

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, JUNE 13, 2006

COMMISSIONERS PRESENT

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

COMMISSIONERS ABSENT

Lisa Batey

STAFF PRESENT

Katie Mangle,
Planning Director
Susan Shanks,
Associate Planner
Gary Firestone,
Legal Counsel
Shirley Richardson,
Hearings Reporter

1.0 CALL TO ORDER

The meeting was called to order at 6:35 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 CONSENT AGENDA

3.1 Planning Commission Minutes -- May 9, 2006

Commissioner Bresaw moved to approve the minutes of May 9, 2006 as presented. Commissioner Brinkman seconded the motion.

Ayes: Bresaw, Brinkman, Churchill, Newman, Klein

Nays: None.

Abstentions: None.

The motion carried 5-0.

4.0 INFORMATION ITEMS -- City Council Minutes

City Council minutes can be found on the City web site at www.cityofmilwaukie.org

5.0 PUBLIC COMMENT -- None.

Speaking: Ed Zumwalt, 10888 SE 29th, Milwaukie

Mr. Zumwalt stated that in 1998, 1899, and 2000 when forming the Downtown Riverfront Plan one of the main thrusts was to make the area pedestrian friendly. The way things are going it is half right; it is pedestrian but not friendly. No one will be able to park or drive. A group approached the Planning Commission and asked that language be put into the Code providing some controls on parking and traffic. Very strong language was provided to City Council to protect the City as it went on to meet the vision, control traffic and parking and have a nice livable town.

This didn't get taken care of right away and in 2000 Reliable Credit came in and concerns were raised because 50 parking spaces that were promised didn't materialize. In 2003 the Electric Credit Union (Advantis) came in and caused more stress on the town. The Budget Committee freed \$45,000 for the study of the Downtown Milwaukie Parking and Traffic Management Program. A consultant was hired and the study was completed. There were trigger points in this Plan to save the town; the parking and traffic flow had to be addressed.

Tri-Met went out I-205 with light rail and there was a dilemma for what to do with City Hall. In the fall of that year a working group was set up for the location of the transit center; this was followed by a two-year beef. Two months ago, five or six promised parking spaces in front of the library disappeared; they came back. At that time he learned that Downtown Parking and Traffic Management Plan has not been passed by Council; it had been three years on the shelf.

The North Main Village went in with 97 units; one on one parking. There will be 9,000 feet of retail with 17 parking spaces for retail going in on Main. This will not work. Now there is another opportunity, the Texaco site and city parking site combined and there is going to be a committee of eight formed shortly to decide what to do with this site. This committee will be made up of four Metro people and four people appointed by City Council. He feels that Metro is going to be the hammer; no one mentioned that they own half the property which was purchased with tax money. It is Metro's job to put density in and he has no doubt that it will happen. He is concerned that there still is no Downtown Parking and Management Program. The City is behind on doing something about the Program and it is not going to get any better. He is concerned that Metro will have the control. He asked that this be brought before the council and do something positive about it.

Chair Klein asked Mr. Zumwalt in his opinion what would be the solution to this matter. **Mr. Zumwalt** stated that he is not a traffic engineer. The number one step is to review the Plan and get it in front of the council as soon as possible. It should be considered before the new site is bid on. The growth has to stop until there are controls on the traffic flow and parking. The City needs to review the Plan that the consultant was hired for and get it in front of the Council.

Ms. Mangle agreed that the Plan should be reviewed and put before Council. **Mr. Klein** stated that this should be reviewed by all neighborhood associations. This is something that will affect the entire city.

6.0 Public Hearings

6.1 Applicant: Lynn Welsh
Location: 12015 SE 19th
Proposal: Raise house 3'0" in the Willamette Greenway Zone
File Numbers: CU-06-02 and TPR-06-03
NDA: Island Station

Chair Klein opened the hearing on Conditional Use 06-02 and Transportation Planning Review 06-03, a minor quasi-judicial hearing to consider the approval of the proposed remodel of an existing 2-story single-family house at 12015 SE 19th. The criteria to be addressed can be found in the Milwaukie Zoning Ordinance Section 19.303, Residential Zone R-5, Section 19.328, Willamette Greenway Zone, Section 19.600, Conditional Uses; Section 19.1011.3, Minor Quasi Judicial Review; Section 19.1400, Transportation Planning, Design Standards and Procedures; Title 16, Erosion Control and Title 18, Flood Hazard Regulations.

Chair Klein asked if there were any conflicts of interest or ex-parte contacts to declare. There were no conflicts of interest or ex-parte contacts declared.

Chair Klein asked if any member of the Planning Commission visited the site; 5 hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. 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

Susan Shanks reviewed the staff report with the Commission. She introduced Zack Weigel who is here tonight to answer any engineering questions. The applicant tonight is proposing to raise the main floor of their house by three feet to provide additional height to their daylight basement. The property is in the 100-year flood plain and in the Willamette Greenway Zone (waterfront property). Any use in the Willamette Greenway Zone must address the criteria in the Conditional Use Chapter of the Zoning Code. Overheads were shown of the subject site and surrounding area.

There are two key issues in this proposal; the first to be discussed is protection of views to and from the River. Three documents address views that are relevant to this proposal and the review criteria in all three can be interpreted in a number of ways; Oregon's Statewide Planning Goal 15, Milwaukie's Comprehensive Plan and Milwaukie's Zoning Code).

Planning Goal 15 was developed to preserve the scenic, economic, cultural, recreational and unique qualities related to the Willamette River, one of which was views, "...identified view points should be protected." The Comprehensive Plan has two elements; the Willamette Greenway Element and the Open Spaces Element. This Plan talks about "...assessing the effect on access to visual corridors." The Milwaukie Zoning Code specifically states "...protection of views to and from the river."

Staff believes that this is a reasonable proposal to raise the height three feet. This will maintain the existing side yard setbacks and therefore maintain the existing view corridors between the existing homes on either side of the subject property. This proposal will not increase the footprint in any other way than going straight up. Private views to the river will be impacted by this proposal if approved. Pictures were shown of the view from the neighbors home and a simulation was created of what view would remain after the height increase. The proposed three feet of height will take river view from the neighbor's window. The view corridor on the side of the existing home will be maintained.

The second issue has to do with setbacks. This proposal meets all the setback requirements and conditional use setbacks of the R-5 Zone with existing height and proposed height. Both of the side yards do not meet either the conditional use setback as is or what is being proposed. The house is currently out of conformance and technically will go further out of conformance with the proposal. A legal non-conforming structure is allowed to be maintained; additions and improvements are required to conform to the current standard.

