up of vehicles waiting to get gas. Having one large opening allows the traffic to flow directly in and out of the station, and any island or curb would interfere with the stacking capability of the vehicles.

**Commissioner Batey** asked if the kiosk will be a place for employees and not selling convenience store goods. **Mr. Wallace** stated that the kiosk is not intended for the public; it is strictly for the employees to make fuel related transactions.

**Commissioner Bresaw** asked what types of plantings are planned for the landscaping. **Mr. Wallace** pointed out Cherry Trees, Juniper Bushes, and various flowers (Photinia, Rhododendron) and Arborvitae proposed for the site.

**Commissioner Churchill** asked for further clarification of the reasoning for not putting something in the open area between the travel way and the fuel pumps. **Mr. Wallace** stated that if there is a blockage between the two pumping stations, the cars could not pull out of the stacked lane to go around cars being serviced to exit the station. This area allows room for cars to pull out of the pumping line and exit.

Speaking: Mike Art, Lancaster Engineering, 800 NW 6<sup>th</sup> Avenue, Suite 206, Portland, OR 97209

**Commissioner Batey** asked what the traffic impacts to the Safeway site were at the time of the original proposal for Safeway in comparison to the traffic impacts with the addition of the gas station. **Mr. Art** explained the ingress and egress of the original proposal. The site was redesigned to comply with staff's suggestion to consolidate to a single access at this location. The site was a gas station previously so there is no change of use at this location. Regarding the overall operation of the intersection, the traffic impact study indicates that Harrison & 42<sup>nd</sup> will operate at a level of service "C" at build out; no mitigation is required.

**Commissioner Batey** stated that access on Harrison would produce very little use because Safeway is oriented towards King Road; she asked about the expected travel level on Harrison using the original pre-existing entrance compared to the

revised, proposed entrance. **Mr. Art** stated that according to the memo of June 6, 2006, prepared by **Todd Modley**, Figure 6 in the Technical Appendix, shows that the most impact (majority of the trips for the gas station) is at the 42<sup>nd</sup> and Harrison entrance. There will be no problems at all; this intersection will operate at an "A" level of service. The number of trips that will be added to Harrison Street will not impact traffic at this location.

**Chair Klein** asked for trip generation numbers for the Safeway site, as there will be an increase of traffic where Safeway shoppers go into the station for gas. **Mr. Art** stated that he does not have those numbers but that the proposed increase will not impact the applicable code criteria.

**Commissioner Churchill** asked if there is a formal streetscape view from 42<sup>nd</sup> Avenue or Harrison Street. **Mr. Wallace** stated that this information was not requested as part of the application.

#### TESTIMONY IN FAVOR

Speaking: Dianne Phillips, Safeway, 16300 SE Evelyn Street, Clackamas  
Shawn Elton, Safeway, 16300 SE Evelyn Street, Clackamas

**Chair Klein** asked what the hours of operation would be for the store. **Ms. Elton** stated that she did not know the exact hours for that store, but generally the Safeway Stores are open from 6:00 a.m. to 10:00 p.m. Some stores are open 24 hours, seven days a week.

**Chair Klein** asked if the lights will be dimmed during the time the store is closed. **Ms. Phillips** stated that when the store is closed the station will be closed and will not be lit.

**Commissioner Batey** asked if there were any codes to preclude the store being opened on a 24 hours a day basis. **Mr. Kelter** stated that he is not sure that the codes and standards for the general commercial zone include any direction about hours of operation. **Ms. Mangle** stated that the transition area review does allow for 24-hour operation; that is why staff is incorporating the lighting standards concerning intrusion of glare into the surrounding area.

**Commissioner Batey** asked where the entrances were to the Safeway store. **Ms. Phillips** pointed out the two entrances to the store.

**Chair Klein** asked when the Safeway store is slated for opening. **Ms. Phillips** stated that it has been a long process to this point. The escalation of construction costs, materials and labor has caused the store cost to increase over the budget that was originally planned. They are looking at the addition of a fuel station in hopes that it will increase sales and increase the budget to begin store construction. If there is approval tonight, they will be able to go back and rework

the numbers and hopefully be able to take the next step (construction). If they are able to proceed (if costs warrant going forward), completion will be at the end of this year or by this time next year.

#### TESTIMONY IN FAVOR

Pat Dieringer was called and indicated that he had no comments.

Speaking: David Aschenbrenner, 11505 SE Home Avenue, Milwaukie

**Mr. Aschenbrenner** stated that he is the Chair of the Hector Campbell Neighborhood Association. The delineation of the travel lane is an important aspect of the layout. The landscaping looks good; it is much better than originally proposed. He hopes construction begins this August.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION -- None.

#### ADDITIONAL COMMENTS FROM STAFF

**Mr. Kelter** read the suggested language for the two additional conditions:

- Condition 2(J) and 3(H), "...Submit a detailed narrative describing all actions taken to comply with the conditions of approval..."
- Condition 3(I), "Delineate internal travel way east of proposed development from the E-3 access as shown on Exhibit I with use of striping and or markers consistent with requirements of the MUTCD or other Engineering Standards and approval of the City Engineer."
- Condition 3D, "...Extend the existing northern boundary landscape island on the adjacent shopping center property to eliminate the existing entry lane as far west of the subject property line."

Discussion followed on landscaping and curb-tight sidewalks. **Commissioner Batey** stated that she would prefer a sidewalk and a planter strip on Harrison Street side. This is more consistent with code and no topographical barriers prevent it. Better from pedestrian safety standpoint. **Commissioner Churchill** agreed it was preferable. **Mr. Weigel** stated that the right-of-way width is already the standard required by the code. The applicant can be asked to provide an easement on the sidewalk and it would allow for a planter strip in the right-of-way.

Recess was taken at 8:05 p.m. and the meeting reconvened at 8:17 p.m.

#### REBUTTAL TESTIMONY FROM APPLICANT



Speaking: Duncan Wallace, RHL Design Group, 1550 140<sup>th</sup> Avenue, NE, Suite 100, Bellevue, Washington

Steve Holberg, Attorney for Safeway, 1120 NW Couch Street, Suite 1000, Portland 97209

In response to the discussion regarding the transition area, sidewalk and landscaping, **Mr. Wallace** stated that Safeway would prefer to keep the plan as proposed as they will be maintaining the 15-foot transition area. There is an issue of safety if a standard sidewalk is required. If the majority of the Planning Commission desires them to make the modification and put 4-5-ft. of landscaping on the street side of the sidewalk, pull the sidewalk into the property they would be agreeable to that as long there is a city easement for the sidewalk. They will also request that there be low-level landscaping (shrubs, ground cover, grasses, etc.) on the street side due to irrigation issues, visibility and pedestrian safety. **Mr. Wallace** requested that there be a condition that the easement be mutually agreeable with the City Attorney and Safeway.

QUESTIONS FROM THE COMMISSIONERS -- None.

#### CLOSING OF PUBLIC HEARING

**Chair Klein** closed the public testimony portion of the hearing and opened the meeting for discussion among the Commissioners.

**Commissioner Bresaw** stated that she was definitely in favor of a gas station at this site.

**Commissioner Churchill** stated that he is strongly in support of the landscape strip and sidewalk easement. It was the consensus of the Commissioners to support the application and be in favor of the easement.

Staff prepared conditions and findings to support the easement.

**Commissioner Batey** moved to direct staff to draft a condition that would alter the Harrison Street side of the site to insert a planter strip and adjust the findings accordingly to allow for the sidewalk with a planter strip width of 4-feet consistent with the 42<sup>nd</sup> Avenue side.

**Commissioner Churchill** seconded the motion.

**Ayes: Batey, Bresaw, Churchill, Klein**

**Nays: None.**

**Motion carried 4-0.**

Recess was taken at 8:25 p.m. and the meeting reconvened at 8:40 p.m.

**Mr. Kelter** read the amended findings into the record:

Page 1, Finding 1E, "Construction of new curb, 4-foot landscape strip and 8-foot sidewalk on SE 42<sup>nd</sup> Avenue, fronting the proposed development; construction of new curb and 4-ft. landscaping strip and 5.5-foot sidewalk on SE Harrison Street fronting the proposed development. The Planning Commission approves the adjustment request as modified to reduce the landscape strip, sidewalk and bike lane widths on SE 42<sup>nd</sup> Avenue fronting the proposed development and to reduce the landscape strip and reduce the sidewalk strip on SE Harrison Street, fronting the proposed development (See Finding 7-B below)."

Page 2, Finding #3, "The proposal is subject to the following provisions of the Zoning Ordinance as follows..."

Page 3, #7(B)(1)(a), "The Planning Commission approves the adjustment request as modified upon finding the following Sub point A, reduction of the landscape strip to 4 feet and reduction of the sidewalk width..."

Page 8, Condition 2(A), "Submit full engineered plans consistent with Exhibit I as modified by Condition 3(B) for all public improvements..."

Condition 2(H), "Submit a revised landscaping plan showing plantings (1) along the SE Harrison Street frontage that will achieve a 6-foot height and (2) in the northern boundary landscape island described in Condition 3(D)..."

Condition 3(B), "Construct new curb, 4-ft. landscape strip and 5.5-ft. sidewalk adjacent to SE Harrison Street fronting the proposed development and provide an easement for the sidewalk in a form that is agreeable to both the City Attorney and the Applicant."

**Chair Klein** re-opened the public testimony portion of the hearing and asked the applicant if they had any additional comments to the changes.

Speaking: Duncan Wallace, RHL Design Group, 1550 140<sup>th</sup> Avenue, NE, Bellevue, Washington

**Mr. Wallace** stated that since they are making the modification with the sidewalk and planter, he wanted the condition or findings to specifically indicate that the 15-foot transition area requirement is now reduced to 10-feet.

**Mr. Kelter** indicated that Page 2, Finding #5, deals with Section 19.416, Transitional Area Review, which states, "...In addition to the separation provided by SE Harrison Street the Applicant proposes to establish landscaping along SE Harrison Street frontage as a buffer including plantings with a 6-foot height at maturity..." This finding references Condition 2(H) on Page 8, "...Submit a revised landscaping plan showing plantings (1) along the SE Harrison Street frontage that will reach 6-foot heights..." There is no reference to a 15-foot width.



**Mr. Wallace** asked that Finding #5 include language that the easement includes a 5.5-ft. sidewalk as a portion of the transition area. **Mr. Kelter** suggested that Finding #5 be changed to read, "...In addition to the separation provided by SE Harrison Street the Applicant proposes to establish a easement for 5.5-ft. wide sidewalk and landscaping along SE Harrison Street frontage as a buffer including plantings with a 6-ft. height at maturity..."

#### QUESTIONS FROM THE COMMISSIONERS

**Commissioner Bresaw** suggested the Applicant consider different types of trees, something thinner and taller. **Commissioner Churchill** stated that having a streetscape diagram would be beneficial for understanding the size of plants.

**Chair Klein** closed the public testimony portion of the hearing and opened it up to discussion and decision by the Commissioners.

**Commissioner Batey moved to adopt the recommended findings and conditions in support of approval of applications TAR-06-01 and TPR-06-05 along with the revised findings and conditions as stated by staff tonight and the earlier conditions noted regarding delineation striping and the sidewalk. Commissioner Churchill seconded the motion**

**Aye: Batey, Bresaw, Churchill, Klein**

**Nays: None.**

**The motion carried 4-0**

#### 7.0 WORKSESSION ITEMS

##### 7.1 Draft Revisions to MMC Title 14 – Sign Ordinance

**Ms. Mangle** submitted the draft code language for the proposed sign code amendments. The Court has held that on-premise and off-premise signs must be treated equally and that any disparate treatment between these signs is an unconstitutional content-based restriction on speech.

The sign code is primarily being revised to further reduce the content-based regulations that are still present. In 1973 the City tried to eliminate content-based regulations; since that time there have been court decisions to clarify what content-based signs are allowed. The purpose of permitting signs is to consider the public, safety and welfare.

Government may impose content-neutral "time, place and manner" restrictions on speech so long as those restrictions leave adequate means for expression. This standard will provide the City with a means of defending most of its sign code.

The sign code was adopted in 1975 and has not changed much since. During the process of editing for content-based provisions, the Planning Department has

proposed other minor changes that make the code clearer and easier to implement. There are other changes than those proposed tonight that the Commission is asked to consider.

**Ms. Mangle** presented a table showing the use, maximum sign area, height, number and illumination of the sign ordinance. While many code revisions clarify or address constitutional issues, they raise policy questions for the community. Staff will discuss those issues with the Design and Landmarks Committee, Planning Commission and City Council.

Questions for discussion include:

- Temporary Window Signs – Section 14.12.010.K, page 8 places a strict time limit on when temporary window signs can be displayed. Traditional holidays do not include days that are important to diverse creeds and ethnicities. Limiting temporary window displays neutralizes the bias of when temporary window signs can be displayed. The Planning Commission may wish to recommend a standard that allows more flexibility for temporary window signs throughout the year.
- Wall Signs and Murals – The proposed changes do not distinguish between wall signs and murals. Discussion followed on the time limit of how long a sign can be non-conforming; perhaps on non-conforming signs, there could be a limit to certain types of non-conforming. The Commission may wish to recommend some allowance for murals within the sign code, bearing in mind that the City cannot regulate based on content. Suggestions include allowing wall signs on non-primary building faces to have a larger area, allowing wall signs to have a larger area if they are applied by paintbrush or exempting murals from the sign code and requiring murals to be approved as public art through the Regional Arts and Culture Council.
- Illuminated Cabinet Signs – Section 14.16.060.G, page 20, covers illuminated signs in the downtown sign district. Concerns were raised about time limits; possibly there could be an option of approving with a time associated with the permit. Problems identified are that there are not clear standards for considering internally illuminated cabinet signs and that the code states that awning signs shall not be illuminated unless approved by the DLC and Planning Commission. Staff was asked to provide the Commissioners with a copy of the Lake Oswego Sign Ordinance so they can see what other jurisdictions are doing.
- Sign Size for Community Service Uses – The code surface area now proposed is limited to 16 sq.ft. (4x4) with an overall height limit of 6 feet by 3. This applies to schools, churches, public institutions, etc.

**Ms. Mangle** asked the Commissioners to review the revised code and consider for discussion at another worksession other issues and areas for simplification.

Speaking: Dave Aschenbrenner, 11505 SE Home Avenue, Milwaukie

**Mr. Aschenbrenner** voiced concern about literature you see in the right-of-ways; garage sale literature, advertising, etc. He would like to see the City encouraging residents to clean up their litter after their sales. There could be proactive articles in the *Pilot* or mailings letting people know that there are regulations that must be complied with or there will be enforcement measures. There needs to be stricter enforcement; he still sees Christmas tree signs out on poles left from December.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS

9.1 Response to City of Portland letter regarding the Three Bridges Project

**Ms. Mangle** reported that they have received a response to the letter regarding the Three Bridges Project; the plan now is to open the bridge and not coordinate the two projects. The estimated completion date is September. She will call and thank them for their response.

10.0 OTHER BUSINESS / UPDATES

10.1 Matters from the Planning Director


**Ms. Mangle** reported that per Mike Swanson's request, Council approved the Comprehensive Plan and Zoning Code Amendments unrelated to Kellogg Creek (only the housekeeping and policy amendments). The zoning amendments related to Kellogg Creek have been tabled.

11.0 NEXT MEETING -- July 11, 2006

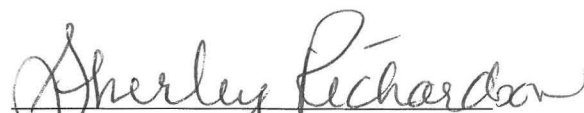
11.1 Minor Quasi-Judicial Hearing – Immovable Foundation Church on Lake Road (ESD site)

**Commissioner Bresaw** moved to adjourn the meeting of June 26, 2006. **Commissioner Churchill** seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 9:58 p.m.



Jeff Klein, Chair



Shirley Richardson, Hearings Reporter

# MILWAUKIE PLANNING COMMISSION

MILWAUKIE CITY HALL  
10722 SE MAIN STREET

## AGENDA TUESDAY, JUNE 27, 2006 6:30 PM

		ACTION REQUIRED
1.0	<b>Call to Order</b>	
2.0	<b>Procedural Matters</b> If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. Thank You.	
3.0	<b>Planning Commission Minutes</b> Approved PC Minutes can be found on the City web site at: <a href="http://www.cityofmilwaukie.org">www.cityofmilwaukie.org</a>	Motion Needed
4.0	<b>Information Items – City Council Minutes</b> City Council Minutes can be found on the City web site at: <a href="http://www.cityofmilwaukie.org">www.cityofmilwaukie.org</a>	Information Only
5.0	<b>Public Comment</b> This is an opportunity for the public to comment on any item not on the agenda	
	<b>Public Hearings</b> Type of Hearing: Minor Quasi-Judicial Applicant: RHL Design Group Owner: Dieringer's Properties, Inc. Location: 10550 SE 42 <sup>nd</sup> Ave Proposal: New Safeway Fuel Station File Numbers: TAR-06-01 / TPR-06-05 / VR-06-01 NDA: Hector Campbell Staff Person: Brett Kelter	Discussion and Motion Needed For These Items
7.0 7.1	<b>Worksession Items</b> Draft Revisions to MMC Title 14 - Sign Ordinance	Discussion Only
8.0	<b>Discussion Items</b> This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	<b>Old Business</b> Response to City of Portland letter regarding the Three Bridges Project	
10.0 10.1	<b>Other Business/Updates</b> Matters from the Planning Director - Update on CSO (Section 19.321) Revision	Information Only Review and Comment
11.0	<b>Next Meeting:</b> 7/11 - Minor Quasi Judicial Hearing - Immovable Foundation Church on Lake Road (ESD site)  The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	

ist for Future Meetings:

## Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

### Public Hearing Procedure

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** The staff report is followed by any verbal or written correspondence that has been received since the Commission was presented with its packets.
3. **APPLICANT'S PRESENTATION.** We will then have the applicant make a presentation, followed by:
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **COMMENTS OR QUESTIONS.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** We will then take testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** When you testify, we will ask you to come to the front podium and give your name and address for the recorded minutes. Please remain at the podium until the Chairperson has asked if there are any questions for you from the Commissioners.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all testimony, we will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. We will then enter into deliberation among the Planning Commissioners. From this point in the hearing we will not receive any additional testimony from the audience, but we may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION/ACTION.** It is our intention to make a decision this evening on each issue before us. Decisions of the Planning Commission may be appealed to the City Council. If you desire to appeal a decision, please contact the Planning Department during normal office hours for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** The Planning Commission may, if requested by any party, allow a continuance or leave the record open for the presentation of additional evidence, testimony or argument. Any such continuance or extension requested by the applicant shall result in an extension of the 120-day time period for making a decision.
12. **TIME LIMIT POLICY.** All meetings will end at 10:00pm. The Planning Commission will pause hearings/agenda items at 9:45pm to discuss options of either continuing the agenda item to a future date or finishing the agenda item.