Staff has concluded that because the applicant is going straight up it is not an actually increase in a non-conforming situation. The setbacks will remain the same and the side yard view corridors will remain unchanged.

QUESTIONS FROM THE COMMISSIONERS -- None.

CORRESPONDENCE

Chair Klein asked if there had been any correspondence received since the mailing of the packet. **Ms. Shanks** stated that there was one letter received and it has been submitted to the Commissioners.

APPLICANT PRESENTATION

Speaking: Gwen Welsh, 12015 SE 19th Avenue, Milwaukie

Ms. Welsh stated that she has read the staff report and listened to the presentation by Susan Shanks and feel that everything is accurate. She purchased the home last October and has spent time and effort trying to figure out what is the best

remodeling that would have little impact on the neighborhood and suit her and her son. There is one small bedroom on the main floor and a bedroom on the daylight basement level which only has 7-foot ceilings. There are things that are not up to code and she would like to retain the character of the cottage.

Ms. Welsh stated that she was not aware her neighbor had a view of her roof because her home is set so far below the street. Based on her discussions with Gamble she intends to prune the bushes. When she starts construction, the bushes will be trimmed and altered. She recently had knee surgery and has not had a chance to do the pruning.

The only other option for remodeling would be to add an upper story; however, it would be a lot more expensive and would create more obstruction of views for the neighbors. She is only one foot above flood plain; she was not required to buy flood insurance by her mortgage company, however she purchased the insurance because of her concerns. Her son is a student at the Waldorf School in Milwaukie and she intends to make this her home; not an investment property.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Bresaw asked if the roof design will change. **Ms. Welsh** stated that the roofline will not change; they just want to jack up the roof and add three feet to the house. The carport will not be raised and will remain at the same level.

Chair Klein asked if this proposal was discussed at her neighborhood association meeting. **Ms. Welsh** stated that they supported the remodel because it will improve the quality of the house and therefore the quality of the street.

Chair Klein asked if there will be a kitchen in the basement. **Ms. Welsh** stated that there will be no kitchen in the basement area.

Commissioner Churchill asked if the pitch of the roof could be changed to allow the three-foot increase and maintain the views to the river.

Speaking: Mathew McQue, Ms. Welsh's Architect

Mr. McQue explained that changing the pitch of the roof would require removing the roof; economically that would be the same as reconstructing the home.

COMMENTS IN FAVOR

Speaking: Craig Chamlaw, 12323 SE 25th Avenue, Milwaukie

Mr. Chamlaw stated that he is the Vice Chair of Island Station Neighborhood Association and that he is here tonight speaking in support of the application. It is nice to have someone new come into the area wanting to improve the residence

thus improving the character of the neighborhood. This application does come with detriment to someone else who has been a long-term valued member of the neighborhood. This is a modest improvement to a modest house that will help improve the neighborhood.

QUESTIONS OR COMMENTS -- None.

COMMENTS IN OPPOSITION

Ken Gamble, 12080 SE 19th, Milwaukie

Mr. Gamble stated that his view will be taken away if this is approved. He doesn't want to lose it; once the house is raised it becomes permanent and the view cannot be brought back. Inside the house he has views from his kitchen and front room. He is here tonight to try to maintain this view. He has no problem with the owner, just wants to maintain his view. His grandfather built the house many years ago and his family has lived on this land since then. His home was built after Ms. Welsh's home was brought into the area.

If this is approved, his view will be gone and it will set a precedent for others along that road to raise their height. This will impact his property and other lots that he owns on this street. There is a possibility that the people who buy Ms. Welsh's neighbors' property will raise their height and block the view of his vacant lots.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Brinkman asked if Mr. Gamble's view was of water or trees. **Mr. Gamble** stated he had a view of the River; you can't see it now because the bushes are overgrown and have not been maintained. Previous owners always maintained and kept the bushes trimmed; otherwise there would be a view. He could see the River and he could see his buddies fishing out there in the morning.

Commissioner Churchill noted that Mr. Gambel's home is a one-story house on the river and asked if he had plans of a second story. **Mr. Gamble** stated that he was lucky to have the site almost paid for now; he doesn't see any great building plans in the future. He understands that Ms. Welsh has the right to do what she wants to do with her property; his concern is that once his view is gone it will never be replaced.

Gwen Welsh asked Mr. Gamble what year his home was built. **Mr. Gamble** stated that he purchased the home from the estate of his grandparents over 20 years ago. His house was built by his father and grandfather when his father was about 12; he is 75 now. His house was built after the houses across the street were brought in. He feels the house was built high enough to get a view of the River and over the houses across the street. He feels that if the house is raised,

trimming the trees will not matter; he will have no view of the River. Trimming the side vegetation will give him a view of the trees, not the River.

ADDITIONAL COMMENTS FROM STAFF -- None.

QUESTIONS FROM THE COMMISSIONERS REGARDING CLARITY

Commissioner Newman asked if the neighbor, Mr. Gamble, did build a second story on his house would he be subject to the same Willamette Greenway process. **Ms. Shanks** stated that any Willamette Greenway Zone criteria would come into effect for any alteration to the exterior of a home in this zone. Mr. Gamble's addition up would bring the issue to this process and venue.

Commissioner Churchill asked if the subject property was 1.5 feet below the current flood grade. **Ms. Shanks** stated that the applicant was required to have the topography surveyed; there is confirmation that the property is below the current flood grade.

APPLICANT CLOSING REMARKS -- None.

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

Commissioner Bresaw stated that she feels the three feet height increase is a reasonable request.

Commissioner Newman stated that he is sympathetic but is inclined to vote in favor of this application. He suggested a condition that protects the view corridor on the north side of the property.

Recess was taken at 7:38 p.m. and the meeting reconvened at 7: 46 p.m.

Gary Firestone suggested the following language for the Condition #2D, "Trim all vegetation along the property frontage so that it does not extend above the ridge-line of the house. Trim all vegetation in the existing view corridor to the north of the property so that it does not extend above the roof of the carport. Trim all vegetation in the view corridor to the south of the house so that it does not exceed 8 feet in height above grade.

Condition 3A would be amended to read, "After final building inspection, the Applicant shall maintain the vegetation trimmed to the standards stated in Condition 2D."

Commissioner Churchill moved to approve applications CU-06-02 and TPR 06-03 and adopt the recommended findings and conditions in support of

approval with the change to Condition #2D and 3A, as revised tonight. Commissioner Bresaw seconded the motion.

Ayes: Bresaw, Brinkman, Churchill, Newman, Klein

Nays: None

The motion carried 4-0.

- 6.2 Applicant: Richard and Alicia Hamilton
 Location: 11921 SE 19th Avenue
 Proposal: Remodel house in the Willamette Greenway Zone
 File Numbers: CU-06-03 and TPR-06-06 and HIE-06-02
 NDA: Island Station

Chair Klein opened the hearing on Conditional Use 06-03, Transportation Planning Review 06-06 and Home Improvement Exceptions 06-02, a minor quasi judicial hearing to consider approval of remodeling an existing single-family house at 11921 SE 19th Avenue which formerly contained two separate dwelling units. The criteria to be addressed can be found in the Milwaukie Zoning Ordinance Section 19.303, Residential Zone R-5; Section 19.320, Willamette Greenway Zone; Chapter 19.600, Conditional Uses; Chapter 19.700 Variances, Exceptions and Home Improvement Exceptions; Section 19.1011.3, Minor Quasi Judicial Review; Chapter 19.1400, Transportation Planning/Design Standards and Procedures; Title 16, Erosion Control and Title 18, Flood Hazard Regulations.

Chair Klein asked if there were any abstentions, conflicts of interest or ex-parte contacts to declare. **Chair Klein** stated that he talked with Ms. Hamilton but they did not discuss this issue. He does not feel it will affect his ability to vote on this application. There were no other conflicts of interest or ex-parte contacts declared.

Chair Klein asked if any member of the Planning Commission visited the site; 5 hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. 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

Susan Shanks reviewed the staff report with the Commission. She introduced Zack Weigel who is here tonight to answer any engineering questions. The applicant proposes to remodel an existing single-family house that formerly contained two separate dwelling units. The property is in the 100-year flood plain and in the Willamette Greenway Zone (waterfront property); it is zoned R-5; any use in the Willamette Greenway Zone must address the criteria in the Conditional Use Chapter of the Zoning Code and it is in the 100-year flood plain. Overheads were shown of the subject site and surrounding area.

The key issues in this proposal are views as well as setbacks and street improvement issues. The documents that address views that are relevant to this proposal and the review criteria include the Oregon's Statewide Planning Goal 15, Milwaukie's Comprehensive Plan and Milwaukie's Zoning Code. These documents offer limited guidance with regard to views and how they are assessed and impacted.

This property is not an identified viewpoint. There are existing side yard viewpoints that act as visual view corridors and an undeveloped right-of-way that is on the south side of the property that also serves as a view corridor to the river. The proposal is not to develop the property any further towards the river. Staff feels the proposal is reasonable and maintains the existing side yard view corridors and keeps development away from the river.

This property does not currently impact any private views. The property across the street from the subject site is composed of three separate platted lots (one tax lot). There is potentially one undeveloped lot across the street. This is the property that would have view impacts if developed.

This proposal meets all the R-5 zone and conditional use setbacks. The front yard setback is non-conforming, the north side is conforming, the south side is non-conforming and the south side is conforming. With this proposal, the front yard will go further out of non-conformance. The south side will remain non-conforming, as there will be no changes to that side of the structure.

The conditional use setbacks are relative; they are based on the height of the structure. The setback is two-thirds the height of the existing structure and the proposed structure. Based on the height, the current setback should be 9.67 feet; based on the proposed height the setback should be the increased 2.13.67 feet.

In summary there is existing side yard non-conformity and a proposed side and front yard non-conformity. Existing non-conformities are allowed to be maintained in their present location. The applicant is not proposing to change the south side yard at all; however, they are proposing to push out the front to make an architectural feature for the front entranceway which will put them further into the setback than they already are to the north side.

Chapter 19.700, Home Improvement Exceptions, provides for existing homes that have been in existence more than five years, are granted relief from the provisions of the zoning code which allows them unlimited relief from all standards. In this case the homeowner can do additional remodel that encroaches into any setback and/or go over the required lot coverage standards for the R-5 zone. All objective standards have been met. The side yard view corridors are unchanged.

Chapters 19.1400, Transportation Planning apply in specific situations. Substantial redevelopment is defined as a situation where the permit value

exceeds an access of 50% of the real value of the home. If the project is classified as substantial redevelopment and has a permit value of \$101,296, all of Chapter 19.1400 applies. The City cannot require public improvements when it is disproportionate to the project proposed. Staff could not approve a permit if the application does not meet the standards of 19.1400. Under the counsel of the city attorney, the applicant can be asked to voluntarily make any required public street improvements.

There is a section of code that allows landowners to pay money instead of making public improvements in certain situations. One of these situations is when the public improvement would be considered an isolated situation. In those situations, the City accepts funds-in-lieu of. Chapter 1400 allows exceptions from the standards where you pay funds in lieu of improvements.

In summary, the Applicant is asking that the landscape strip requirement be eliminated (sidewalk and parking strip). Staff supports both requests. In regards to the reduction in the travel lane width, the code is inflexible and only the Planning Commission can improve something that is less than what is required under the Code. The Applicant requests that if after all is done that is required, can they have an exception to pay the funds-in-lieu of rather than building improvements in front of their property. Staff supports the elimination of the landscaping strip, the variance to elimination of sidewalk and the parking strip.

An overhead of cross-section alternatives proposed by the Applicant were shown.

This proposal triggers Chapter 19.1400 requirements. It meets the standards for substantial redevelopment and exceeds the \$101,000 threshold and all the requirements contained wherein. Chapter 19.1400 is inflexible; it does not give the Engineering Director or Planning Director much discretion. Only the Planning Commission has discretion in applying Chapter 19.1400 in this situation. In regards to off-site improvements, staff feels that it is defensible to legally take money and not apply it to the frontage directly in front of the subject property.

Staff has concluded that if the Planning Commission approves the application and requires the applicant some improvements and allows for exceptions (funds in lieu of), they would like to see the improvements be built on a street in the neighborhood rather in front of the subject site. This would be a street that the applicant also travels so it would be a benefit to them just as if the improvements were made in front of their property.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Bresaw stated that the road width fluctuates on 19th and asked if there is room to have a consistent 20-foot roadway. **Ms. Shanks** stated that staff can't support the variance to reduce travel lane width because there is just enough (22-feet) of flat public right-of-way upon which a 20-foot wide roadway could be

constructed. Staff cannot support the variance because this would not be a very meaningful improvement and would rather see funds in lieu of collected to build a more meaningful improvement elsewhere.