**The Planning Commission's decision on these matters may be subject to further review or may be appealed to the City Council. For further information, contact the Milwaukie Planning Department office at 786-7600.**

#### Milwaukie Planning Commission:

Jeff Klein, Chair  
Dick Newman, Vice Chair  
Lisa Batey  
Teresa Bresaw  
Catherine Brinkman  
Scott Churchill

#### Planning Department Staff:

Katie Mangle, Planning Director  
Susan Shanks, Associate Planner  
Brett Kelter, Assistant Planner  
Ryan Marquardt, Assistant Planner  
Jeanne Garst, Office Supervisor  
Karin Gardner, Administrative Assistant  
Marcia Hamley, Administrative Assistant  
Shirley Richardson, Hearings Reporter



**To:** Planning Commission

**Through:** Katie Mangle, Planning Director *km*  
Paul Shirey, Engineering Director

**From:** Brett Kelter, Assistant Planner *bk*  
Zachary John Weigel, P.E., Civil Engineer *ZJW*

**Date:** June 27, 2006

**Subject:** Files: TAR-06-01, TPR-06-05, VR-06-01  
Applicant: RHL Design Group, Inc.  
Address: 10550 SE 42<sup>nd</sup> Ave.  
NDA: Hector Campbell

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**Actions Requested**

Adopt the recommended findings and conditions in support of approval of applications TAR-06-01 and TPR-06-05 and denial of application VR-06-01. These actions would approve the proposed transition area measures to allow redevelopment of a gas station while requiring the closure of both driveways on SE Harrison Street and one driveway on SE 42<sup>nd</sup> Avenue.

**Key Issues**

1. Are the proposed **transition area measures** adequate to minimize the gas station impacts to neighboring lower density uses?
2. The applicant has requested **adjustments** to the Transportation Planning Design Standards. Have the approval criteria been met for each of the following requested adjustments?
  - a. On SE Harrison Street fronting the proposed development, to eliminate the landscape strip and reduce sidewalk width to 5.5 feet.
  - b. On SE 42<sup>nd</sup> Avenue fronting the proposed development, to reduce landscape strip width to 4 feet, reduce sidewalk width to 8 feet, and reduce bike lane width to 5.5 feet.
3. The applicant has requested a **variance** to the required 100-foot distance between the easternmost driveway approach on SE Harrison Street and the street intersection curb return at SE Harrison Street and SE 42<sup>nd</sup> Avenue. Does the request adequately satisfy the variance criteria?



**Existing Conditions and Project Description**

The property is located in the General Commercial (CG) zone. The applicant is proposing to redevelop the northeast corner of SE Harrison Street and SE 42<sup>nd</sup> Avenue to establish a Safeway retail fuel station. Attachment 2 – Zoning Compliance Report addresses how the proposal meets the applicable zoning requirements.

An unrelated gas station operated on this site for many years until sometime in 2004. The underground fuel tanks have been excavated and removed. The applicant proposes to demolish and remove the existing structures, which include a fuel-pump canopy, service station building, and pole sign. New underground tanks will be installed as well as a new concrete pad, fuel dispensers, and canopy. A 300 square-foot kiosk to serve the fuel station will be located on the adjacent Safeway store site with a parking space that is compliant with the Americans with Disabilities Act (ADA). A shared-use agreement will link both the kiosk and the parking space to the fuel station parcel.

A Residential (R-3) zone is located across SE Harrison Street from the southeast corner of the subject parcel. As per Section 19.416 of the Milwaukie Municipal Code (MMC), transition area measures must be established to minimize the impact of the proposed commercial activity on the adjacent residential area. Because the previous gas station has been out of operation for more than six months, a Traffic Impact Study is required to re-evaluate the traffic situation.

The proposed fuel station was not part of the larger King Road Shopping Center application (File # TAR-03-02), which was approved by the Planning Commission on September 9, 2003. Therefore it was not considered when transition area measures were established for the larger store site.

The subject parcel currently has four driveway approaches: two on SE 42<sup>nd</sup> Avenue and two on SE Harrison Street (see Civil Existing Conditions Sheet C001 in Attachment 3 – Application Packet). The applicant is proposing to close the driveway approach on each frontage nearest the intersection of SE Harrison Street and SE 42<sup>nd</sup> Avenue. The applicant is requesting a variance to allow one driveway approach on SE Harrison Street (labeled E1 on Figure 1 on the next page) to be within 100 feet of the intersection. The applicant is also requesting adjustments to 1) eliminate the required landscape strip and reduce the width of the required sidewalk on SE Harrison Street and 2) reduce the width of the required landscape strip, sidewalk, and bike lane on SE 42<sup>nd</sup> Avenue.

**Analysis of Key Issues****1. Are the proposed transition area measures adequate to minimize the gas station impacts on neighboring lower density uses?**

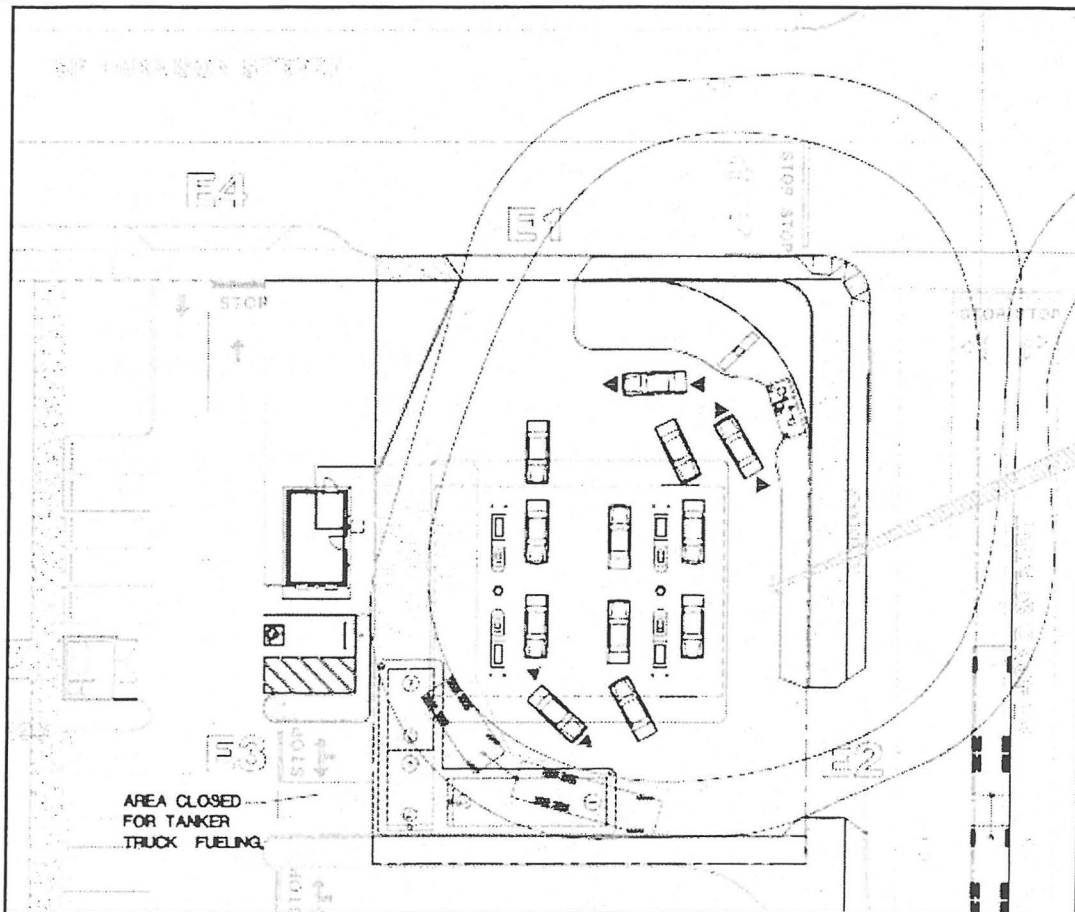
MMC Section 19.416 requires that when a commercial project is proposed within 100 feet of lower density uses, it must apply transition area measures to minimize the project's impact. Possible measures include roadways that provide separation and landscaped open areas that are at least as wide as the minimum front yard setback of the adjacent residential area.

### **Separation**

In this case, there is a Residential (R-3) zone located across SE Harrison Street within 100 feet of the southeastern corner of the project site. As noted in the applicant's narrative, SE Harrison Street separates the project from the adjacent residential area (see Land Use Narrative in Attachment 3 – Application Packet). Along the SE Harrison Street frontage, the applicant is proposing to maintain an open area at least 15 feet wide to match the minimum front yard setback of the adjacent Residential R-3 zone (see Landscape Planting Plan Sheet L1.0 in Attachment 3 – Application Packet).

The proposed open area includes two landscaped areas on either side of an existing driveway onto SE Harrison Street. The landscaped plantings should reach a mature height of at least six feet, which will provide the screening required by Subsection 19.416.1(B). Driveway E1, which the applicant proposes to keep open, serves as open space since it will be clear of structures. However, the driveway will subject the adjacent neighborhood to site traffic and does not meet access spacing standards (see discussion of Key Issue #3 for more detail).

**Figure 1 – Revised site plan with direct access to SE Harrison Street and SE 42<sup>nd</sup> Avenue.**



### **Lighting**

Lighting of the site could potentially impact nearby residences, so the applicant provided information regarding the proposed lighting for the canopy (see Lighting Details in Attachment 3 – Application Packet). While this information does not



include photometric projections of canopy lighting, it demonstrates that the proposed lighting fixtures are designed in such a way as to be easily convertible if they present a light-pollution problem for adjacent properties. Five on-site yard lights are proposed at or near the various driveways and will be shielded as per City specifications. Staff recommends that the applicant submit a photometric study for both the canopy lights and yard lights at the time of submission for a building permit for the project.

**2. Adjustments – The applicant has requested adjustments to the Transportation Planning Design Standards. Have the approval criteria been met for each of the following requested adjustments?**

- a. On SE Harrison Street fronting the proposed development, to eliminate the landscape strip and reduce sidewalk width to 5.5 feet.**

The three-lane cross section of SE Harrison Street fronting the proposed development limits the area for landscape strip and sidewalk improvements. It is infeasible, due to engineering limitations, to construct a full-width landscape strip and sidewalk fronting the proposed development on SE Harrison Street. The adjustment is the minimum necessary to construct acceptable pedestrian improvements on SE Harrison Street.

Elimination of the landscape strip and reduction of the sidewalk width to 5.5 feet meets the minimum dimensions of MMC Table 19.1409.3. The adjustment is consistent with the purposes of Chapter 19.1400 and the Milwaukie Transportation System Plan.

- b. On SE 42<sup>nd</sup> Avenue fronting the proposed development, to reduce landscape strip width to 4 feet, reduce sidewalk width to 8 feet, and reduce bike lane width to 5.5 feet.**

Strict compliance with the transportation facility design standards is deemed infeasible due to engineering limitations of connecting to adjoining transportation facilities. The adjustment serves to match the adjoining landscape strip, sidewalk, and bike lane on SE 42<sup>nd</sup> Avenue north of the proposed development. The adjacent transportation facilities were approved as part of the King Road Shopping Center development.

Reducing the width of the planter strip, sidewalk, and bike lane meets the minimum dimensions of MMC Table 19.1409.3. The adjustment is consistent with the purposes of Chapter 19.1400 and the Milwaukie Transportation System Plan.

The Engineering Director recommends approval of each of these requests.

- 3. Variance – The applicant has requested a variance to the required 100-foot distance between the easternmost driveway approach on SE Harrison Street and the street intersection curb return at SE Harrison**

**and SE 42<sup>nd</sup> Avenue. Does the request adequately satisfy the variance criteria?**

SE Harrison Street, east of SE 42<sup>nd</sup> Avenue, is classified as a local street. Subsection 19.1413.2 requires that driveway approaches for multifamily and all other non-residential uses that access local and neighborhood streets be located at least 100 feet from the nearest intersection curb return. Both of the existing driveway approaches on SE Harrison Street are within 100 feet of the intersection of SE Harrison and SE 42<sup>nd</sup> Avenue. Along the SE Harrison Street frontage, the applicant proposes to close the driveway approach nearest the intersection but is applying for a variance to keep open the other driveway approach, labeled E1 in Figure 1, above. (See Land Use Variance Narrative in Attachment 3 – Application Packet.) Staff is recommending denial of the variance application.

The criteria for granting variances are listed below, with a summary of the applicant's narrative and the staff response:

**A. That the property in question has unusual conditions over which the applicant has no control. Such conditions may only relate to physical characteristics of the property, lot or boundary configurations, or prior legally existing structures.**

**Applicant:** The property has four existing access points or driveway approaches, two per frontage, which are prior legally existing driveway approaches. The property needs at least one driveway approach on each frontage in order to accommodate circulation and make the fuel station viable. The subject property has only 93 feet of frontage along SE Harrison Street, so it is impossible to have a driveway approach without a variance.

**Staff:** Lot size is not an unusual condition in this case. While Subsection 19.1413.3(A)(1) states that one driveway per site frontage is the "normal number allowed," the language does not constitute entitlement to such access, especially where considerations of public safety are present. The site has direct access to a public street along its SE 42<sup>nd</sup> Avenue frontage, and there is access onto SE Harrison Street (Driveway E4) only 24 feet from the subject property line on the adjacent shopping center site that can be shared. In addition, an internal access driveway (E3) is proposed that would connect to the adjacent shopping center site.

Staff believes that a separate driveway approach on SE Harrison Street is not functionally necessary for the site. Moreover, a separate driveway approach will create vehicular conflicts between the existing driveway approach on the adjacent shopping center property, which is a mere 24 feet away, and the intersection at SE Harrison Street and SE 42<sup>nd</sup> Avenue. The adjacent Super-Burrito restaurant has no direct access onto a public street and appears to function adequately.

**B. That there are no feasible alternatives to the variance and that the variance is the minimum variance necessary to allow the applicant**

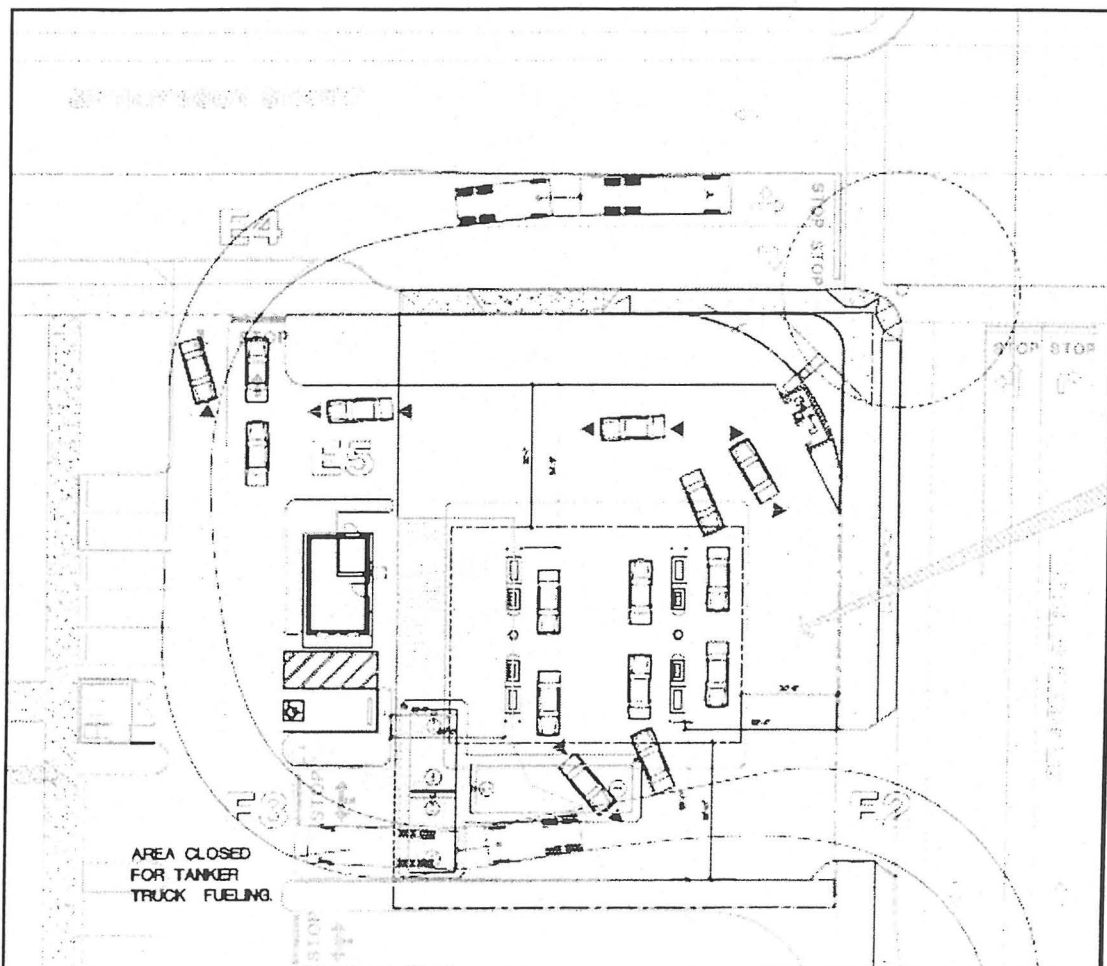
**the use of his/her property in a manner substantially the same as others in the surrounding area.**

**Applicant:** No alternatives allow this site to function as an independent property. Shared access would combine all gas station and fuel truck traffic with shopping center traffic and would result in a greater impact on the fuel dispensers when a fuel truck is on site to fill the underground tanks. The ARCO fuel station at the southwest corner of the intersection has driveway approaches on both SE Harrison Street and SE 42<sup>nd</sup> Avenue, with the SE Harrison Street driveway approach only 15 feet from the intersection curb return.

**Staff:** Upon staff request, the applicant submitted a site plan showing both driveways closed on SE Harrison Street and shared access with the adjacent shopping center property (see Figure 2 below, or Sheet B2 in Attachment 5 – Alternate Site Plan). This alternate site plan shows that there are feasible alternatives to the one currently proposed by the applicant.

The applicant asserts that the shared access results in poor internal site circulation and greater interference with shopping center traffic. Staff responds that the SE Harrison Street access to the shopping center was not designed to be a primary access point and that shared access will not significantly interfere with shopping center traffic. Unless a fuel truck happens to be filling the underground tanks, patrons entering the shopping

**Figure 2 – Alternate site plan with shared access to SE Harrison Street.**



center from SE Harrison Street can choose either of Driveways E5 or E3 to access the fuel station. Fuel trucks will visit the fuel station on a regular but infrequent basis.

Staff believes the site can be designed with shared access onto SE Harrison Street in such a way as to allow adequate internal circulation. While the shared access option might result in the temporary closure of more fuel dispensers when a fuel truck is on site for refueling, the fuel station will still be operational during those brief occasions. Closing the SE Harrison Street access will have important benefits for public safety by reducing the points of potential pedestrian-automobile conflicts, avoiding multiple queuing conflicts on SE Harrison Street, and maximizing the effectiveness of the right-turn lane on SE Harrison Street. These benefits far outweigh any temporary on-site inconvenience.