Chair Klein asked if there are plans for future development of this street. **Ms. Shanks** stated that this street is not identified on any Capital Improvement List to be improved in the near future. The neighborhood association heard this application and stated that the neighborhood would like to see sidewalks on River Road and 22nd Avenue and not on other streets in neighborhood.

Commissioner Newman asked how staff arrives at the fee in lieu of figure. **Susan Shanks** stated that the figure is derived from calculations made by the Engineering Department. It is a standard formula depending on width of frontage and the amount of improvements needed. **Gary Firestone** stated that the Planning Commission can decide what the appropriate amount should be. The decision however must be supported by evidence of the cost that would be incurred to improve the adjacent frontage to the travel lanes. In most situations there will be a collector or arterial that impacts the subject street. If you can say they have an impact on other streets the Commission can say it can go to other streets and still be directly related if there is an impact.

CORRESPONDENCE -- None.

Chair Klein asked if there had been any correspondence received since the mailing of the packet. **Ms. Shanks** stated that there were two additional letters received and they have been made available to the Commissioners.

APPLICANT PRESENTATION

Speaking: Richard and Alicia Hamilton, 11921 SE 19th Avenue, Milwaukie

Ms. Hamilton thanked the staff for their cooperation with this application. She thanked the neighbors present for coming out to hear this case.

Rich Hamilton thanked the planning staff. He wanted express what issues he found important. The staff report addresses all issues and he and his wife agree with everything in the report except the transportation requirements. They are not volunteering to write a check for \$2,500 above and beyond the \$4,100 application fee and permit fees. They would like to continue with the Planning Department with the idea that if it is determined by the Planning Commission that they do have to go through with the road improvements, their issue is not where the improvements are made it is the amount of money involved. They feel there is no impact from their project therefore they should not be required to do transportation improvements. Public improvements cannot be required if there is no impact.

Mr. Hamilton stated that they are not adding a duplex to their house, and that their addition will not involve more traffic on the street. There is no need for a two-lane street on this roadway.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Bresaw asked how big the house is. **Mr. Hamilton** stated that the addition will be a 400 sq.ft. maximum increase.

Speaking: Gary Hartill, 215 SE 90th Avenue, Suite 108, Portland

Mr. Hartill stated that the existing basement (where duplex used to be) was and remains 1,150 sq.ft; the first floor is 1,150 sq.ft. (they will be adding 93 sq.ft.) and on the second floor (currently a finished attic) they will be adding 705 sq.ft. The total new square footage is 798 sq.ft. This residence will be going from a duplex to a single-family dwelling.

Commissioner Bresaw asked if the new addition on the first floor is for a porch. **Mr. Hartill** stated that right now the house is in the front setback. They created a new entryway with a covered porch over the entryway; a bay window which will be off a new bedroom on the second floor, with a front porch. There are three significant trees that are in the right-of-way of the current roadway which would be affected by street improvements.

Chair Klein asked if this transportation issue was brought up at the Neighborhood Association meeting. **Mrs. Hamilton** said yes, the Association suggested that they canvas the neighborhood getting feedback on their proposal. The Land Use Committee gave approval; a report was submitted in favor of the proposal. Sidewalks are a big issue in their neighborhood and some people are against sidewalks on 22nd.

COMMENTS IN FAVOR

Speaking: Craig Chamlaw, 12323 SE 25th Avenue, Milwaukie

Mr. Chamlaw stated that he is the Vice Chair of Island Station Neighborhood Association. This is a lovely project that will be of great benefit to the neighborhood. The one difficult issue caused by the Code can be solved by using concepts of fairness and what will be the affect on neighborhood. This project will greatly improve the looks of the neighborhood; makes the residence much more pleasant than it is. The effect on this street and the neighborhood of this improvement is in support of the travel land width. The width is not adequate but it serves their neighborhood quite safely. If the street were extended car doors will be scraping front porches.

If the payment in lieu exception is exercised and the payment is in lieu of effects of the proposal, the finding should be that the effect is zero and that should be the amount of payment in lieu. Although there are certain sections of the neighborhood that could benefit from sidewalks, this is not one of them. The benefit they would like to have to the neighborhood from this project is simply the project itself; not additional expenses cajoled from the applicants.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Bresaw asked if the Neighborhood Association reviewed the site plans. **Mr. Chamlaw** stated that anyone who sees the house with any regularly has seen the plans and thinks they are wonderful.

Commissioner Churchill asked Mr. Chamlaw if he was supporting the elimination of landscape strip. **Mr. Chamlaw** stated that the street is attractive as it is; having parking when there is sufficient off-street parking for this residence and sufficient side parking for those who use the street is not a benefit to anyone.

Commissioner Churchill asked why elimination of the parking potential is not needed in front of this residence. **Mr. Chamlaw** stated that a parking strip in front of this residence would be at an angle that would be uncomfortable. The only lot that is capable of development is owned by Ms. Batey. The addition of that residence would not seem to add sufficient vehicles to the neighborhood to require anything in the way of a parking strip. Parking should be discouraged on that street; it functions well as the lane for bicyclists who are coming from the river front park as well as pedestrians. The existing parking is quite sufficient for the festivities that their neighborhood has.

Ms. Shanks stated that there is potential on this street for a number of infill lots.

Commissioner Churchill noted that the existing retaining wall is in the right-of-way and asked if it was built by engineering and would it remain as it is. **Zach Weigel** stated that the recommended street improvements would be on the east side of the street, not to the west, because of the topography north of the driveway. Engineering raised no concerns regarding this retaining wall. The prior owner did get a permit from the City and put the retaining wall in. It would have been a permitted process. As part of the improvements the Applicant would have to provide structural analysis of the retaining wall.

Speaking Gary Hartill, 215 SE 9th Avenue, Suite 108, Portland

Mr. Hartill stated that currently in the gravel strip from the retaining wall to the paving there is room for perpendicular parking for three vehicles and the driveway access which has room for about 2-2 1/2 vehicles. If you parked cars perpendicular you get four cars across. If you did a parking strip parallel to the roadway, it would actually be reducing the current parking.

Gary Firestone reported that the Code does not discuss impact; it says if certain criteria are met certain adequacy standards apply. Those adequacy standards include how developed is the frontage adjacent to the property.

Mr. Hamilton quoted from the code; "New development shall provide transportation improvements in rough proportion to impacts of the development." He feels the municipal code does address impact, it just contradicts itself.

QUESTIONS OR COMMENTS -- None.

COMMENTS IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF

QUESTIONS FROM THE COMMISSIONERS REGARDING CLARITY

Commissioner Churchill asked if the Commission could impose any figure. **Mr. Firestone** stated that the Commission could impose any figure that can be supported by the evidence.

Ms. Shanks explained that if the Commission agrees with the elimination of the landscape strip, the adjustment issue goes away as a requirement. If the Commission approves the first variance, elimination of the sidewalk and parking strip, the variance eliminates the requirement section of the exception. If the variance is approved for keeping the roadway as it, it eliminates the requirements to meet the standard of a 20-foot wide roadway and the exception becomes a non-issue. If the Commission doesn't want to vary from the 20-foot standard for the roadway, the Engineering Director has found that it does not create an unsafe situation. If the improvements are required to be built, then the exception is needed.

Gary Firestone gave some suggested options to the Commission:

- Go through the code as written, follow steps and go through to the analysis
- Look at the one provision of the code that does talk about proportionality
- Go step by step through the code to the point of exaction (any requirement for the Applicant to give up some property right)

APPLICANT CLOSING REMARKS -- None.

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

Commissioner Bresaw stated that the roadway should be 20-feet. Some day the lot across from the subject site will develop and she feels that funds should be collected for street improvements.

Chair Klein stated that he is concerned about sidewalks; however, in this case he does not think the road will ever be improved or changed. The proximity of the roadway to the houses is too close. This is a non-conforming street that may never change; the only people using the street are the ones that live on the street.

Commissioner Churchill stated that he feels there is potential development in the future that will force more traffic on this road. This roadway is unique.

Commissioner Brinkman agrees that the Applicant has reduced the amount of traffic by turning this duplex into a single-family dwelling. The Applicants are bumped into the requirement because of the value of their construction and it concerns her how much of this value is based on quality not quantity. This is something that should be considered as the Commission reviews code provisions in the future. If the people who live there are okay with the situation, that should carry some substantial weight.

Gary Firestone noted that the Planning Commission will review the code for revisions soon. Whatever value issues are in existence now will change in the future.

Discussion followed on whether there should be improvement dollars in lieu of construction and where the funds would be used if the funds are required. It was decided to eliminate the sidewalk, eliminating the parking strip, approving the second variance to reduce the travel lane width and half street improvement width (keeping as is) and deny the variance to eliminate the landscape strip.

Gary Firestone stated that the variance could be justified based on the existing conditions because the property is so narrow to taper off to each one; it is not practical and creates a safety issue given that the adjacent roadway's already existing conditions make construction of full width impracticable.

Commissioner Brinkman moved to approve VR-06-02 with the recommended conditions and finds in support of approval with the exception of removing paragraph 2C and adding findings as stated tonight. Commissioner Newman seconded the motion.

Ayes: Bresaw, Brinkman, Churchill, Newman, Klein

Nays: None.

The motion carried 5-0.

Commissioner Brinkman moved to approve CU-06-03, TPR-06-06 with the adjustments, and HIE-06-02 and adopt the recommended findings and conditions in support of approval with the exception of striking paragraph 2C and adding findings as stated by City Attorney tonight. Commissioner Newman seconded the motion.

Ayes: Bresaw, Brinkman, Churchill, Newman, Klein

Nays: None.

The motion carried 5-0.

7.0 WORKSESSION ITEMS -- None.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS / UPDATES

10.1 Matters from the Planning Director

Ms. Mangle reported that on Tuesday night the Council interviewed a commissioner applicant.

Ms. Mangle submitted the Planning Department Activities Report and a memo from her regarding Metro Title 13 Nature in Neighborhoods Initiative.

Other issues reported were:

- The City of Milwaukie received a Transportation System Plan grant that was applied for by John Gessner a year ago. This grant is over \$100,000 and will go towards a consultant that will do the work.
- The Tri-Met Park and Ride has been appealed to LUBA
- Staff submitted a letter on the Spring Water Trail to Portland and received a response; a copy will be made available to all the Commissioners. A response will be needed.

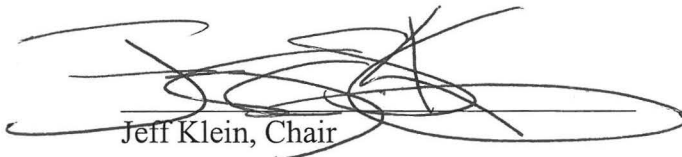
11.0 NEXT MEETING -- June 27, 2006

11.1 Safeway Gas Station (10550 SE 42nd) Hearing, Sign Ordinance Review

11.2 Draft revisions of the Sign Ordinance

Commissioner Brinkman moved to adjourn the meeting of June 13, 2006.
Commissioner Bresaw seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 9:52 p.m.



Jeff Klein, Chair



Shirley Richardson, Hearings Reporter

APPROVED AS PRESENTED

MILWAUKIE PLANNING COMMISSION

MILWAUKIE CITY HALL
10722 SE MAIN STREET

AGENDA TUESDAY, JUNE 13, 2006 6:30 PM

		ACTION REQUIRED
1.0	Call to Order	
2.0	Procedural Matters 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 3.1	Planning Commission Minutes May 9, 2006 Approved PC Minutes can be found on the City web site at: www.cityofmilwaukie.org	Motion Needed
4.0	Information Items – City Council Minutes City Council Minutes can be found on the City web site at: www.cityofmilwaukie.org	Information Only
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda	
6.0 6.1	Public Hearings Type of Hearing: Minor Quasi-Judicial Applicant / Owner: Lynn Welsh Location: 12015 SE 19 th Ave Proposal: Raise house 3' 0" in the Willamette Greenway Zone File Numbers: CU-06-02 and TPR-06-03 NDA: Island Station Staff Person: Susan Shanks	Discussion and Motion Needed For These Items
6.2	Type of Hearing: Minor Quasi-Judicial Applicant / Owner: Richard and Alicia Hamilton Location: 11921 SE 19 th Ave Proposal: Remodel house in the Willamette Greenway Zone File Numbers: CU-06-03, TPR-06-06, VR-06-02 and HIE-06-02 NDA: Island Station Staff Person: Susan Shanks	
7.0	Worksession Items	
8.0	Discussion Items This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	Old Business	
10.0 10.1 10.2	Other Business/Updates Matters from the Planning Director - Planning Department Activities Memo (PC Only) Metro Title 13 Memo / Attachments (PC Only)	Information Only Review and Comment
11.0	Next Meeting: June 27, 2006 Safeway Gas station (10550 SE 42 nd) Hearing, sign ordinance review The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	

Forecast for Future Meetings:

7/11 Hearing Immovable Foundation Church (Lake Rd) Hearing, Downtown Parking Plan

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 *PS*

From: Susan P. Shanks, Associate Planner *SPS*
Zachary John Weigel, P.E., Civil Engineer *ZJW*

Date: June 13, 2006

File: CU-06-02, TPR-06-03

Applicant: Lynn Welsh (property owner)

Site Address: 12015 SE 19th Avenue

NDA: Island Station

Action Requested

Approve applications CU-06-02 and TPR-06-03 and adopt the recommended findings and conditions in support of approval.