The applicant notes that the nearby ARCO fuel station has driveways on both SE Harrison Street and SE 42<sup>nd</sup> Avenue. Staff responds that the current ARCO site configuration was approved in 1999. The City adopted the Access Management Standards of MMC Section 19.1413 in 2001. Redevelopment of the ARCO site under current standards would result in a similar requirement to limit access points for public safety and code compliance.

**C. That adverse effects upon other properties that may be the result of this variance shall be mitigated to the extent feasible.**

**Applicant:** There are currently four driveways on the site. By closing two of them, the project is providing a benefit to surrounding properties. The proposed 15-foot transition area along SE Harrison Street, which includes landscaping up to 6 feet in height, will further mitigate the impacts of the fuel station.

**Staff:** The applicant addresses the adverse impacts from the existing nonconforming driveway approaches but disregards the variance criteria, which requires that the adverse effects of the variance must be mitigated to the extent feasible. The continued use of multiple driveway approaches (Driveways E1 and E4 on Figure 1) on SE Harrison Street creates multiple safety hazards.

First, locating two driveway approaches (Driveways E1 and E4 on Figure 1) less than 50 feet apart would create conflicts between vehicles entering and exiting the two driveway approaches at the same time. Second, the provision of a separate gas station driveway approach (E1) on SE Harrison Street would create additional conflict points between pedestrians walking along the gas station and shopping center frontage and vehicles entering and exiting the site.

Additionally, any vehicle larger than a passenger vehicle that stopped on SE Harrison Street at the intersection would block driveway approach E1.



Moreover, any additional development that increases traffic on SE Harrison Street would add to the queue length and block driveway approach E1. Queues extending past the gas station driveway would restrict sight distance and may lead to aggressive driver behavior from increased delay.

The combination of these conflicts creates a complex driving environment, with multiple conflicts to observe and process for drivers entering and exiting the site. The additional points of conflict increase the chances for crashes, injuries, and property damage. By requiring a shared access point (Driveway E4) with the King Road Shopping Center, the number of conflict points can be significantly decreased, while providing for adequate intersection queuing distance. Requiring the applicant to share access with the King Road Shopping Center at driveway E4 onto SE Harrison Street would mitigate the safety hazards described above and would eliminate the need for a variance.

### **Summary**

As conditioned, staff believes the applicant has demonstrated compliance with applicable criteria for Transition Area Review and Transportation Plan Review as follows:

1. The proposal complies with the development standards of the General Commercial (C-G) zone.
2. The impacts of the proposed fuel station on the adjacent residential area will be adequately minimized by the separation provided by SE Harrison Street and the landscaping buffer as shown on the applicant's site plan. The intent of the transition area measures will be better served if both existing driveways onto SE Harrison Street are closed and replaced with additional landscaping.
3. The applicant is requesting adjustments to several of the transportation facility design standards. The requests are to reduce the width of the sidewalk, landscape strip, and bike lane on SE 42<sup>nd</sup> Avenue fronting the proposed development and to eliminate the landscape strip and reduce the sidewalk width on SE Harrison Street fronting the proposed development. These requests for adjustment to transportation facility design standards meet the minimum dimensions of MMC Table 19.1409.3 and are consistent with the purposes of Chapter 19.1400 and the Milwaukie Transportation System Plan.

Staff does not believe the applicant has demonstrated compliance with the variance criteria and is recommending denial of the variance based on the following points:

1. The fact that the subject property does not have enough frontage on SE Harrison Street to meet the 100-foot distance requirement for a driveway is not an unusual condition. The property is allowed—but is not entitled to—direct access onto SE Harrison Street, and staff believes that public safety would be better served by sharing access with the adjacent Safeway store.
2. The applicant has submitted an alternative site plan showing shared access onto SE Harrison Street that staff believes will work (see Sheet B2 in Attachment 5 – Alternate Site Plan). Shared access may not produce ideal

internal circulation on the site but it will be adequate and, more importantly, it would serve public safety interests by reducing the points of potential pedestrian-automobile conflicts, avoiding multiple queuing conflicts on SE Harrison Street, and maximizing the effectiveness of the right-turn lane on SE Harrison Street.

3. There is no effective way to mitigate the impacts of the variance, which, if approved, would result in two access points onto SE Harrison Street within 40 feet of one another on adjacent properties.

### **Code Authority and Decision Making Process**

The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance and Land Division Ordinance as follows:

- a. Milwaukie Zoning Ordinance
 

Section 19.313	General Commercial (CG) zone
Section 19.416	Transition Area Measures
Chapter 19.500	Off-Street Parking and Loading
Chapter 19.700	Variances, Exceptions, and Home Improvement Exceptions
Subsection 19.1011.3	Minor Quasi-Judicial Review
Chapter 19.1400	Transportation Planning, Design Standards, and Procedures

This application is subject to minor quasi-judicial review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In quasi-judicial reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The final decision on these applications, which includes any appeals to the City Council, must be made by September 15, 2006, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

### **Comments**

Comments were received from city departments and the chair of the Hector Campbell Neighborhood District Association (NDA). Comments from the Building Department, Hector Campbell NDA Chair, and TriMet are included in Attachment 6 – Comments. The following bullet points summarize other comments received:

- ***[Staff Note on Comments from David Aschenbrenner, Chair of Hector Campbell NDA: Staff has since clarified Mr. Aschenbrenner's question with the applicant, who was under the impression that the proposed on-site parking space was required. In fact, the ADA-compliant space proposed next to the kiosk on the adjacent property will serve as the required parking space and will be shared as permitted by Subsection 19.503.2. The applicant has***

*revised the proposed site plan to reflect this clarification (see Attachment 4 – Revised Site Plan).]*

- Clackamas County Fire District #1 requires that the fuel station comply with Chapters 22, 27, and 34 of the Oregon Fire Code.
- Comments were received via separate telephone calls from Janice McDonald (business owner of the ARCO fuel station at the southwest corner of SE Harrison Street and SE 42<sup>nd</sup> Avenue) and Kelli Kang (property owner of the ARCO fuel station site). Both were concerned about the economic impact that they believe the proposed Safeway fuel station will have on the ARCO station. Both were informed that the proposed gas station is an allowable use in the General Commercial zone and that economic impact is not established in the Zoning Ordinance as a criterion for review.
- Ruth Toller, a property owner at 4141 SE Harrison Street, came to the Planning Department counter. She asked to see plans for the fuel station and had general questions about the project. When asked whether or not she thought the applicant's request to keep open the driveway on SE Harrison Street, she initially said that she thought the driveway should be closed and then recanted and said she would need to think about it more.

#### **Attachments**

1. Findings in Support of Approval of TAR-06-01 and TPR-06-05 and Denial of VR-06-01, and Recommended Conditions of Approval for TAR-06-01 and TPR-06-05
2. Zoning Compliance Report
3. Application Packet (*to Planning Commission Only*)
  - a. Land Use Narrative
  - b. Land Use Variance Narrative
  - c. Development Plans
    - i. Cover Sheet A0.0
    - ii. Existing Conditions Plan Sheet 1 of 1
    - iii. Civil Existing Conditions Sheet C001
    - iv. Grading Plan Sheet C002
    - v. Utility Plan Sheet C003
    - vi. Landscape Planting Plan Sheet L1.0
    - vii. Composite Site Plan Sheet A1.1
    - viii. Site Plan Sheet A1.2
    - ix. Floor Plans Sheet A2.1
    - x. Canopy & Kiosk Elevations Sheet A3.0
    - xi. Kiosk Elevations, Sections, Details Sheet A3.1
    - xii. Interior Elevations and Details Sheet A4.0
  - d. Land Use Applications & Checklists

- e. 8½ x 11 Site Plan Sheets
- f. FEMA
- g. Transportation Impact Study
  - i. April 28, 2006 study
  - ii. May 17, 2006 addendum
  - iii. June 6, 2006 addendum
- h. Lighting Details
- 4. Revised Site Plan
- 5. Alternate Site Plan
  - a. Sheet B – Shared Access with Linear Tank Configuration, Truck Route through E3 and E4
  - b. Sheet B2 – Shared Access with Perpendicular Tank Configuration
  - c. Sheet C – Shared Access with Linear Tank Configuration, Truck Route through E5 and E4
- 6. Comments
  - a. Building Department (Tom Larsen)
  - b. Hector Campbell NDA Chair (David Aschenbrenner)
  - c. TriMet (David Zagel)
- 7. DKS Associates memo of June 7, 2006 (*to Planning Commission Only*)



## ATTACHMENT 1

### Recommended Findings in Support of Approval of TAR-06-01 and TPR-06-05 and Denial of VR-06-01

1. The applicant is proposing to develop a Safeway fuel station at the northeast corner of the intersection of SE Harrison Street and SE 42<sup>nd</sup> Avenue. Previously, an unrelated fuel station operated on the site but was discontinued in 2004, and the underground fuel tanks have since been removed. The proposal includes the following:
  - A. Demolition of existing structures and clearing of the site.
  - B. Installation of new underground fuel tanks and construction of a canopy over four new fuel dispensers.
  - C. Construction of a 300 square-foot service kiosk and establishment of a parking space compliant with the requirements of the Americans with Disabilities Act (ADA) on the adjacent Safeway property to the east. A shared-use agreement will be recorded for both.
  - D. Construction of new curb, 4-foot landscape strip, and 8-foot sidewalk on SE 42<sup>nd</sup> Avenue fronting the proposed development. Construction of new curb and 5.5-foot sidewalk on SE Harrison Street fronting the proposed development. The Planning Commission approves the adjustment requests to reduce the landscape strip, sidewalk, and bike lane widths on SE 42<sup>nd</sup> Avenue fronting the proposed development and to eliminate the landscape strip and reduce sidewalk width on SE Harrison Street fronting the proposed development (see Finding #7-B, below).
  - E. Establishment of a landscaped buffer along the SE Harrison Street frontage as a transition area measure to minimize the fuel station's impacts on the residential (R-3) properties across SE Harrison Street from the site.
  - F. Closure of the two driveway approaches nearest the intersection of SE Harrison Street and SE 42<sup>nd</sup> Avenue, one on each frontage. The Planning Commission denies the variance request to keep open the existing driveway on SE Harrison Street that is approximately 63 feet from the intersection (see Finding #7-C, below). The existing driveway on SE 42<sup>nd</sup> Avenue that is approximately 92 feet from the intersection will remain open.
2. Public notice has been provided in accordance with the Milwaukie Municipal Code (MMC) Subsection 19.1011.3 – Minor Quasi Judicial Review. A public hearing was held June 27, 2006 as required by law.
3. The proposal is subject to the following provisions of the Zoning Ordinance and Land Division Ordinance as follows:

Section 19.313	General Commercial (CG) zone
Section 19.416	Transition Area Measures
Chapter 19.500	Off-Street Parking and Loading
Chapter 19.700	Variances, Exceptions, and Home Improvement Exceptions
Subsection 19.1011.3	Minor Quasi-Judicial Review
Chapter 19.1400	Transportation Planning, Design Standards, and Procedures

4. MMC Section 19.313 – General Commercial (CG) Zone. The Planning Commission finds that the proposal is consistent with MMC Section 19.313 – General Commercial (CG) Zone requirements. Attachment 2 – Zoning Compliance Report demonstrates compliance with Section 19.313.

5. MMC Section 19.416 – Transition Area Review requires the application of transition measures to minimize the impacts of commercial projects on lower density uses within 100 feet. In addition to the separation provided by SE Harrison Street, the applicant proposes to establish landscaping along the SE Harrison Street frontage as a buffer, including plantings with a 6-foot height at maturity. The applicant also proposes to install canopy light fixtures that can be adjusted to avoid light impacts to neighboring properties and on-site yard lights. As conditioned, the Planning Commission finds that the proposed transition area measures adequately meet the intent of MMC Section 19.416.

6. MMC Chapter 19.500 – Off-Street Parking and Loading. Table 19.503.9(F)(6)(a) establishes the minimum required parking for gas-only gas stations at one space per four pumps. The applicant proposes four fuel pumps and one ADA-compliant parking space, which will be located on the adjacent shopping center property to the east.

MMC Subsection 19.503.2 allows parking to be shared when it is within 300 feet of the principal use. The required parking space will be less than five feet from the subject property line and will be bound to the subject property by a recorded shared-use agreement. The King Road Shopping Center site has 265 parking spaces when only 259 are required, so there is no conflict in sharing one space with the fuel station. As conditioned, the Planning Commission finds that the proposal satisfies the requirements of MMC Chapter 19.500.

7. MMC Chapter 19.1400 – Transportation. The Planning Commission finds that the following complies with applicable criteria of MMC Chapter 19.1400:

- A. MMC Chapter 19.1400 applies to commercial redevelopment, except as limited by MMC subsection 19.1403.1.

MMC Chapter 19.1400 is not limited by MMC subsection 19.1403.1 when a traffic study is required. A transportation impact study is required for the proposed development.

The Planning Commission finds that MMC Chapter 19.1400 applies to the proposed development.

B. MMC Section 19.1404 authorizes the Engineering Director to approve adjustments to transportation facility design standards.

- 1) The applicant requests an adjustment to eliminate the landscape strip and reduce the sidewalk width to 5.5 feet on SE Harrison Street fronting the proposed development. SE Harrison Street fronting the proposed development is classified as a local street. As a result, a 5-foot wide landscape strip and 6-foot wide sidewalk is required on SE Harrison Street

The Planning Commission approves the adjustment request upon finding the following:

- a. Elimination of the landscape strip and reduction of the sidewalk width to 5.5 feet meets the minimum dimensions of MMC Table 19.1409.3. The adjustment is consistent with the purposes of Chapter 19.1400 and the Milwaukie Transportation System Plan.
  - b. The three-lane cross section on the westbound leg of the intersection of SE Harrison Street and SE 42<sup>nd</sup> Avenue fronting the proposed development limits the area for landscape strip and sidewalk improvements. It is infeasible, due to engineering limitations, to construct a full-width landscape strip and sidewalk fronting the proposed development on SE Harrison Street. The adjustment is the minimum necessary to construct acceptable pedestrian improvements on SE Harrison Street.
- 2) The applicant requests an adjustment to reduce the landscape strip to 4 feet, sidewalk to 8 feet, and bike lane to 5.5 feet on SE 42<sup>nd</sup> Avenue fronting the proposed development. SE 42<sup>nd</sup> Avenue fronting the proposed development is classified as an arterial roadway. As a result, a 5-foot wide landscape strip, 10-foot wide sidewalk, and 6-foot wide bike lane are required on SE 42<sup>nd</sup> Avenue.

The Planning Commission approves the adjustment request upon finding the following:

- a. Reducing the width of the planter strip, sidewalk, and bike lane meets the minimum dimensions of MMC Table 19.1409.3. The adjustment is consistent with the purposes of Chapter 19.1400 and the Milwaukie Transportation System Plan.
- b. Strict compliance is deemed infeasible due to engineering limitations of connecting to adjoining

transportation facilities. The adjustment serves to match the adjoining landscape strip, sidewalk, and bike lane on SE 42<sup>nd</sup> Avenue north of the proposed development. The adjacent transportation facilities were approved as part of the King Road Shopping Center development.

- C. MMC Subsection 19.1404(E) requires that requests for variance be reviewed for compliance with the criteria of MMC Chapter 19.700.

The applicant requests a variance to reduce the minimum distance between driveways and street intersection curb return of MMC Subsection 19.1413.2(E)(2) from the required 100 feet to 63 feet. The criteria for granting variances under MMC Subsection 19.702.1 are as follows:

- 1) ***The property in question has unusual conditions over which the applicant has no control. Such conditions may only relate to physical characteristics of the property, lot or boundary configurations, or prior legally existing structures.***

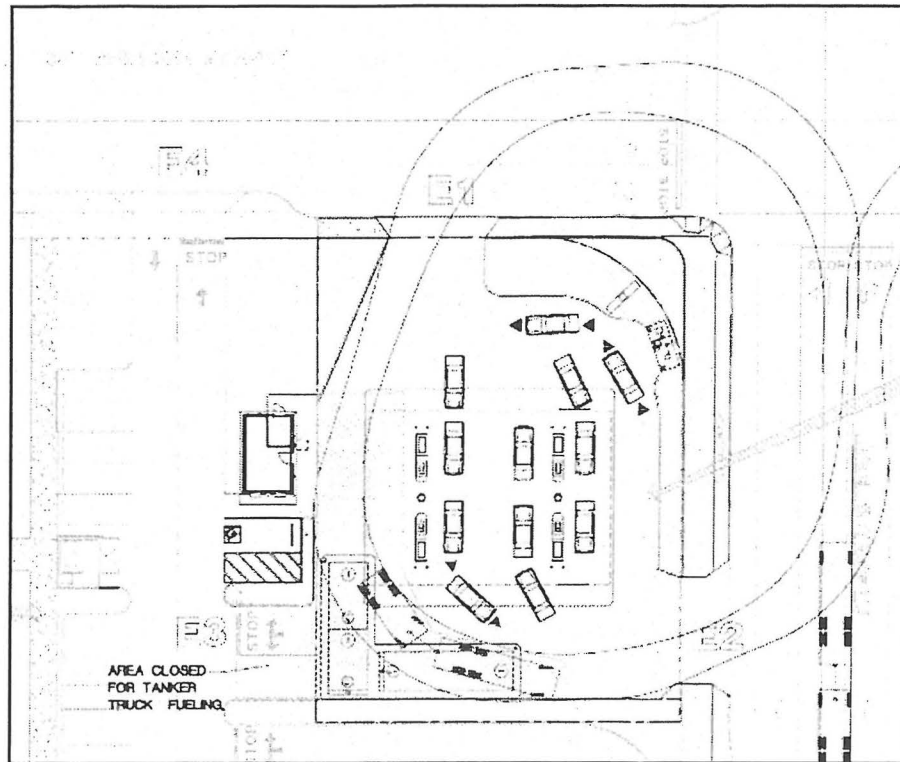
**Applicant:** The property has four existing access points or driveway approaches, two per frontage, which are prior legally existing driveway approaches. For the property to be a viable fuel station it would need at least one approach per street frontage to accommodate circulation. The two existing driveway approaches closest to the intersection will be closed. The existing lot is sized such that it is not possible to retain the approach on SE Harrison Street and meet the code requirements without a variance.

**Staff:** The proposed development property does not have unusual conditions over which the applicant has no control. Although the proposed development frontage on SE Harrison Street is less than 100 feet, the applicant does have control over the provision of internal access between the gas station and the shopping center.