Project Description

The applicant proposes to remodel an existing 2-story single-family house at 12015 SE 19th Avenue. The remodel involves raising the main floor of the house by three feet in order to provide three additional feet of height to the daylight basement. The existing daylight basement is approximately seven feet in height and contains one of the structure's two bedrooms. The applicant does not plan to alter the footprint of the existing house.

The property at 12015 SE 19th Avenue is located on the Willamette River. It is in the R-5 zone, the Willamette Greenway (WG) zone, and the 100-year flood plain. Because the property is in the WG zone and the applicant is proposing to substantially alter the appearance of the existing house, the applicant's proposal is subject to the WG zone review criteria. Moreover, all development in the WG zone is a conditional use and is subject to the provisions of Chapter 19.600 Conditional Uses.

Background Information

The existing house consists of two levels: (1) a wooden frame cottage that was built in the 1920's and (2) a concrete block daylight basement that was built in the 1950's. County records show that the frame house was moved to the site and attached to the concrete block daylight basement in the 1950's. The house is currently assessed as a two bedroom and two bath house, with one bedroom and one bath on each level. The upper level is approximately 654 square feet in area with a glass-enclosed porch, and the lower level is approximately 934 square feet in area.

Key Issues

1. Should the applicant be required to maintain river views over the existing house for the benefit of a neighboring property owner?
2. Have the conditional use setback standards been met?

Analysis of Key Issues**Key Issue #1 – Should the applicant be required to maintain river views over the existing house for the benefit of a neighboring property owner?**

There are three documents that address views that are relevant to this proposal. They are as follows:

- Oregon's Statewide Planning Goal 15: Willamette River Greenway
- Milwaukie's Comprehensive Plan: (1) Willamette Greenway Element, and (2) Open Spaces, Scenic Areas, and Natural Resources Element.
- Milwaukie's Zoning Code: (1) Residential R-5 Zone, and (2) Willamette Greenway Zone

There are a number of ways to interpret the various policies, goal statements, and review criteria contained in these documents with regard to existing and proposed development projects that are located in the Willamette Greenway (WG) zone. Public and private views of the Willamette River are desirable on many levels, yet the documents cited above provide only limited direction with regard to their creation and protection.

Planning Goal 15 requires protection of identified viewpoints. Milwaukie's Comprehensive Plan identifies a number of viewpoints, all of which are public in nature. The Comprehensive Plan recognizes that most riverfront property in Milwaukie is privately owned. Staff interprets these statements to mean that it is less realistic to protect views to and from the river when the property in question is privately owned. The review criteria contained in the WG zone, however, does not distinguish between public and private views. It simply requires that views be taken into consideration when evaluating a development proposal in the WG zone.

Generally speaking, each use zone has its own height limitation, and this limitation is applied to all properties in that zone regardless of location. In this

case, the property in question is in the R-5 zone, and the height limitation for this zone is 35 feet. The applicant is not proposing to exceed the height limitation of the R-5 zone. The existing structure is 12 feet tall and the proposed structure would be 15 feet tall¹ (see Photo 1). Moreover, the front of the applicant's house sits approximately eight feet below street level. The additional three feet of height will minimally impact public views to and from the river to those on the water or on SE 19th Avenue. Unfortunately, this additional three feet of height will significantly diminish the private views currently enjoyed by the property owner at 12080 SE 19th Avenue, which is across the street from the applicant. However, there is nothing in the WG zone that requires waterfront property owners to either provide views over structures and/or to build at a lower height.