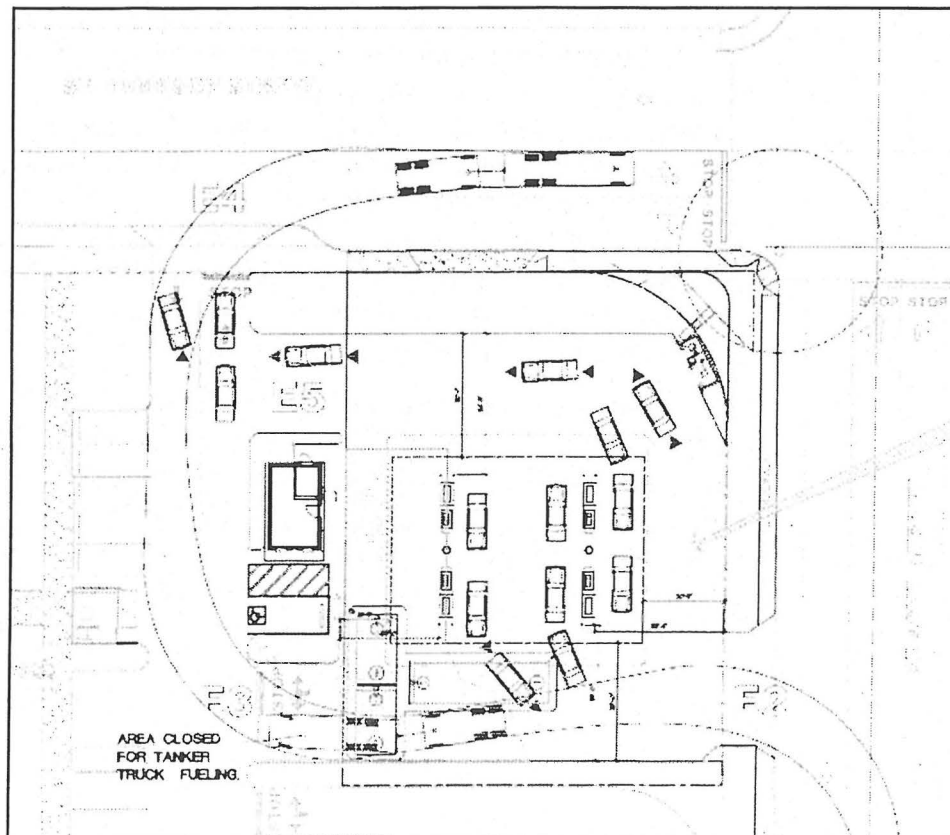
The applicant is proposing one internal access driveway to the shopping center (see Figure 1 on the following page). Material provided by the applicant demonstrates that this internal driveway connection (E3) is adequate to serve fueling-vehicle circulation (see Figure 2 on the following page). The addition of a second internal access driveway (E5) on the east property line of the proposed development would provide adequate customer circulation and access on SE Harrison Street via the existing King Road Shopping Center driveway. This second internal access driveway should be placed at least 25 feet north of the south property line to provide for a one-car queue at the SE Harrison Street approach. This configuration would eliminate the need for

an additional access onto SE Harrison Street and the need for a variance.

**Figure 1** – Revised site plan with direct access to SE Harrison Street and SE 42<sup>nd</sup> Avenue.



**Figure 2** – Alternate site plan with shared access to SE Harrison Street.





The applicant is already proposing use of the drive aisle accessed by the existing shopping center driveway onto SE Harrison Street by placing the required ADA-compliant parking space on the shopping center property.

MMC Subsection 19.1413.3(B) states that within commercial, industrial, and multifamily areas, shared driveways and internal access between similar uses are encouraged to reduce the number of access points to the higher classified roadway, improve internal site circulation, and reduce local trips or movements on the street system.

The existing driveway approaches accessing the proposed development were a legally existing use. However, the proposed development is a complete redevelopment of the site. As a result, the proposed development must conform to all access standards of MMC Section 19.1413, including the access spacing standards.

- 2) ***There are no feasible alternatives to the variance and that the variance is the minimum necessary to allow the applicant the use of his/her property in a manner substantially the same as others in the surrounding area.***

**Applicant:** There are no alternatives that allow this site to function as an independent property. A shared access would be a burden on the owner of the adjacent shopping center as all fuel station traffic and the fuel delivery truck would need to use a shared approach. The proposed variance would allow Safeway to use the property in a manner substantially similar to the ARCO fuel station on the opposite (southwest) corner from our site. The ARCO station has driveway approaches on both streets, and one driveway approach on Harrison Street is approximately 15 feet from the 42<sup>nd</sup> Avenue curb return, which is considerably less than our variance request of 63 feet.

**Staff:** The requested variance is not the minimum necessary to allow the applicant the use of his/her property in a manner substantially the same as others in the surrounding area. The applicant has provided truck turning movements under the shared access scenario using driveway E5 (from Figure 2). The site plan demonstrates that the site would function adequately without a separate driveway access (E1, from Figure 1) onto SE Harrison Street and can comply with access spacing standards without a

variance. Staff recommends a second internal access driveway (E5) on the east property line of the proposed development, at least 25 feet north of the shared access driveway, to improve site circulation.

The access spacing standards of MMC Section 19.1413 do not guarantee that any site shall function as an independent property. In fact, MMC Subsection 19.1413.3(B) states that within commercial, industrial, and multifamily areas, shared driveways and internal access between similar uses are encouraged to reduce the number of access points to the higher classified roadway, improve internal site circulation, and reduce local trips or movements on the street system.

In the event the ARCO station opposite of the proposed development were to redevelop in a similar manner, it would be subject to the same access spacing requirements applied to the proposed Safeway development.

3) ***Adverse effects upon other properties that may be the result of this variance shall be mitigated to the extent feasible.***

**Applicant:** There were four existing driveway approaches for the prior fuel station, and Safeway proposes to reduce that to two driveways. We think there will be positive impact to surrounding properties instead of an adverse impact. Safeway is providing a 15-foot transition buffer along SE Harrison Street with 6-foot high landscaping. This should further mitigate the impact of the proposed fuel station.

**Staff:** The applicant addresses the adverse impacts being mitigated from the existing nonconforming driveway access, disregarding the variance criteria. However, the adverse effects of the variance must be mitigated to the extent feasible. Continued use of multiple driveway approaches (Driveways E1 and E4, from Figure 1) on SE Harrison Street creates multiple safety hazards. These safety hazards can be mitigated by providing shared access at the existing driveway approach (E4) onto SE Harrison Street.

There are several conflict issues that would be created with the provision of a separate gas station driveway approach (E1) onto SE Harrison Street. First, locating two driveway approaches (E1 and E4) less than 50 feet apart would create conflicts between vehicles entering and exiting the two driveway approaches (E1 and E4) at the same time.

Second, the provision of a separate gas station driveway (E1) on SE Harrison Street would create additional conflict points between pedestrians walking along the gas station

and shopping center frontage and vehicles entering and exiting the site.

As DKS Associates, the City's traffic consultant, stated in its review of the applicant's traffic study (see Attachment 7 – DKS Associates memo of June 7, 2006), the proposed driveway onto SE Harrison Street would meet the estimated queue length at the intersection of SE Harrison Street and SE 42<sup>nd</sup> Avenue. However, any vehicle larger than a passenger vehicle that stopped on SE Harrison Street at the intersection would block the proposed driveway approach (Driveway E1). Also, any additional development increasing traffic on SE Harrison Street would add to the queue length and block the proposed driveway approach (E1). Queues extending past the gas station driveway can restrict sight distance and can lead to aggressive driver behavior from increased delay.

The combination of these conflicts creates a complex driving environment, with multiple conflicts to observe and process for drivers entering and exiting the site. Also, the additional points of conflict increase the chances for crashes, injuries, and property damage. By requiring a shared access point (Driveway E4) with the King Road Shopping Center, the number of conflict points can be significantly decreased, while providing adequate queuing at the intersection. Providing a shared access (E4) onto SE Harrison Street would eliminate the need for a variance.

The Planning Commission finds that the applicant does not meet the variance criteria and denies the variance request to reduce the minimum distance between driveways and street intersection curb return of MMC Subsection 19.1413.2(E)(2) from the required 100 feet to 63 feet.

- D. MMC Subsection 19.1405.5 establishes approval criteria for transportation review applications to ensure that impacts are mitigated.

The Planning Commission finds that the proposed development, as conditioned, meets the approval criteria of MMC Subsection 19.1405.5 for decisions made under MMC Chapter 19.1400.

- E. MMC Section 19.1406 requires the applicant to provide an assessment and recommend mitigation of local street impacts when any non-residential development adds more than 25 through-vehicles per day to an adjacent residential local street.

The applicant submitted an update to the Neighborhood Traffic Analysis conducted as part of the King Road Shopping Center Traffic Study from May 2002 (see Transportation Impact Study in



Attachment 3 – Application Packet). The update found that there was no additional impact from the proposed development and that mitigation was not necessary.

The City's traffic consultant, DKS Associates, has reviewed the update to the Neighborhood Traffic Analysis and agrees with the applicant's findings. (See Attachment 7 – DKS Associates memo of June 7, 2006.)

The Planning Commission finds that the proposed development will not impact the adjacent local neighborhood streets.

- F. MMC Section 19.1407 requires streets, sidewalks, and transportation facilities to be safe, convenient, and adequate to accommodate the impacts of new development.

The applicant proposes to construct a new curb, 4-foot planter strip, and 8-foot sidewalk on SE 42<sup>nd</sup> Avenue fronting the proposed development. The applicant proposes to construct a new curb and 5.5-foot sidewalk on SE Harrison Street fronting the proposed development.

Planning Commission has denied a variance request to reduce the minimum distance between driveways and street intersection curb return of MMC Subsection 19.1413.2(E)(2) from the required 100 feet to 63 feet. (See Finding #7-C, above.)

The intersection of SE Harrison Street and SE 42<sup>nd</sup> Avenue will operate within City of Milwaukie level of service standards with the proposed development.

The Planning Commission finds that the proposed development, as conditioned, will not result in hazardous or unsafe transportation conditions or unacceptable level of service impacts that cannot be mitigated.

- G. MMC Subsections 19.1408.1 and 19.1408.2 require submission of a transportation impact analysis documenting the development impacts on the surrounding transportation system.

The proposed development scores over the 100 points necessary to require transportation impact analysis in accordance with the Transportation Design Manual. The applicant's traffic consultant, Lancaster Engineering, updated a transportation impact study that was conducted for the King Road Shopping Center, dated May 2002. The update was submitted with the land use application in accordance with MMC Section 19.1408 (see Transportation Impact Study in Attachment 3 – Application Packet). Staff has hired DKS Associates to conduct an independent review of the submitted transportation impact analysis (see Attachment 7 – DKS Associates memo of June 7, 2006).

The Planning Commission finds that the applicant's updated transportation impact analysis adequately complies with MMC Section 19.1408.

- H. MMC Subsections 19.1408.3 and 19.1408.4 require that transportation impacts of the development be mitigated and that the mitigation be roughly proportional to the impacts of the development.

The updated transportation impact analysis submitted by the applicant finds that there is no impact as a result of the proposed development (see Transportation Impact Study in Attachment 3 – Application Packet). As a result, no mitigation is necessary.

The City's traffic consultant, DKS Associates, has reviewed the updated transportation impact analysis submitted by the applicant (see Attachment 7 – DKS Associates memo of June 7, 2006). DKS Associates recommends denial of the variance request to reduce the minimum distance between driveways and street intersection curb return. Instead, DKS Associates recommends the applicant provide a shared access with the existing driveway access onto SE Harrison Street serving the King Road Shopping Center.

The Planning Commission finds that the proposed development, as conditioned, mitigates the impacts of the proposed development and the mitigation is roughly proportional to the impacts.

- I. MMC Section 19.1409 establishes standards for street design and improvement.

The applicant proposes to construct new curb, 4-foot planter strip, and 8-foot sidewalk on SE 42<sup>nd</sup> Avenue fronting the proposed development. The applicant proposes to construct new curb and 5.5-foot sidewalk on SE Harrison Street fronting the proposed development. Planning Commission has approved the necessary adjustments for bike lane, planter strip, and sidewalk width fronting the proposed development.

Staff recommends construction of a 25-foot curb radius at the NE corner of the intersection of SE 42<sup>nd</sup> Avenue and SE Harrison Street fronting the proposed development.

Staff recommends that no signs, structures, or vegetation in excess of three feet in height be placed in "vision clearance areas" at the intersections of streets, driveways, and alleys.

The proposed development complies with the requirements for additional setbacks from major streets.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC Section 19.1409.

- J. MMC Section 19.1410 establishes standards for pedestrian facilities.

The applicant proposes new sidewalk and driveway approaches on SE Harrison Street and SE 42<sup>nd</sup> Avenue fronting the proposed development. The Planning Commission has approved the necessary adjustments for sidewalk width fronting the proposed development (see Finding #7-B, above). The proposed sidewalk and driveway improvements shall meet the current requirements of the Americans with Disabilities Act.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC Section 19.1410.

- K. MMC Section 19.1411 establishes standards for bicycle facilities.

An existing bike lane fronts the proposed development on SE 42<sup>nd</sup> Avenue. The Planning Commission has approved the necessary adjustments for bike lane width fronting the proposed development.

The portion of SE Harrison Street fronting the proposed development is not classified as a bike route in the Transportation System Plan. As a result, bike lane improvements on SE Harrison Street as part of the proposed development are not required.

The Planning Commission finds that the proposed development is consistent with MMC Section 19.1411.

- L. MMC Section 19.1412 establishes standards for transit facilities.

The portion of SE 42<sup>nd</sup> Avenue fronting the proposed development is identified as a transit route. TriMet has submitted comments recommending improvements to the transit stop on SE 42<sup>nd</sup> Avenue near SE Llewellyn Street (see Attachment 6 – Comments). Staff recommends that the transit improvements not be required to be constructed as part of the proposed development, finding that the exaction is not proportional to the impact of the development. Transit improvements in this area should have been required as part the King Road Shopping Center development. Such improvements are needed; however, they would be a voluntary contribution by the applicant.

The portion of SE Harrison Street fronting the proposed development is not identified as a transit route in the Transportation System Plan. As a result, transit improvements on SE Harrison Street as part of the proposed development are not required.

The Planning Commission finds that the proposed development is consistent with MMC Section 19.1412.

- M. MMC Section 19.1413 establishes standards for access management.

The proposed development includes a driveway approach (E2) on SE 42<sup>nd</sup> Avenue. The proposed development does not meet the access spacing standard of 600 feet on an arterial roadway. The applicant has submitted an access study, in accordance with MMC Subsection 19.1413.1(C) for the proposed driveway approach (E2) on SE 42<sup>nd</sup> Avenue. The study finds that the access (E2) is necessary to provide adequate access to the proposed development site. The City's traffic consultant, DKS Associates, agrees with the finding (see Attachment 7 – DKS Associates memo of June 7, 2006).

Planning Commission has denied a variance request to reduce the minimum distance between driveways and street intersection curb return of MMC Subsection 19.1413.2(E)(2) from the required 100 feet to 63 feet.

The applicant shall share the existing access (E4) with the King Road Shopping Center for access onto SE Harrison Street.

The driveway approach must be 10 feet from the property line.

The allowed driveway approach width for commercial development is between 12 feet and 36 feet in width.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC Section 19.1413.

8. Title 16 of the Milwaukie Municipal Code requires that the applicant obtain an erosion control permit prior to construction or commencement of any earth-disturbing activities. As conditioned the application complies with MMC Title 16 – Erosion Control.

#### **Recommended Conditions of Approval for TAR-06-01 and TPR-06-05**

1. Prior to any earth-disturbing activities or construction, erosion controls and construction barriers shall be installed and inspected by the city in accordance with an approved erosion control plan.
2. Prior to issuance of a building permit the following shall be resolved.
  - a. Submit full-engineered plans for all public improvements to the City of Milwaukie Planning Department for review and approval.
  - b. Pay an inspection fee equal to 5.5% of the cost of the public improvements.
  - c. Provide a payment and performance bond for 100% of the cost of the public improvements prior to the start of construction.
  - d. Provide an erosion control plan and obtain an erosion control permit.
  - e. Provide a detailed stormwater management plan. The report shall detail pre- and post-construction flows in sufficient detail to demonstrate flows into the city storm system.

- f. Provide shared access onto SE Harrison Street via the existing King Road Shopping Center driveway approach (E4). Record a shared access agreement with Clackamas County.
  - g. Record a shared use agreement with Clackamas County for the service kiosk and ADA-compliant parking space to be located on the adjacent shopping center property.
  - h. Submit a photometric study for the proposed yard lights and canopy lights, for review and approval by the Planning Department.
- 3. Prior to final inspection for any building the following shall be resolved:
  - a. Submit approved public improvement Mylar "As Constructed" plans to the City of Milwaukie Planning Department.
  - b. Construct new curb, 4-foot landscape strip, and 8-foot set back sidewalk on SE 42<sup>nd</sup> Avenue fronting the proposed development.
  - c. Construct new curb and 5.5-foot curb tight sidewalk on SE Harrison Street fronting the proposed development.
  - d. Construct a 25-foot curb radius at the NE corner of the intersection of SE 42<sup>nd</sup> Avenue and SE Harrison Street fronting the proposed development.
  - e. Construct a second internal access point (Driveway E5 on Figure 2) on the east property line 25 feet north of north right-of-way line of SE Harrison Street.
  - f. The City of Milwaukie shall install all street signs, relative to traffic control and street names. The applicant shall be responsible for the costs of all street signing for the proposed development. Necessary street signage shall be determined as part of the public improvements design review.
  - g. Trim and/or remove all signs, structures, or vegetation in excess of three feet in height on the proposed development property at all vision clearance areas. Limb trees and trim tree branches located in the vision clearance area to a height of 8 feet.
- 4. The public right-of-way shall not be used for storage of equipment, materials, construction trailers or construction vehicles. All construction vehicles, materials, and trailers shall be stored on site.
- 5. Other requirements:
  - a. Construct all public improvements to City of Milwaukie standards for construction.
  - b. Construct sidewalk and driveway approaches to meet all applicable guidelines of the Americans with Disabilities Act.
  - c. Construct driveway approaches 10 feet from the property line.
  - d. All driveway approaches for the proposed development are to be between 12 feet and 36 feet in width.