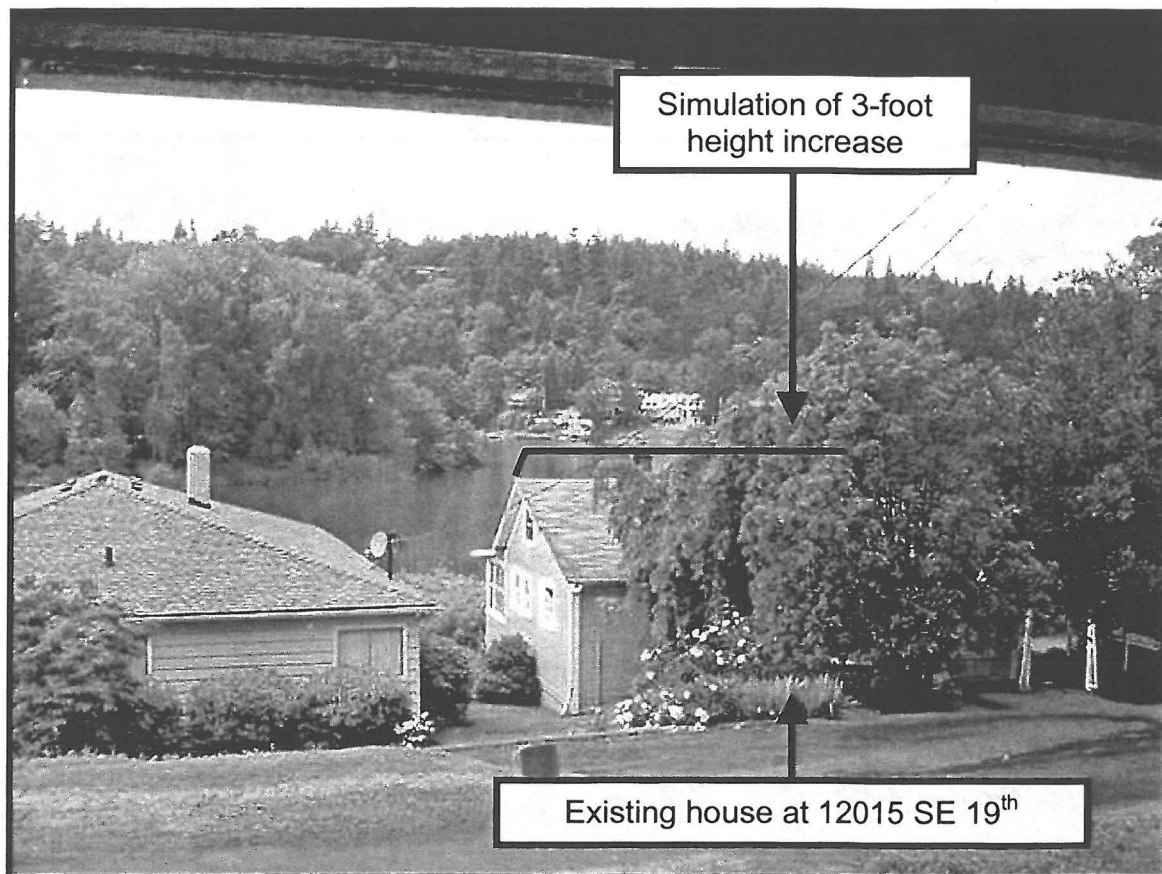


Photo 1: View over existing house from neighbor's kitchen window at 12080 SE 19th Avenue.

Staff believes that strictly applying the Willamette Greenway zone's view criterion to waterfront property would unfairly restrict these property owners from developing their properties in a manner similar to their neighbors. In other words, staff believes that the City can encourage but should not require waterfront property owners to provide views over existing or proposed structures.

¹ As measured from the average elevation of the finished grade at the front of the building to the mean height level between the eaves and the ridge.

Just as the WG zone does not distinguish between public and private views, neither does it distinguish between views over structures and views between structures. The Comprehensive Plan, on the other hand, requires development proposals to be evaluated for their impact on "visual corridors". Staff believes that requiring waterfront property owners to create and/or maintain view corridors is more realistic and reasonable than requiring property owners to provide views over existing or proposed structures.

All residential zones have side yard setback requirements. Side yard setbacks serve a number of functions, one of which is to create separation between structures on adjacent properties. In this case, that space serves as a natural view corridor toward the river. The applicant does not propose to decrease the existing side yard setbacks. The proposal, therefore, will maintain the existing view corridors on either side of the house (see Photo 2).

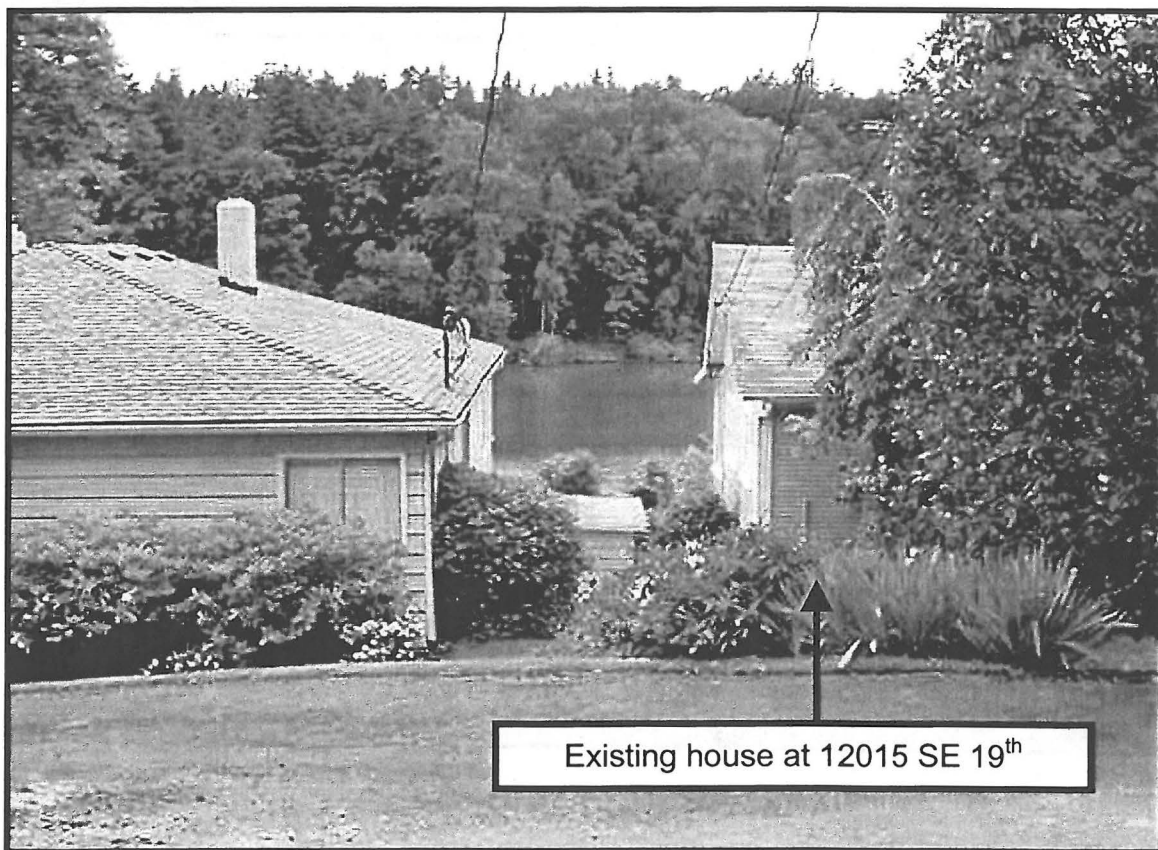


Photo 2: View corridor on south side of existing house as seen from the street.

The applicant's neighbor at 12080 SE 19th Avenue has indicated that the previous property owner kept the vegetation along the front of the property trimmed in such a manner so as not to obstruct his views to the river. Staff believes it is reasonable to require the applicant to maintain the vegetation along the front of the property (shown in Photo 3) in such a way so as to not completely obstruct the existing views to the river on either side of the existing house.