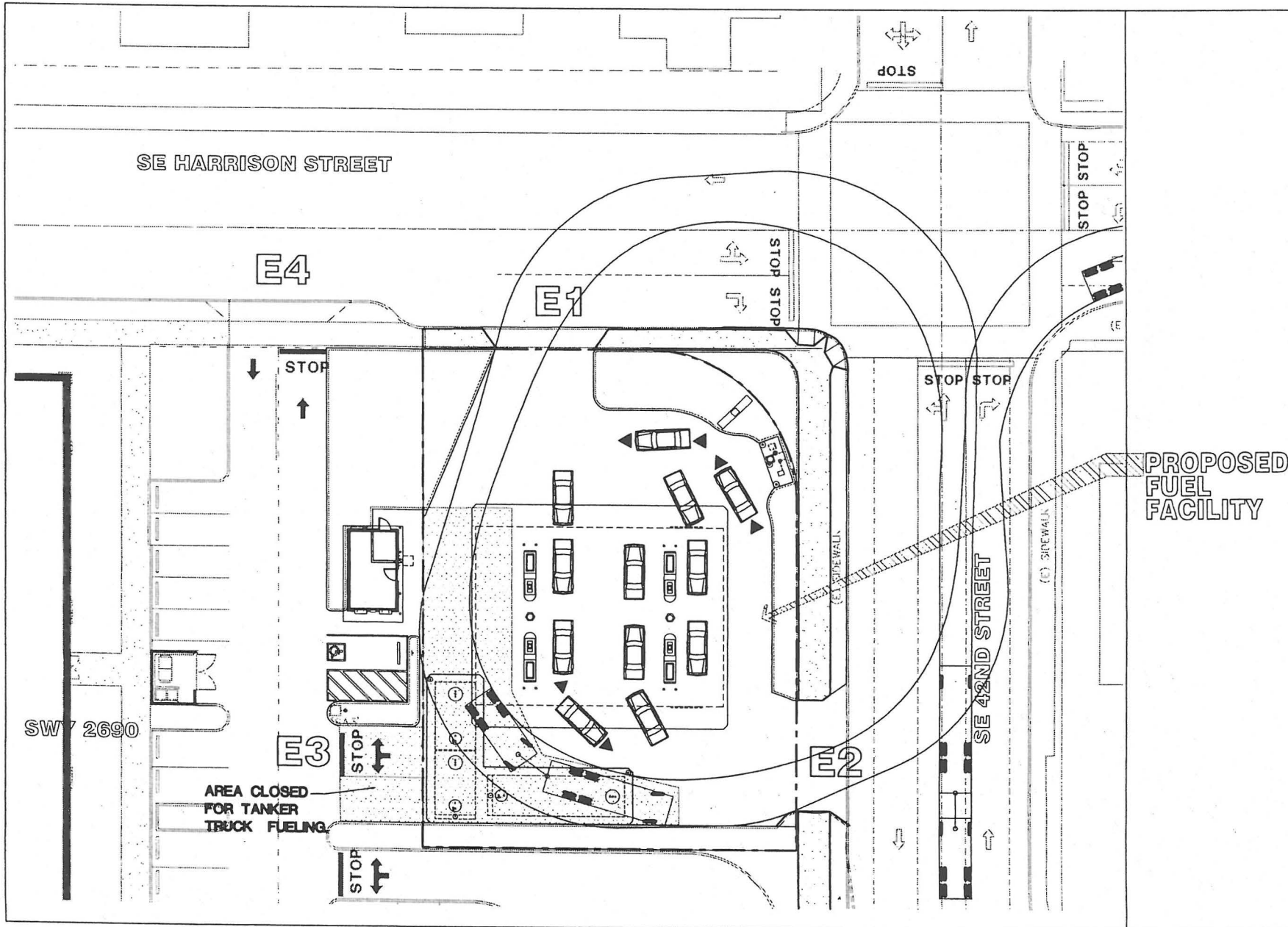
## ATTACHMENT 2

### Zoning Compliance Report

#### GENERAL COMMERCIAL DEVELOPMENT STANDARDS

General Commercial Development Standards			
Standard	Required	Proposed	Staff Comment
1. Minimum lot size	None	11,386 sq. ft.	Complies with development standard.
2. Minimum Lot Width	50 feet	93.5 feet	Complies with development standard.
3. Minimum Lot Depth	80 feet	125 feet	Complies with development standard.
4. Minimum Setbacks	None	From canopy: 44 feet (south side) 13 feet (west side) 36 feet (north side) 13 feet (east side)	Complies with development standard.
5. Transition Area	Yes	15-foot landscaped buffer along Harrison Street on either side of driveway	If a variance is granted to allow a driveway onto Harrison Street, the proposed landscape buffer is adequate. If both driveways onto Harrison Street are closed (per staff recommendation), impacts to the adjacent residential area would be reduced if the driveways were replaced with additional landscaping.
6. Frontage	35 feet	93.5 feet on Harrison 125 feet on 42 <sup>nd</sup> Ave.	Complies with development standard.
7. Off-Street Parking and Loading	1 space per 4 fuel pumps (ADA compliant)	1 ADA-compliant space will be located on the adjacent Safeway property with a recorded shared-use agreement	As conditioned, staff believes the application meets the intent of the off-street parking and loading requirements as set forth in MMC Chapter 19.500.
8. Height Restriction	3-stories or 45 feet	Canopy height: 19 feet, 10 inches	Complies with development standard.
9. Lot Coverage	85% max.	24.5%	Complies with development standard.
10. Open Use	N/A	N/A	N/A
11. Minimum Vegetation	15% min.	15.7%	Complies with development standard.
12. Transportation Requirements	Yes	Multiple adjustments requested for relief from sidewalk, landscape strip, and bike lane dimensional requirements.	Staff recommends approval of all adjustment requests. See analysis of adjustment approval criteria in the staff report.





REVISIONS	DATE	BY	REASON

SHEET NO.	DATE

PROJECT NO.	DATE

PROJECT NO.	DATE

PROJECT NO.	DATE

PROJECT NO.	DATE

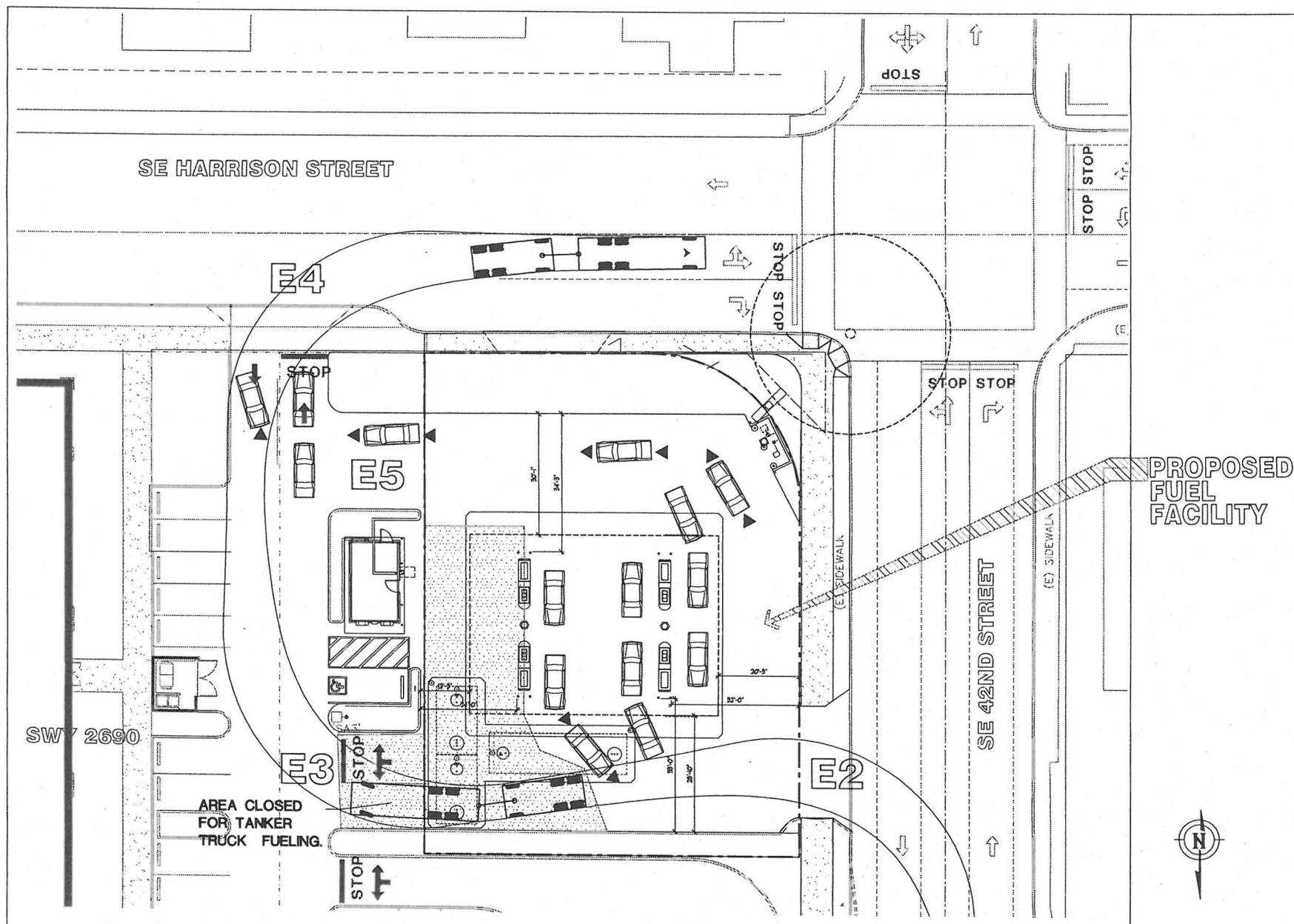
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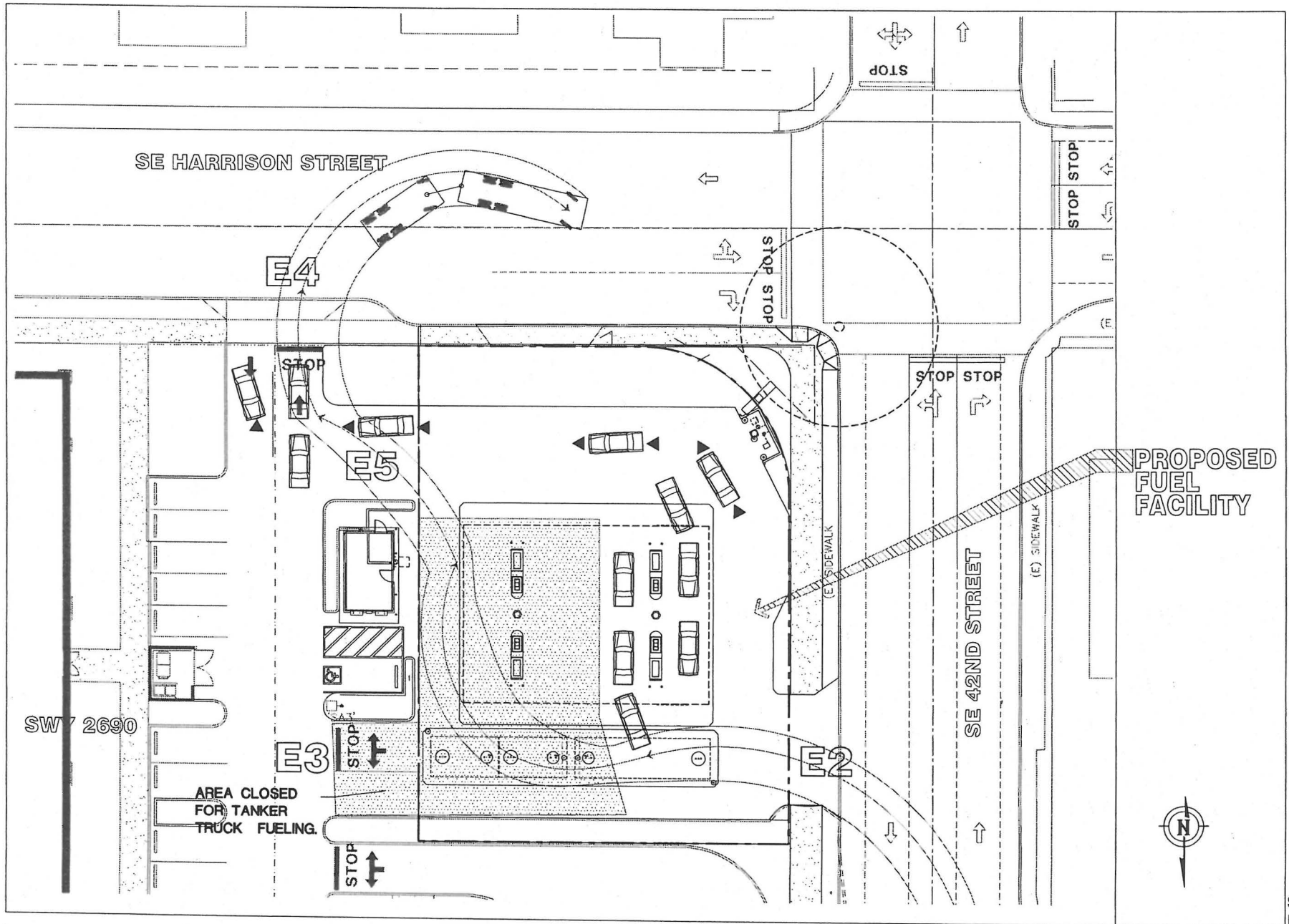
site plan review

# Revised Site Plan





site plan  
review



REVISIONS	DATE	DESCRIPTION	BY	CHKD	DATE
1	01/01/00	PRELIMINARY	WHL		
2	01/01/00	FINAL	WHL		

SUBMITTAL	DATE
OWNER	01/01/00
DESIGNER'S	01/01/00
DATE	01/01/00



PROJECT NO.	SP05010.0
DRAWN BY	WHL
CHECKED BY	WHL/DJH
DATE	01/01/00

SAFeway FUEL STATION	MILWAUKEE, OR
STORE # 2890	MILWAUKEE, OR


SHEET TITLE	SITE PLAN
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SHEET NO.	C
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site plan  
review

**CITY OF MILWAUKIE  
BUILDING  
DEPARTMENT**

# Memo

**To:** Brett Kelter, Assistant Planner  
**From:** Tom Larsen, Building Official   
**Date:** May 24, 2006  
**Re:** TAR-06-01 etc. - Safeway Gas Station

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1. A demolition permit is required for the removal of the existing building and canopy.
2. The applicant should contact Clackamas County Electrical Division for any electrical permit requirements.
3. Preliminary plans show a sanitary sewer connection to the existing line to the east. This is acceptable, however it would become an issue if the lot were to be divided in the future (OSPC Section 721.0).
4. Prior to the issuance of a building permit for this project, the following items will need to be resolved:
  - a. The plans shall show an accessible route from the building entries to the public way and to the accessible parking space (OSSC Section 1103.1).
  - b. Preliminary plans show the kiosk building face approximately (6) feet from the west property line of Lot 4. Per Table 602 of the OSSC, this wall would need to be constructed of materials consistent with a one-hour fire-resistive rating. Per Table 704.8, unprotected openings would be limited to 10% of the area of the wall and protected openings limited to 25 % of the area of the wall. The applicant may request a modification in accordance with Section 104.9 of the OSSC.
  - c. Preliminary plans show the rear wall of the kiosk approximately (7) feet from the existing sanitary sewer line. This line is approximately (11) feet deep at this location. The footing will need to be designed such that the base of the footing is at least 45 degrees from the bottom of the pipe (OSPC Section 313).

**Kelver, Brett**

From: David Aschenbrenner [dlasch@comcast.net]  
 Sent: Tuesday, May 30, 2006 7:16 PM  
 To: 'Kelver, Brett'  
 Cc: David Work  
 Subject: RE: Safeway gas comments?



Safeway Gas.doc

Brett,

Here are the only comments I have as the Chair of the Hector Campbell NDA. I have attached a map from the book you sent me, These are the question that I have:

1. What is the space in the front of the property for. I marked this area with a large letter A
2. If it is for on site parking? Then would a better location be next to the building as I have marked with the letter B?

I feel that the front of the site along 42nd Ave. would have a better appearance with landscaping than as a parking space. If the concern is the buffering requirements along Harrison St., I feel we can work out an agreement on the buffering issue. Other than that it looks good.

David Aschenbrenner, Chair  
 Hector Campbell  
 Neighborhood District Association  
 1722 SE Main St.  
 Milwaukie, OR 97222  
 503-804-3837

-----Original Message-----

From: Kelver, Brett [mailto:KelverB@ci.milwaukie.or.us]  
 Sent: Tuesday, May 30, 2006 9:41 AM  
 To: 'dlasch@comcast.net'  
 Subject: Safeway gas comments?

David,

A separate note this morning to check in and see if you are planning to submit any comments regarding the Safeway gas station application. I'm looking to pull those in by Thursday of this week (June 1). Let me know where you're at with that when you get a chance. Thanks!

\* \* \* \* \*

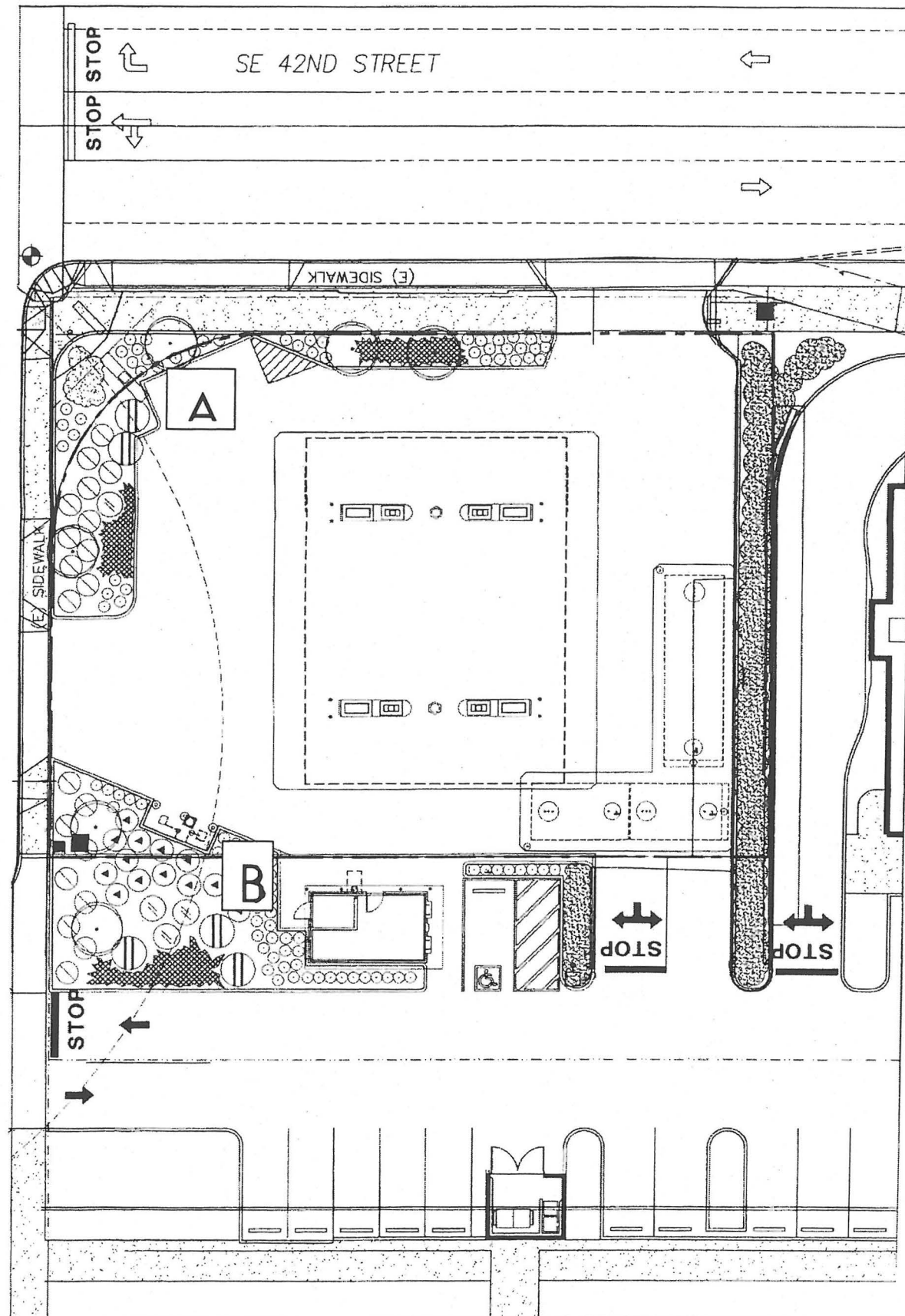
Brett Kelver, Assistant Planner  
 City of Milwaukie  
 6101 Johnson Creek Blvd.  
 Milwaukie, OR 97206

Phone: (503) 786-7657  
 Fax: (503) 774-8236  
 Email: kelverb@ci.milwaukie.or.us

PUBLIC RECORDS LAW DISCLOSURE:

This e-mail is a public record of the City of Milwaukie and is subject to public disclosure unless exempt from disclosure under Oregon Public Records





June 1, 2006

Via e-mail to: kelverb@ci.milwaukie.or.us

Brett Kelter, Associate Planner  
City of Milwaukie – Planning Department  
6101 SE Johnson Creek Blvd.  
Milwaukie, OR 97206

**RE: TriMet Comments on Application Referral File # TAR-06-01, TPR-06-05, VR-06-01**

Dear Mr. Kelter:

Thank you for the opportunity to comment on the proposed redevelopment at the northeast corner of SE 42nd Avenue and Harrison.

The nearest transit stop to this development is just north of the shopping center entrance off of 42nd opposite Llewellyn. While the service station redevelopment would not alone trigger much additional demand for transit, the Safeway store development associated with it certainly will.

As long as it is appropriate to do so with the related service station proposal, I would request that the developer pay for the purchase and installation of a standard TriMet bus passenger waiting shelter for the nearby northbound stop for an amount not to exceed \$3500. TriMet would be responsible for any ongoing maintenance costs. A database that I reviewed earlier this week had indicated that this stop had a shelter but that is not the case. The average weekday boardings for this stop currently fall just short of warranting TriMet installing a shelter but the increased activity associated with the new Safeway and this development will meet this threshold.

Thank you again for the opportunity to comment on this proposal and supporting the needs of transit customers in Milwaukie. If you have any questions, please contact me at 503-962-2139.

Sincerely,

David Zagel  
Project Planner

C: DocC file



To: Planning Commission

From: Katie Mangle, Planning Director *Km*

Cc: Kenny Asher, Community Development and Public Works Director  
Gary Firestone, City Attorney

Subject: Proposed Sign Code Amendments

Date: June 20, 2006

Action Requested

Review attached draft text amendments to Title 14, Sign Ordinance of the Milwaukie Municipal Code (MMC). The agenda item will be a worksession discussion of the proposed text amendments.

Background

The Oregon Supreme Court issued its long-awaited decision in *Outdoor Media Dimensions, Inc. v. Dept. of Transportation* on March 23, 2006. The Court held that on-premise and off-premise signs must be treated equally and that any disparate treatment between on-premise and off-premise signs is an unconstitutional content-based restriction on speech. In addition, the Court established a rule that is new for Oregon but has long been a mainstay of federal precedent—that governments may impose content-neutral “time, place and manner” restrictions on speech, so long as those restrictions leave adequate means for expression. The express adoption of a “reasonable time, place and manner” standard will provide the City with a means of defending most of its sign code.

The City of Milwaukie still has some content-based provisions in its sign code. The proposed text amendments change the sign code to eliminate content-based provisions. During the process of editing for content-based provisions, the Planning Department has proposed other minor changes that make the sign code clearer and easier to implement. The proposed amendments include the following key changes:

- Additions to the purpose statement that emphasize regulation based on time, place, and manner.
- Removing content-based descriptions in the definition section, such as references to lettering, and display of time and temperature.
- Deletion of the definitions of on-premise signs and off-premise signs, and removal of regulations within the sign districts that distinguish between on-premise and off-premise signs.
- Corrections to the review process that involve the Design and Landmarks Committee (DLC). The updates verify the role of the DLC as an advisory committee to the Planning Commission, and not as a decision-making authority.
- Giving the City Manager increased discretion with respect to sign code enforcement. New language allows for unsafe signs to be repaired or removed, and non-conforming signs to be removed or cited into court.

### Questions for Discussion

While many code revisions clarify or address constitutional issues, they raise policy questions for the community. Staff will discuss those issues with the Design and Landmarks Committee, Planning Commission, and City Council. We will discuss potential solutions to these issues at the meeting.

- The proposed language in MMC 14.12.010.K, page 8, places a strict time limit on when temporary window signs can be displayed. The problem being addressed is that traditional holidays do not include days that are important to diverse creeds and ethnicities. Limiting temporary window displays neutralizes the bias of when temporary window signs can be displayed.

The proposed time limit is strict, and leaves out many non-winter holidays and widely recognized non-holiday celebrations, such as Halloween. The Planning Commission may wish to recommend a standard that allows more flexibility for temporary window signs throughout the year. Some options include:

- Allowing temporary window signs 2 weeks before and 1 week after holidays chosen by the Planning Commission and City Council, with recommendation by the DLC.
  - Limiting the consecutive days of display for any individual temporary window sign and limiting the total number of days each year that temporary window signs can be displayed.
- The proposed changes do not distinguish between wall signs and murals. The result is that any mural is subject to the same standards as a regular wall sign, which is often 10-20% of the wall face for a building or occupancy. In the DR and DOS zones downtown, wall signs are limited to sixteen square feet. The Planning Commission may wish to recommend some allowance for

Planning Commission Staff Report -- Proposed Sign Code Amendments  
Page -- 3

murals within the sign code, bearing in mind that the City cannot regulate based on content. Some ideas may include:

- Allowing wall signs on non-primary building faces to have a larger area.
  - Allowing wall signs to have a larger area if they are applied by paintbrush.
  - Exempting murals from the sign code, and requiring murals to be approved as public art through the Regional Arts and Culture Council. The City of Portland uses this approach and requires a five-year public art easement for the building wall on which the mural is painted.
- MMC 14.16.060.G, page 20, covers illuminated signs in the downtown sign district. The problems identified in this code section are:
    - There are not clear standards for considering internally illuminated cabinet signs. The code states that they are discouraged in downtown zones, but this is not an appropriate standard. The code should be amended to prohibit them, specify where they are allowed or prohibited, or include criteria for signs that may be illuminated.
    - MMC 14.16.060.G.3 states that awning signs shall not be illuminated unless approved by the DLC and Planning Commission. Specific standards should be added to this section to give a basis for decisions about illuminated awning signs.

Attachments

- Draft redline/strikeout revisions to the Sign Ordinance, Title 14 of the Milwaukie Municipal Code.

**Amendments to Milwaukie Municipal Code****Title 14—Sign Ordinance**

**Underlined text is to be inserted**

**Strikeout ~~text~~ is to be deleted**

**SECTION 14.04 GENERAL PROVISIONS:****Section 14.04.020 Purpose:**

The Council of the city of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, erection, maintenance, electrification, illumination, type, size, number and location of all signs visible from public property or from public rights-of-way in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. ~~Maintain~~ Promote the neat, clean, orderly and attractive appearance of the community city;
- C. Provide for the safe erection and maintenance of signs;
- D. ~~Eliminate signs that demand, rather than invite, public attention;~~
- D. Accommodate the need of sign users while avoiding nuisances to nearby properties;
- E. Preserve and enhance the unique scenic beauty of Milwaukie.
- F. Insure for safe construction, location, erection and maintenance of signs;
- G. Prevent proliferation of signs and sign clutter;
- H. Minimize distractions for motorists on public highways and streets;
- I. Regulate solely on the basis of time, place and manner of a sign, not on its content.

**14.04.030 Definitions:**

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

"Area" or "area of a sign" means the area to and within an established sign edge, frame or perimeter which encloses the limits of any writing, representation, emblem, figure or character. The area of a sign having no such perimeter, or the area of a sign having an irregular shape, shall be computed by enclosing the surface area within a circle, square, rectangle and/or triangle. The area of all signs in existence at the time of the enactment of the ordinance codified in this chapter, whether conforming or nonconforming, shall be counted in establishing the permitted sign area of all new signs to be allowed for an individual business on a premises. Where a sign is of a three



dimensional or round or irregular solid shape, the largest cross section shall be used, as though it were a flat surface, to determine sign area.

"Awning" means either a permanent or retractable structural extension off a building or structure which has a minimum ground clearance of eight feet, an extension of at least three feet, and is intended for the purpose of pedestrian cover.

"Canopy" means a covered structural extension off a building or structure which has a minimum ground clearance of eight feet, an extension of less than three feet, and is generally not intended for the purpose of pedestrian cover.

"City" means the city of Milwaukie, Oregon.

"Clearance" is measured from the highest point of the grade below the sign to the lowermost point of the sign.

"Display surface" means the area made available by the sign structure for the purpose of displaying the message.

"Downtown zones" means the DS, downtown storefront; DC, downtown commercial; DO, downtown office; DR, downtown residential; and DOS, downtown open space zones as defined in the zoning ordinance.

"Erect" means to build, construct, attach, place, suspend or affix and shall also include the painting of wall signs.

"Face of a building" means all window and wall area of a building in one plane.

"Flag" means any fabric or banner displayed on a flagpole. ~~, banner or bunting containing distinctive colors, patterns, or symbols, used as a symbol of a government, political subdivision or other entity.~~

"Frontage" means the length of the property line of any one premises along each public street it borders. Each portion of the premises abutting a separate street shall be considered as a separate frontage.

"Height" is measured from the highest point of the grade below the sign to the topmost point of the sign.

"Home occupation" means an occupation carried on at a dwelling as an accessory use to the dwelling, with the activity conducted in such a manner as to give no appearance of a business, and with no infringement upon the right of neighboring residents to enjoy the peaceful occupancy of their homes.

"Maintain" means to permit a sign, sign structure or part thereof to continue, or to repair or refurbish a sign, sign structure or part thereof.

"Manufacturing zones" are the M, manufacturing, and BI, business industrial, zones as defined in the zoning ordinance.

"Marquee" means a permanent roof-like structure attached to and supported by a building and projected therefrom.

"Neighborhood commercial zone" means the C-N, neighborhood commercial, zone as defined in the zoning ordinance.

Occupancy. A property or portion of property that is possessed or used separately from other properties or other portions of the same property. Examples of occupancies include a store in a mall or an office in an office building.

"Other commercial zones" means the C-L, limited commercial; DS, downtown storefront; DC, downtown commercial; DO, downtown office; C-CS, community shopping commercial; and C-G, general commercial, zones as defined in the zoning ordinance.

"Parapet or parapet wall" means that part of any exterior wall which extends above the roofline.

"Permittee" means a person who has applied for a city sign permit to allow placement or erection of a sign covered by this ordinance, or a person who has not as yet applied for a sign permit, but will be required to do so due to an intent to place or erect a covered sign, or by the premature placement or erection of a covered sign.

"Person" means any natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government, or any other group or combination acting as a syndicate, branch of government, or any other group or combination acting as a unit.

"Premises" means a lot, parcel or tract of land occupied, or to be occupied, by a building or unit or group of buildings and its accessory buildings. If more than one business or activity is located on the lot, parcel or tract of land, each separate business shall be considered as a separate premises.

"Projection" means the distance by which a sign extends from its supporting structure.

"Residential zones" means the R-10, R-7, R-5, R-3, R-2.5, R-2 and R-1 residential zones as defined in the zoning ordinance.

"Residential-office-commercial zone" means the R-O-C, R-1-B and DR zones as defined in the zoning ordinance.

"Sign" means the physical components of materials placed or constructed primarily to convey a message or other display and which can be viewed from a right-of-way or another property. ~~a presentation or representation by words, letters, figures, designs, pictures or colors displayed out of doors in view of the general public so as to give notice relative to a person, a business, an article of merchandise, a service, an assemblage, a solicitation or a request for aid or other message. This definition includes, but is not limited to, billboards, ground signs, marquees, awnings, canopies and street clocks, and includes the surface upon which the message is displayed.~~

~~Sign, Abandoned. "Abandoned sign" means any sign located on a premises when the business or activity to which it relates is no longer conducted or in existence on the premises.~~

Sign, Awning. "Awning sign" means a sign which is painted onto, attached or affixed to, the surface of an awning, or is suspended underneath an awning.

Sign, Banner. "Banner sign" means a sign of lightweight fabric or similar material that can be mounted both on a permanent or temporary basis. A banner sign may be used as a wall sign provided appropriate wall sign standards are met. National flags, state or municipal flags, or the official flag of any institution or business shall not be considered banners.

Sign, Bench Advertising. "Bench advertising sign" means a sidewalk bench which displays a message and is subject to the provisions of Chapter 12.20 of the Milwaukie Municipal Code.

~~Sign, Billboard or Outdoor Advertising. "Billboard or outdoor advertising sign" means a freestanding sign not pertaining to, or unrelated to, the activity of the premises on which it is located and with display surface or surfaces primarily designed for purposes of painting or posting a message thereon at periodic intervals.~~

Sign, Cabinet. "Cabinet sign" means a sign in which the display face is mounted on or attached to the front of a self contained "box like" structure, which usually houses a light source, and is affixed to a building or other structure.

Sign, Canopy. "Canopy sign" means a sign painted onto, or attached to, the face of a canopy. For purposes of calculating sign area, the entire exposed face of the canopy shall be designated the sign area. Canopy signs shall be considered to be wall signs for the purposes of determining size allowances.

Sign, Changing (Automatic). "Changing sign (automatic)" means a sign in which the display on the sign face is changed by motors, by clockwork, or other mechanical means, or by electric or electronic means, including changes in color or intensity of lights, ~~such as an electronically or electrically controlled public service, time, temperature and date sign, message center, or reader board, where different copy changes are shown on the same lamp bank.~~

Sign, Daily Display. "Daily display sign" means a nonpermanent ~~on-premises~~ sign normally associated with business activity which is placed out-of-doors during business hours for display and returned indoors during off-hours. Daily display signs may be constructed in a sandwich board (A-frame) style, mounted on a single pedestal, or other similar construction, and are intended to be unlit and easily moved.

Sign, Externally Illuminated. "Externally illuminated sign" means a sign illuminated by an exterior light source or luminous tubing which is primarily designed to illuminate only the sign.

Sign, Fence. "Fence sign" means a sign attached to the side of a fence on a permanent basis.

Sign, Fin. "Fin sign" means a sign which is supported by a pole or poles and partly by a building.

Sign, Flashing. "Flashing sign" means any sign which contains an intermittent or flashing light source, or which includes the illusion of intermittent or flashing light by means of animation, or an externally mounted intermittent light source. ~~Automatic changing signs such as public service, time, temperature and date signs or~~

~~electronically controlled message centers are classed as changing signs, not flashing signs.~~

Sign, Freestanding. "Freestanding sign" means a sign wholly supported by a sign structure in the ground. Freestanding signs include pole signs and monument signs.

Sign, Hanging. "Hanging sign" is a sign that is suspended below a canopy, awning, or other portions of a building and typically oriented perpendicular to pedestrian or vehicular travel.

Sign, Internally Illuminated. "Internally illuminated sign" means a sign which is wholly or partially illuminated by an internal light source from which source light passes through the display surface to the exterior of the sign.

Sign, Kiosk. "Kiosk sign" means any sign with multiple display surfaces for view by pedestrians, that illustrates the layout of a development and lists tenants, and/or businesses, or landmarks in a specific area.

Sign, Monument. "Monument sign" means any sign affixed to a base which has a width that is equal to or greater than the width of the sign.

Sign, Noncomplying. "Noncomplying sign" means any sign that did not comply with applicable sign code standards when built or modified. ~~which is constructed after the effective date of the ordinance codified in this chapter in violation of any of the provisions of this chapter.~~

Sign, Nonconforming. "Nonconforming sign" means a sign that complied with applicable standards when created or modified but which does not comply with existing standards. ~~in existence or under construction on the effective date of the ordinance codified in this chapter which does not conform to the provisions of this chapter, but which was or is being constructed, erected or maintained in compliance with all previous regulations.~~

Sign, Notice. "Notice sign" means a sign required to be posted or expressly authorized by applicable statute, regulation, or ordinance ~~posted by either a public agency or private individuals intended to convey information of a legal nature pertaining to specific properties.~~ Examples of notice signs include building permits, ~~no trespassing notices, public hearing notices and similar signs.~~

Sign, Off-Premises. ~~"Off-premises sign" means a sign not pertaining to or unrelated to the activity of the premises on which it is located.~~

Sign, On-Premises. ~~"On-premises sign" means a sign pertaining to or related to the activity of the premises on which it is located.~~

Sign, Pennant. "Pennant" means a shaped, lightweight sign made of plastic, fabric or other material (whether or not containing a message of any kind) suspended from a rope, wire or string, usually in a series and designed to move in the wind.

Sign, Pole. "Pole sign" means a freestanding sign in which the display face of the sign is supported on a base which may be tubular, columnar or rectangular in shape and in which any portion of the base or support structure has a width that is less than the width of the display surface of the sign.



Sign, Portable. "Portable sign" means a sign which is not permanently attached to the ground or other permanent structure and is intended to be transported to a site for purposes of display. A portable sign may or may not be mounted on wheels and may or may not include flashing or moving lights and removable lettering or display surface.

Sign, Projecting. "Projecting sign" means and includes any sign which is attached to a building and extends more than twelve inches beyond the line of the building or more than twelve inches beyond the surface of that portion of the building to which it is attached.

~~Sign, Public Service Information. "Public service information sign" means any sign intended primarily to promote items of general interest to the community, such as time, temperature, date, atmospheric conditions, news or traffic control, etc.~~

Sign, Roof. "Roof sign" means a sign erected upon or above a roof or parapet of a building.

Sign, Temporary. "Temporary sign" means any sign, regardless of construction materials, which is not permanently mounted and is intended to be displayed on an irregular basis for a limited period of time.

~~Sign, Time and Temperature. "Time and temperature sign" means a sign providing only time and/or temperature information.~~

Sign, Under-Marquee. "Under-marquee sign" means a sign which is erected or maintained under, and supported or partially supported by, a marquee.

Sign, Unsafe. "Unsafe sign" means any sign determined to be a hazard to the public by the city manager or duly authorized representative.

Sign, Wall. "Wall sign" means any sign painted on, attached to, or erected against the wall of a building or structure, with the exposed face of the sign in a plane parallel to the plane of said wall, the angle of said wall not to exceed thirty degrees from the vertical. Wall signs may not project more than twelve inches from the wall to which they are attached. Painted wall decorations which include a message are considered to be wall signs.

Sign, Window. "Window sign" means a sign, pictures, symbols, neon tubing or combination thereof, designed to communicate information, that is placed within a window and directed towards the outside of the window. Window signs do not include painted or printed displays of a temporary nature associated with holidays.

"Structural alteration" means any change in a sign or sign structure other than advertising message or normal maintenance.

~~"Written message" means the lettering, wording, numbers and/or other symbols on a sign intended to convey a message. Written message does not include notation on the sign identifying the sign installer or artist, provided such identification is less than one square foot in area.~~

**SECTION 14.08 ADMINISTRATION AND ENFORCEMENT:****14.08.090 Conditional and community service use signs:**

Signs for CSO and Conditional uses shall be limited to those allowed in the underlying zone. In zones in which the sign regulations are more restrictive, signs for uses requiring conditional use or community service use review shall be limited to one monument or freestanding sign with a per-display surface area limit of sixteen square feet and a maximum overall height limit of six feet above grade, and one wall sign not exceeding a display surface area limit of sixteen square feet, and one daily display sign per premises not exceeding twelve square feet per display surface. ~~Signs for uses requiring conditional use or community service use reviews shall be reviewed by the planning commission regarding size, height and location at the time of conditional use or community service use review. Signs for prior conditional or community service uses that did not include a sign review at the time of planning commission approval shall be limited to one monument or freestanding sign with a per-display surface area limit of sixteen square feet and a maximum overall height limit of six feet above grade, and one wall sign not exceeding a display surface area limit of sixteen square feet, and one daily display sign per business not exceeding twelve square feet per display surface.~~

**SECTION 14.12 SIGNS PROHIBITED OR EXEMPTED:****14.12.010 Exempted signs:**

The following signs shall not require a sign permit but shall conform to all other applicable provisions of this chapter and shall be permitted in all zones, except as otherwise noted:

A. One sign not exceeding three square feet per premises. ~~On premises signs not exceeding four square feet in area, nonilluminated and not exceeding three feet in height if ground-mounted. Such signs may include, but are not limited to, property address or building numbers, names of occupants or premises, professional or home occupation nameplates, on-site directional and similar signs;~~

B. Temporary signs which are nonilluminated, have an overall face area not exceeding sixteen square feet, are not permanently installed, and are intended to be located on property for short durations of time. Such signs may include, but are not limited to, real estate lease and sales, political signs, construction signs, garage sale, open house, special event and similar signs. Such signs shall only be posted for the duration of the activity. See also Section 14.12.020M;

C. Signs placed in the right-of-way by the City or other jurisdiction responsible for the right-of-way for purposes of public direction and safety. Such signs may include, but are not limited to, traffic and municipal signs, directional signs for emergency services (such as hospitals, police and fire stations), legal notices, railroad crossing signs, danger signals and similar signs. Such signs may be placed within the public right-of-way subject to right-of-way permit requirements of Section 12.16.020 of the Milwaukee Municipal Code and Section 14.20.020;



D. Bench advertising signs which comply with all regulations in Chapter 12.20 of the Milwaukie Municipal Code;

E. Banners not exceeding a total display area of forty square feet per face and pennants not to exceed a length of fifty feet per site ~~that remain, used on premises in conjunction with temporary events and not in place for longer than a period of thirty days or less in any one calendar year;~~

F. ~~Painted wall decorations or embellishments, or decorated banners, which are not accompanied by a written message~~ Repealed

G. Flags;

H. Signs carved into a building or which are a part of materials which are an integral part of the building such as cornerstones, ~~building names~~ and similar signs;

I. Signs required by law of public or legal notice;

J. Window signs in the downtown zones which occupy a total display area of no more than twenty percent of the window area. In all other commercial and manufacturing zones, window signs which occupy a total display area of no more than fifty percent of the window area. ~~Window signs may not use materials subject to No sign prohibited by~~ Section 14.12.020A may be used as part of the window sign authorized by this exemption;

K. ~~Painted or printed displays in windows of a temporary nature during the periods from November 15 to December 31 and January 1 to January 15 of each year. associated with holidays.~~

#### **14.12.020 Prohibited signs:**

It is unlawful for any person to erect, display or maintain, and no permit shall be issued for the erection, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

A. Moving signs or flashing signs, or any sign or advertising structure which has any visible moving part or visible mechanical movement of any description or other apparent visible movement achieved by any means, including intermittent electrical pulsations or by action of normal wind currents, which creates an unduly distracting or hazardous condition to a motorist or pedestrian; ~~excepting clocks, barber poles, public service information signs, including changing signs (automatic) and revolving signs which revolve at six revolutions per minute or less;~~

B. Signs erected within the right-of-way other than by the City or other jurisdiction responsible for administering the right-of-way; of any street, along any driveway, or in any other location which do not meet the requirements of Section 14.12.010C; or by reason of the location, shape, color, animation or message are likely to be confused with any traffic control device; or create a distracting or hazardous condition for motorists;

C. Signs that imitate traffic control devices and are located in places where they are likely to be confused with a traffic control device, and any sign obscuring the view of a traffic control device;

~~G D.~~ Such advertising devices as strings of lights, banners, pennants and balloons, except as permitted under Sections 14.12-.010E and F;

~~D E.~~ Temporary signs, except as permitted under Sections 14.12.010B, 14.12.010E and 14.12.010K;

~~E F.~~ Fin signs;

~~F.~~ No sign shall be erected or maintained which by use of lights, illumination, sequential illumination or other form of total or partial illumination creates an unduly distracting or hazardous condition to a motorist or pedestrian;

G. Off-premises signs, except as defined elsewhere;

H. No sign or portion thereof shall be erected within future street right-of-way, unless and until an agreement is recorded stipulating that the sign will be removed or relocated upon street widening at no expense to the city;

I. No sign or portion thereof shall be placed so that it obstructs any fire escape, stairway or standpipe; interferes with human exit through any window or any room located above the first floor of any building; obstructs any door or required exit from any building; or obstructs any required light or ventilation;

J. Portable signs, except as expressly permitted by another provision of this title ~~defined elsewhere;~~

K. Fence signs exceeding one square foot of sign face per fifty feet of fence length, excepting temporary signs intended for the sale or lease of the property containing the fence;

L. Window signs which obscure more than fifty percent of the window area or are not subject to the provisions of Section 14.12.010K;

M. Signs affixed to power, utility or traffic control poles other than traffic control devices and one sign not to exceed 50 square inches placed by the owner of the pole ~~city-approved traffic control signs and pole identification placards;~~

N. Searchlights.

O. Pole signs in the downtown zones.

## **SECTION 14.16 SIGN DISTRICTS:**

### **14.16.010 Residential zone:**

No sign shall be erected or maintained in an R zone, except as allowed under Section 14.12.010 or as otherwise noted in this section:

A. Signs at the entrances to subdivisions or manufactured home parks. ~~Permanent Subdivision or Mobile Home Park Signs.~~

1. Area. May have a maximum area of two square feet per dwelling unit to a maximum of thirty-two square feet for each sign and sixteen square feet per display surface, and total sign area for all display surfaces shall be no more than sixty-four square feet.

2. Height and/or Clearance. Freestanding sign limited to maximum height of six feet above grade.

3. Number. Limited to one sign per entrance.

B. Signs on Apartment and Condominium Properties. ~~Permanent Apartment or Condominium Signs.~~ Either one freestanding or one wall sign per street frontage permitted.

1. Freestanding sign.

a. Area. Limited to two square feet per dwelling unit to a maximum area of thirty-two square feet, sixteen square feet per display surface.

b. Height and/or Clearance. Freestanding signs limited to a maximum height of six feet above grade.

c. Number. One freestanding sign per street frontage permitted.

2. Wall Sign.

a. Area. Limited to two square feet per dwelling unit to a maximum of thirty-two square feet.

b. Height and/or Clearance. No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.

c. Number. One wall sign per street frontage permitted.

C. Illumination. Signs in R zones may have external illumination only. Par spot or reflective type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.

#### **14.16.020 Residential-office-commercial zone:**

No sign shall be erected or maintained in an R-O-C or R-1-B zone, except as allowed under Section 14.12.010 or as otherwise noted in this section.

A. Signs at entrances to subdivisions. ~~Permanent Subdivision Signs.~~

1. Area. May have a maximum area of two square feet per dwelling unit to a maximum of thirty-two square feet for each sign and sixteen square feet per display surface, and total sign area for all display surfaces shall be no more than sixty-four square feet.

2. Height and/or Clearance. Freestanding sign limited to maximum height of six feet above grade.

3. Number. Limited to one sign per entrance.

B. Signs on apartments and condominium properties. ~~Permanent Apartment or Condominium Signs.~~ Either one freestanding or one wall sign per street frontage permitted.

1. Freestanding Sign.

a. Area. Limited to two square feet per dwelling unit to a maximum area of thirty-two square feet, sixteen square feet per display surface.

b. Height and/or Clearance. Freestanding signs limited to maximum height of six feet above grade.

c. Number. One freestanding sign per street frontage permitted.

2. Wall Sign.

a. Area. Limited to two square feet per dwelling unit to a maximum of thirty-two square feet.

b. Height and/or Clearance. No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.

c. Number. One wall sign per street frontage permitted.

C. Freestanding Signs on Commercial Property ~~Business Sign.~~

1. Area. The maximum permitted area of a freestanding sign shall be thirty-two square feet per display surface and sixty-four square feet overall.

2. Height and/or Clearance. The maximum height of a freestanding sign shall be twelve feet.

3. Number. One freestanding sign is permitted in addition to one wall sign.

D. Wall Signs on Commercial Property ~~Business Sign.~~

1. Area. The maximum permitted area of a wall sign shall be ten percent of the building face related to commercial use.

2. Height and/or Clearance. No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.

3. Number. One wall sign is permitted in addition to one freestanding sign or two wall signs permitted.

E. Awning Sign.

1. Area. The maximum permitted display surface of an awning sign which is painted onto, attached to or affixed to the surface of an awning, is twenty-five percent of the surface of the awning measured in vertical distance times length. For a sign hung or suspended underneath an awning, the sign shall not exceed in area one square foot per one lineal foot of awning length.

2. Height and/or Clearance. An awning sign may not extend higher than the point at which the roofline intersects the exterior wall, regardless of the existence of a parapet wall. The minimum clearance below an awning on which signage is hung or displayed is

eight feet from the sidewalk or ground level to the lowest portion of the awning or suspended sign, whichever is lowest.

3. Number. One awning sign per frontage per occupancy is permitted.

F. Daily Display Sign.

1. Area. The maximum permitted area of a daily display sign shall be eight square feet per display surface and sixteen square feet overall, with a maximum height limit of six feet above ground level.

2. Number. One daily display sign per property or per occupancy business is permitted.

3. Location. A daily display sign ~~shall not must~~ be located within required landscaped areas or within public rights of way. ~~on the premises with which it is associated, but not within required landscaped areas, except that a daily display sign may be allowed within the public right-of-way or off the premises, subject to the standards of Section 14.20.040.~~

G. Illumination. Signs in R-O-C or R-1-B zones may have external illumination only. Par spot or reflective type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.

**14.16.030 Neighborhood commercial zone:**

No sign shall be erected or maintained in a C-N zone, except as allowed under Section 14.12.010 or as otherwise noted in this section.

A. Freestanding Sign.

1. Area. The maximum permitted display surface area of a freestanding sign shall be computed on one and one-half square feet of area per lineal foot of street or highway frontage for the first one hundred feet of such frontage plus one square foot of area for each foot of frontage over one hundred feet, but not exceeding forty square feet per display surface and eighty square feet over all.

2. Height and/or Clearance. Freestanding signs may not project over the top of a building or twenty feet, whichever is less.

3. Number. One freestanding sign is permitted in addition to one wall sign.

B. Wall Sign.

1. Area. The maximum permitted area of a wall sign shall be 20 percent of the building face.

2. Height and/or Clearance. No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.

3. Number. Dictated by area requirements. Wall signs are permitted in addition to one freestanding sign.

4. Location. Limited to the building surface or surfaces facing the public right-of-way only.



### C. Awning Sign.

1. Area. The maximum permitted display surface of an awning sign which is painted onto, attached to, or affixed to, the surface of an awning, is twenty-five percent of the surface of the awning measured in vertical distance times length. For a sign hung or suspended underneath an awning, the sign shall not exceed in area one square foot per one lineal foot of awning length.

2. Height and/or Clearance. An awning sign may not extend higher than the point at which the roofline intersects the exterior wall, regardless of the existence of a parapet wall. The minimum clearance below an awning on which signage is hung or displayed is eight feet from the sidewalk or ground level to the lowest portion of the awning or suspended sign, whichever is lowest.

3. Number. One awning sign per frontage per occupancy is permitted.

### D. Daily Display Sign.

1. Area. The maximum permitted area of a daily display sign shall be eight square feet per display surface and sixteen square feet overall, with a maximum height limit of six feet above ground level.

2. Number. One daily display sign per property or per occupancy business is permitted.

3. Location. A daily display sign shall not be located within required landscaped areas or within public rights of way. ~~must be located on the premises with which it is associated, but not within required landscaped areas, except that a daily display sign may be allowed within the public right-of-way or off the premises, subject to the standards of Section 14.20.040.~~

E. Illumination. Signs in C-N zones may have external illumination, in addition to lighting as noted in Section 14.24.020. Par spot or reflective type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.

### 14.16.040 Commercial zone:

No sign shall be erected or maintained in the C-L, C-G and C-CS zones, except as allowed under Section 14.12.010 or as otherwise noted in this section.

#### A. Freestanding Sign.

1. Area. The maximum permitted display surface area of a freestanding sign shall be computed on one and one-half square feet of area per lineal foot of street or highway frontage for the first one hundred feet of such frontage, plus one square foot of area for each foot of frontage over one hundred feet, but not exceeding three hundred square feet of sign area per display surface for each sign, or a total of one thousand two hundred square feet for all display surfaces as authorized in Section 14.16.040A4.

2. Height and/or Clearance. The maximum height of any portion of a sign or sign structure shall be twenty-five feet from ground level at its base regardless of location.



The minimum clearance below the lowest portion of a freestanding sign and the ground below shall be fourteen feet in any driveway or parking area.

3. Location. No freestanding sign, or any portion of any freestanding sign, shall be located on or be projected over any portion of a street, sidewalk or other public right-of-way or property, except that those currently existing may project over such right-of-way for a distance not to exceed two feet.

4. Number. One multifaced freestanding sign shall be permitted on a street or highway frontage. Where a frontage exceeds three hundred feet in length, one additional freestanding sign is permitted for such frontage. No freestanding sign shall be permitted on the same premises where there is a projected or roof sign.

#### B. Wall Sign.

1. Area. Wall signs shall not exceed in gross area twenty percent of the face of the building to which the sign is attached or on which the sign is maintained. This includes signs painted directly on the building surface.

2. Height and/or Clearance. No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.

3. Number. No limit, dictated by area requirements.

#### C. Projecting Signs.

1. Area. Projecting signs shall not exceed in gross area twenty percent of the face of the building to which the sign is attached or on which the sign is maintained. However, if a projecting sign is located on the same building face as a wall sign, the total of all sign surfaces shall not exceed twenty percent of the face of the building.

2. Height and/or Clearance. No projecting sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher. Overhead clearance and projection into public rights-of-way shall be maintained so that no sign shall project within two feet of the curb nor beyond the distances specified in the following table:

**Table 14.16.040**

#### **Projection of Signs Into Public Rights-of-Way**

<b>Clearance</b>	<b>Maximum Projection Into Public Right-of-Way</b>
Less than eight feet	Not permitted
Eight feet	One foot
Eight to sixteen feet	One foot plus six inches for each foot of clearance in excess of eight feet
Over sixteen feet	Five feet

3. Location. No projecting sign shall be located within twenty feet of another projecting sign. Of two signs not conforming to this provision, the first lawfully erected sign may remain.

4. Number. Only one projecting sign will be permitted on the same occupancy business frontage. No projecting sign shall be permitted on the same premises where there is a freestanding sign or roof sign.

#### D. Roof Signs.

1. Area. Total sign area for roof signs shall not exceed one square foot for each lineal foot of street frontage of the parcel of real property on which the sign is to be located.

2. Height and/or Clearance. The maximum height of a roof sign shall not exceed eight feet above the highest point of the building. All roof signs shall be installed or erected in such a manner that there shall be no visible angle iron or similar sign support structure.

3. Location. No roof sign shall be erected unless and until approved by the fire marshal after a finding that the site, type, and location of the sign will not substantially interfere with fire fighting. Roof signs may not project over the parapet wall.

4. Number. Roof signs are permitted instead of, but not in addition to, projecting signs or freestanding signs.

#### E. Awning Sign.

1. Area. The maximum permitted display surface of an awning sign which is painted onto, attached to or affixed to the surface of an awning is twenty-five percent of the surface of the awning measured in vertical distance times length. For a sign hung or suspended underneath an awning, the sign shall not exceed in area one square foot per one lineal foot of awning length.

2. Height and/or Clearance. An awning sign may not extend higher than the point at which the roofline intersects the exterior wall, regardless of the existence of a parapet wall. The minimum clearance below an awning on which signage is hung or displayed is eight feet from the sidewalk or ground level to the lowest portion of the awning, or suspended sign, whichever is lowest.

3. Number. One awning sign per frontage per occupancy is permitted.

#### F. Under-Marquee Signs.

1. Area. Under-marquee signs shall not exceed six square feet per display surface or twelve square feet in overall sign area.

2. Height and/or Clearance. Under-marquee signs must have eight feet of clearance below the lowest portion of the sign and the ground below.

3. Location. Under-marquee signs shall not project within two feet of the curb.

4. Number. No limit, dictated by area requirements.

~~G. Billboard Signs. Billboard signs existing at the effective date of the ordinance codified in this chapter shall be permitted to remain and be maintained in reasonable repair, but may not be replaced or relocated. Repealed.~~

H. Daily Display Sign.

1. Area. The maximum permitted area of a daily display sign shall be twelve square feet per display surface and twenty-four square feet overall, with a maximum height limit of six feet above ground level.

2. Number. One daily display sign per occupancy business is permitted.

3. Location. A daily display sign shall not be located within required landscaped areas or within public rights of way ~~must be located on the premises with which it is associated, but not within required landscaped areas, except that a daily display sign may be allowed within the public right-of-way or off the premises, subject to the standards of Section 14.20.040.~~

I. Illumination. Signs in commercial zones may be illuminated. Within five hundred feet of any residentially zoned property when fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to four hundred twenty-five milliamperes rating tubes behind a plexiglass face with tubes spaced at least seven inches, center to center. No exposed incandescent lamp which exceeds fifteen watts shall be used on the exterior surface of any sign so as to expose the face of such bulb or lamp to any public street or public right-of-way. Par spot or reflective type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.

**14.16.050 Manufacturing zone:**

No sign shall be erected or maintained in an M or BI zone, except as allowed under Section 14.12.010 or as otherwise noted in this section.

A. Freestanding Sign.

1. Area. The maximum permitted area of a freestanding sign shall be computed on one and one-half square feet of area per lineal foot of street or highway frontage for the first one hundred feet of such frontage plus one square foot of area for each foot of frontage over one hundred feet, but not exceeding two hundred fifty square feet of sign area per display surface for each sign, or a total of one thousand square feet for all display surfaces.

2. Height and/or Clearance. The maximum height of any portion of a sign or sign structure shall be twenty-five feet from ground level at its base regardless of location. The minimum clearance below the lowest portion of a freestanding sign and the ground below shall be fourteen feet in any driveway or parking area.

3. Location. No freestanding sign, or any portion of any freestanding sign, shall be located on or be projected over any portion of a street, sidewalk or other public right-of-way or property except that those currently existing may project over such right-of-way for a distance not to exceed two feet.

4. Number. One multifaced freestanding sign designating the principal goods, products, facilities or services available on the premises shall be permitted on a street or highway frontage. Where a frontage exceeds three hundred feet in length, one additional freestanding sign is permitted for such frontage. No freestanding sign shall be permitted on the same premises where there is a roof sign.

#### B. Wall Sign.

1. Area. Wall signs shall not exceed in gross area ten percent of the face of the building to which the sign is attached or on which the sign is maintained. This includes signs painted directly on the building surface.

2. Height and/or Clearance. No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.

3. Number. No limit, dictated by area requirements.

#### C. Roof Signs.

1. Area. Total sign area for roof signs shall not exceed one square foot for each lineal foot of street frontage of the parcel of real property on which the sign is to be located.

2. Height and/or Clearance. The maximum height of a roof sign shall not exceed eight feet above the highest point of the building. All roof signs shall be installed or erected in such a manner that there shall be no visible angle iron or similar sign support structure.

3. Location. No roof sign shall be erected unless and until approved by the fire marshal after a finding that the site, type and location of the sign will not substantially interfere with fire fighting. Roof signs may not project over the parapet wall.

4. Number. Roof signs are permitted instead of, but not in addition to, freestanding signs.

#### D. Awning Sign.

1. Area. The maximum permitted display surface of an awning sign which is painted onto, attached to or affixed to the surface of an awning is twenty-five percent of the surface of the awning measured in vertical distance times length. For a sign hung or suspended underneath an awning, the sign shall not exceed in area one square foot per one lineal foot of awning length.

2. Height and/or Clearance. An awning sign may not extend higher than the point at which the roofline intersects the exterior wall, regardless of the existence of a parapet wall. The minimum clearance below an awning on which signage is hung or displayed is eight feet from the sidewalk or ground level to the lowest portion of the awning or suspended sign, whichever is lowest.

3. Number. One awning sign per frontage per occupancy is permitted.

~~E. Billboard Signs. Billboard signs existing at the effective date of the ordinance codified in this chapter shall be permitted to remain and be maintained in reasonable repair, but may not be replaced or relocated. Repealed.~~

F. Daily Display Sign.

1. Area. The maximum permitted area of a daily display sign shall be twelve square feet per display surface and twenty-four square feet overall, with a maximum height limit of six feet above ground level.

2. Number. One daily display sign per occupancy business is permitted.

3. Location. A daily display sign shall not be located within required landscaped areas or within public rights of way. ~~must be located on the premises with which it is associated, but not within required landscaped areas, except that a daily display sign may be allowed within the public right-of-way or off the premises, subject to the standards of Section 14.20.040.~~

G. Illumination. Signs in manufacturing zones may be illuminated. Within five hundred feet of any residentially zoned property when fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to four hundred twenty-five milliamperes rating tubes behind a plexiglass face with tubes spaced at least seven inches, center to center. No exposed incandescent lamp which exceeds fifteen watts shall be used on the exterior surface of any sign so as to expose the face of such bulb or lamp to any public street or public right-of-way. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets or other property.

**14.16.060 Downtown zones:**

No sign shall be erected or maintained in the DC, DS, DO, DR and DOS zones, except as allowed under Section 14.12.010 or as otherwise noted in this section.

A. Freestanding Sign. In the downtown zones, freestanding signs shall be monument type only. The sign face shall be no less than sixty percent of the total area of the monument. Pole signs are prohibited.

1. Area. The maximum permitted display surface area of a freestanding sign shall be computed on one square foot of area per lineal foot of street or highway frontage.

a. In the DO zone the maximum area shall not exceed forty square feet per display surface and eighty square feet overall.

b. In the DR and DOS zones the maximum area shall not exceed thirty-two square feet per display surface and sixty-four square feet overall.

2. Height and/or Clearance.

a. In the DC, DS and DO zones, freestanding signs are limited to a maximum height of seven feet. Properties with frontage on McLoughlin Boulevard may have freestanding signs with a maximum height of fifteen feet and shall only be located along the McLoughlin Boulevard frontage. Freestanding sign height shall be measured from the top of the sign to the lowest finished grade within a six foot horizontal distance from the sign.

b. In the DR and DOS zones freestanding signs are limited to a maximum height of six feet above grade.



3. Number. One freestanding sign is permitted on a street or highway frontage.

#### B. Wall Sign.

1. Area. The maximum permitted area of a wall sign shall be twenty percent of the building face.

a. In the DR and DOS zones the maximum permitted area of a wall sign shall be sixteen square feet.

2. Height and/or Clearance. No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.

3. Number.

a. Dictated by area requirements.

b. In the DR and DOS zones one wall sign is permitted in addition to one freestanding sign.

4. Location. Limited to the building surface or surfaces facing the public right-of-way only.

#### C. Awning Sign.

1. Area. The maximum permitted display surface of an awning sign which is painted onto, attached to, or affixed to, the surface of an awning, is twenty-five percent of the surface of the awning measured in vertical distance times length. For a sign hung or suspended underneath an awning, the sign shall not exceed in area one square foot per one lineal foot of awning length.

2. Height and/or Clearance. An awning sign may not extend higher than the point at which the roofline intersects the exterior wall, regardless of the existence of a parapet wall. An awning sign may not be located higher than the first floor of a building or fifteen feet, whichever is less. The minimum clearance below an awning on which signage is hung or displayed is eight feet from the sidewalk or ground level to the lowest portion of the awning or suspended sign, whichever is lowest.

3. Number. One awning sign per frontage per occupancy is permitted.

#### D. Daily Display Sign.

1. Area. The maximum permitted area of a daily display sign shall be eight square feet per display surface and sixteen square feet overall, with a maximum height limit of six feet above ground level.

2. Number. One daily display sign per occupancy business is permitted.

3. Location. A daily display sign shall not be located within required landscaped areas or within public rights of way. must be located on the premises with which it is associated, but not within required landscaped areas, except that a daily display sign may be allowed within the public right-of-way or off the premises, subject to the standards of Section 14.20.040.



**E. Projecting Signs.**

1. Area. Projecting signs shall not exceed in gross area twenty percent of the face of the building to which the sign is attached or on which the sign is maintained. However, if a projecting sign is located on the same building face as a wall sign, the total of all sign surfaces shall not exceed twenty percent of the face of the building.

2. Height and/or Clearance. No projecting sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher. No projecting sign shall project more than five feet from a building. Overhead clearance and projection into public rights-of-way shall be maintained so that no sign shall project within two feet of the curb nor beyond the distances specified in the following table:

**Table 14.16.050****Projection of Signs Into Public Rights-of-Way**

<b>Overhead Clearance</b>	<b>Maximum Projection Into Public Right-of-Way</b>
Less than eight feet above finished floor/grade	Not permitted
Eight feet above finished floor/grade	One foot
Eight to sixteen feet above finished floor/grade	One foot plus six inches for each foot of clearance in excess of eight feet
Over sixteen feet above finished floor/grade	Five feet

3. Location. No projecting sign shall be located within twenty feet of another projecting sign. Of two signs not conforming to this provision, the first lawfully erected sign may remain.

4. Number. Only one projecting sign will be permitted on the same business frontage. No projecting sign shall be permitted on the same premises where there is a freestanding sign.

**F. Under-Marquee Signs.**

1. Area. Under-marquee signs shall not exceed six square feet per display surface or twelve square feet in overall sign area.

2. Height and/or Clearance. Under-marquee signs must have eight feet of clearance below the lowest portion of the sign and the ground below.

3. Location. Under-marquee signs shall not project within two feet of the curb.

4. Number. No limit, dictated by area requirements.

**G. Illumination.** Internally illuminated cabinet signs are discouraged in the downtown zones. Internally illuminated signs may be permitted subject to design review approval

by the design and landmarks ~~committee~~ commission per the procedures outlined in Section 19.1011.3. In considering internally illuminated signs, the design and landmarks ~~committee~~ commission shall use the downtown design guidelines as approval criteria, as provided under subsection 19.312.7F. All other illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are back lit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted. ~~Backlit or "halo" illuminated signs with individual letters are permitted as illuminated signs.~~

2. Par spot or reflective type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.

3. Awning signs shall not be illuminated, either internally or externally unless approved by the design and landmarks ~~committee~~ commission.

4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.

## **SECTION 14.20 SIGNS IN PUBLIC RIGHTS-OF-WAY:**

### **14.20.020 Exempted signs:**

Signs placed and maintained by the City, or by the entity responsible for the right of way (County or state) are permitted within public rights of way. ~~As referenced in Section 14.12.010C, signs for purposes of public direction and safety may be allowed within the public right of way, subject to right of way permit requirements of Section 12.16.020 of the Milwaukie Municipal Code and the following standards:~~

~~A. Sign sizes and configurations shall be subject to the general standards of the Oregon Department of Transportation Sign Policy and Guidelines and the Federal Manual on Uniform Traffic Control Devices. Such standards may be deviated by the city public works director upon determination that such deviation is necessary for purposes of message visibility, clear vision maintenance or other similar factors. Applicants desiring to vary from the public works director's standards determination may apply for a variance following the procedures of Chapter 14.32.~~

~~B. Direction signs shall be generic in nature so as not to unduly distract traffic. Such signs may include, but are not limited to, signs for emergency services (such as hospitals, police and fire stations), traffic control signs, legal notices, railroad crossing signs, signs for nonspecific locations (such as downtown, business area, industrial area, theatre, food services, etc.), danger signals and similar signs.~~

~~C. Maintenance and upkeep of non-city owned direction and safety signs shall be the responsibility of the sign owner. Failure to maintain such signs may be cause for permit revocation and/or sign removal.~~

### **14.20.030 Bench advertising signs:**

Bench signs are permitted, subject to Chapter 14.20 of the Milwaukie Municipal Code. ~~These are permitted subject to the standards of Section 12.16.020 of the Milwaukie Municipal Code.~~

#### 14.20.040 Daily display signs:

A. In sign districts that permit daily display signs (reference Chapter 14.16), one a daily display sign may be placed allowed within a the public right-of-way adjacent to any premises by the person or entity in control of those premises, in front of the premises with which it is associated, provided all of the following conditions are met:

1. A city right-of-way permit is obtained. This permit shall be revocable in case of condition noncompliance.
2. The sign is to be set back behind the curb so as not to interfere with on-street parking, or, a minimum of ten feet from the edge of the nearest street travel lane where curbs are not in place.
3. The sign is to be placed so as to allow at least five feet of unimpeded pedestrian sidewalk maneuvering space.
4. The sign is to meet clear vision requirements of Chapter 12.24 of the Milwaukie Municipal Code.
5. The sign is properly maintained as per requirements of Section 14.24.010
6. The applicant shall assume all liability for incidents involving the sign by signing a document exempting the city from liability.
7. Sign dimension shall not exceed a maximum width of four feet nor a maximum above-ground level height of four an one-half feet.

~~8. One sign per business is allowed.~~

~~B. Daily display signs may be allowed off the premises, or within the public right-of-way in front of a business with which the sign is not associated, subject to the following standards:~~

- ~~1. All applicable standards of Section 14.20.040A;~~
- ~~2. Both the sign owner and owner of the business where the sign is placed must sign a city liability exemption document;~~
- ~~3. The off premises daily display sign will take the place of the daily display sign allowance for both the business site where it is placed and the business placing the sign.~~

#### SECTION 14.24 SIGN CONSTRUCTION, MAINTENANCE AND LIGHTING:

##### 14.24.010 Construction and maintenance requirements:

A. Except as otherwise provided in this chapter, the construction of all signs or sign structures shall conform to applicable provisions of the Uniform Building Code, Uniform Fire Code and electrical code.

B. All signs, together with their supports, braces, guys and anchors, shall be constructed of materials that are durable and weather-resistant, and shall be regularly maintained so as to exist at all times in a state of good repair. No person shall maintain, or permit to be maintained on any premises owned or controlled by him or her, any sign

which is in a sagging, leaning, fallen, decayed, deteriorated or other dilapidated or unsafe condition.

C. All signs shall be kept clean and the site on upon which they are located shall be kept clean and free from debris, maintained in a neat, clean, and attractive condition. Signs shall be kept free from rust, corrosion, peeling paint, torn or peeling paper, and or other surface deterioration. Broken or missing sign components and lighting panels shall be replaced within thirty days of notification by the city. The display surfaces of all signs shall be kept neatly painted or posted. Reflective backgrounds and materials are not allowed.

~~D. Each sign for which a sign permit is required shall specify the name of sign erector, date of erection, electrical power consumption in amperes, and Underwriters Laboratory label, if applicable. Such information shall be in sufficient size and contrast to be readable upon inspection.~~

#### **14.24.020 Sign lighting:**

A. All lamps or bulbs exposed to direct view shall be limited to twenty-five watts or less capacity. ~~On time and temperature signs, such bulb is limited to thirty-three watts capacity.~~

B. When neon tubing is employed on the exterior or interior of a sign, the capacity of such tubing shall not exceed three hundred milliamperes rating for white tubing nor one hundred milliamperes rating for colored tubing.

C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to eight hundred milliamperes rating tubes behind a plexiglass face with tubes spaced at least nine inches, center to center.

D. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations prevail. ~~These general lighting provisions are applicable for all sign districts, except as noted elsewhere.~~

### **SECTION 14.28 REMOVAL OF SIGNS IN VIOLATION:**

#### **14.28.010 Abandoned sign:**

A. Time Limit. Abandoned sign structures ~~signs and their supporting structures~~ shall be removed within 180 one hundred eighty days ~~of the time that a sign is no longer used on the structure, by the owner or lessee when the business which it advertises is no longer conducted on the premises.~~

B. Notice Given. if the owner or lessee fails to remove it, the city manager or duly authorized representative shall give the owner fifteen days' written notice to remove it.

#### 14.28.020 Nonconforming sign:

##### A. Time Limit.

1. Except as provided in Subsection A.23, Signs that were in compliance with applicable regulations when erected but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus one day of the date they became nonconforming. Nonconforming signs may be continued for a period of ten years from the effective date of the ordinance codified in this chapter.

2. ~~Signs located on premises annexed into the city after the effective date of the ordinance codified in this chapter, and which signs do not comply with the provisions of this chapter, shall be brought into compliance with this chapter within a period of seven years after the effective date of the annexation. Repealed.~~

3. Any sign which is structurally altered, relocated or replaced shall immediately be brought into compliance with all of the provisions of this chapter.

4. The provisions of this code relating to Signs in existence on the effective date of the ordinance codified in this chapter which do not comply with provisions regulating flashing signs, use of par spot lights, or revolving beacons, revolving signs, or flags, banners, or streamers, or strings of lights, and temporary or incidental signs, are applicable to all signs, notwithstanding Subsection A.1. shall be made to conform within ninety days from the effective date of the ordinance codified in this chapter.

B. Notice Given. The City Manager or designee shall give 30 days written notice to the owner or lessee of any permanent sign that the City determines to be in violation of the City's regulations to remove the sign and structure or bring it into compliance. No notice is required for a demand to remove a temporary sign that does not comply with the City's regulation or to remove a sign in the right-of-way. For legally established nonconforming signs that are approaching the end of the 10 year period during which they may be maintained under Subsection 1, the City Manager may provide additional notice in anticipation of the date the sign will be required to be removed or made to conform. The city manager or duly authorized representative shall give thirty days' written notice to the owner or lessee of the sign to remove the sign and its supporting structures or to bring it into compliance with this chapter.

#### 14.28.030 Unsafe sign:

A. Time Limit. The city manager or duly authorized representative may cause any sign and/or sign support structure which they determine to be a hazard to persons or property, by reason of it or its support structure being or becoming of unsound and unsafe condition, i.e., weakened or broken support, broken parts, including tubing, wiring, plastic, etc., to be removed summarily. The city manager or duly authorized representative may allow repair as an alternative to removal of an unsafe when the sign does not pose an immediate hazard to persons or property.



B. Notice Given. Two days' notice, except that no notice is required if a determination is made that the sign and/or sign support structure poses an immediate peril to persons or property.

#### **14.28.040 Noncomplying sign:**

A. Time Limit. Noncomplying permanent signs shall be removed or brought into compliance within thirty days of notification.

B. Notice Given. The city manager or duly authorized representative shall give thirty days' written notice, except that noncomplying signs which create a traffic or other safety hazard may be removed by the city manager or his or her representative without notice.

#### **14.28.050 Administrative procedures for notification of violation:**

A. If the city manager or duly authorized representative shall find that any permanent sign or sign structure regulated has been constructed or erected, or is being constructed or maintained, in violation of the provisions of this chapter, he or she shall give written notice to the permittee thereof or, if unknown, to the owner or occupant of the building or premises upon which the sign is located.

B. If the permittee fails to remove or alter the structure so as to comply with the standards set forth within thirty days after such notice, the removal of such sign or sign structure may be ordered, or such sign or structure may be is declared a nuisance and the owner may be issued a citation into municipal court, as per procedures of Chapter 1.08 of the Milwaukie Municipal Code, and subjected to enforcement fines as established by the city council.

~~C. Signs in violation of this chapter which create a safety or traffic hazard may be removed by the city without prior notice and removal costs billed to the sign or property owner.~~

~~D. Such fines and costs may be a lien against the land or premises on which the sign is located and may be collected or foreclosed in the same manner as liens otherwise entered in the liens docket of the city.~~

### **Chapter 14.32 ADJUSTMENTS VARIANCES:**

#### **14.32.010 Authorization to grant or deny adjustments variance:**

A. The planning commission may authorize adjustments variances from the requirements of this chapter where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship. In granting an adjustment variance, the planning commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the city and otherwise achieve the purposes of this chapter.



B. Requests for adjustments in the downtown zone shall receive their first review from the design and landmarks committee. In the downtown zones The design and landmarks committee shall make recommendations to the planning commission, which design and landmarks commission is the review authority and may authorize variances from the requirements of this chapter. Adjustments may be granted where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship. In granting a variance, the planning commission design and landmarks commission in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the city and otherwise achieve the purposes of this chapter.

**14.32.050 Appeals:**

Appeals of planning commission ~~or design and landmarks commission~~ decisions shall follow the procedures of Section 19.1000 of the Milwaukie zoning ordinance.