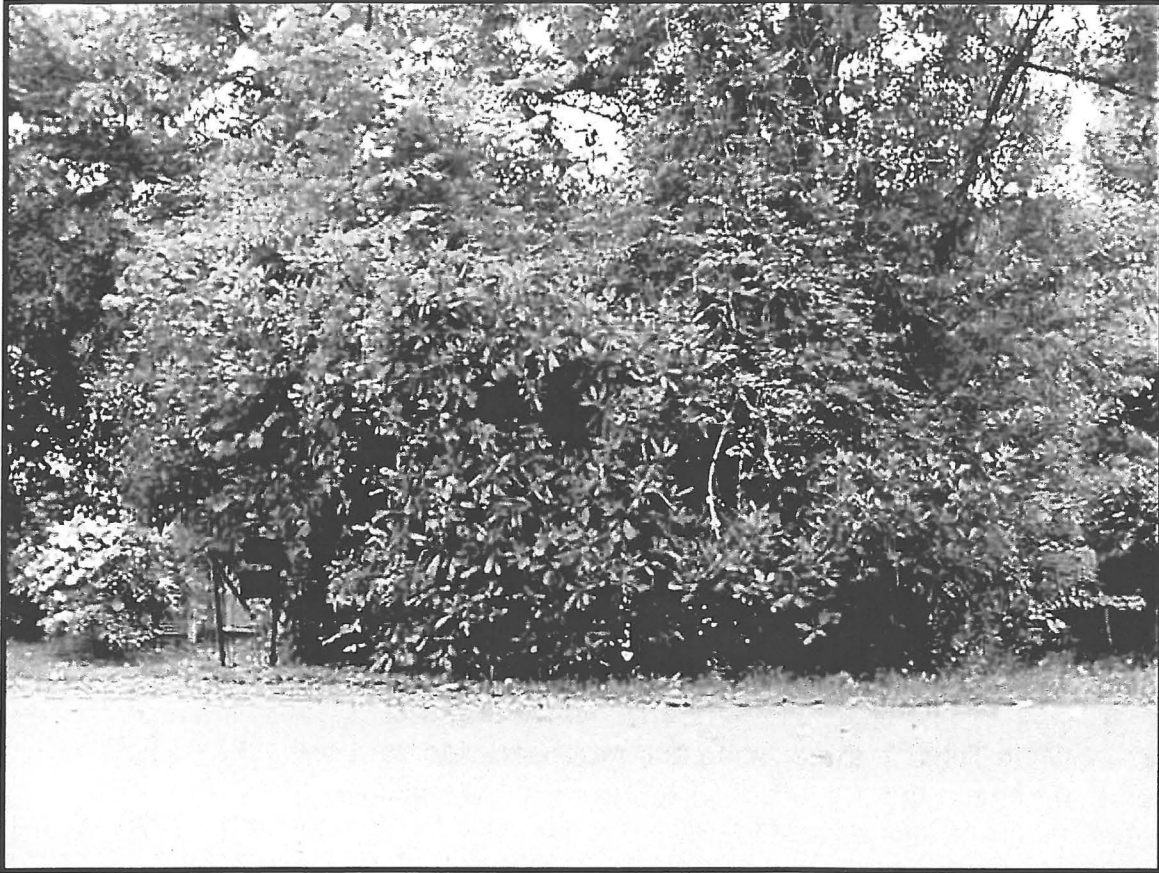


Photo 3: Existing vegetation blocks view corridor on north side of existing house as seen from the street.

Key Issue #2 – Have the conditional use setback standards been met?

The existing house meets the setback standards of the R-5 zone as shown in the following table. Since the applicant does not propose to change any setbacks, the proposal will continue to meet the setback standards of the R-5 zone.

Table 1: R-5 Zone Setbacks

Setback	Minimum Setback Dimension	Existing Setback Dimension²
Front	20 feet	20 feet
North Side	5 feet	5.25 feet
South Side	5 feet	6 feet
Rear	20 feet	145 feet

² These dimensions have been provided by the applicant's architect and have not been confirmed by a surveyor. However, since the applicant is not proposing to change any of the existing setbacks, staff believes the information provided by the applicant is sufficient for this analysis.

As previously stated, all development in the Willamette Greenway zone is considered a conditional use and is subject to Chapter 19.600 – Conditional Uses. When a conditional use is proposed in a residential zone, all setbacks shall be equal to at least two thirds ($2/3$) of the height of the principal structure.³ The existing house is 12 feet in height, and the proposal involves raising it 3 feet. Since conditional use setbacks are relative to height, increasing the height of the principal structure increases the setback requirement. The required conditional use setbacks for this proposal are detailed in the following table:

Table 2: Conditional Use Setbacks

Setback	Minimum Setback Dimension: Existing Height	Minimum Setback Dimension: Proposed Height	Existing Setback Dimension²
Front	8 feet	10 feet	20 feet
North Side	8 feet	10 feet	5.25 feet
South Side	8 feet	10 feet	6 feet
Rear	8 feet	10 feet	145 feet

As shown in Table 2, the existing and proposed side yard setbacks do not conform to the requirements of Chapter 19.600 Conditional Uses. Since the requirements of this chapter came into effect after the construction of the existing house, the house is legally nonconforming with regard to this setback requirement. With the proposed increase in height and the concomitant increase in setbacks, the proposal to raise the house three feet would technically push the house further out of conformance with regard this setback requirement.

Generally speaking, a legal structure is allowed to continue and be maintained as a nonconforming structure. Modifications to a nonconforming structure are allowed as long as the modifications conform to current development standards and do not push the structure further out of conformance. In this instance, however, staff believes that the increase in the nonconformity is a technical increase and not an actual increase. The existing house is already nonconforming with regard to side yard setbacks, and the applicant is not proposing to change these setbacks. Moreover, the existing view corridors on either side of the house will remain the same regardless of the outcome of this land use application. Staff does not believe that a strict interpretation of the conditional use setback requirement is appropriate in this case.

In summary, staff supports this proposal for the following reasons:

- It maintains the existing view corridors on either side of the house.
- It does not result in an increase to the footprint of the existing structure. A rear addition, on the other hand, would increase the existing footprint, thereby creating more impervious surface and stormwater runoff.

³ MMC Section 19.602.1

- It does not move any part of the structure closer to the Willamette River. A rear addition, on the other hand, would place the structure closer to the river, which is expressly discouraged by the WG zone and Goal 15.
- It does not involve new construction in the 100-year flood plain. A rear addition, on the other hand, would place the new construction within the 100-year flood plain.

Code Authority and Decision Making Process

City of Milwaukie Zoning Ordinance references:

1. Section 19.303 – Residential Zone R-5
2. Chapter 19.320 – Willamette Greenway Zone
3. Chapter 19.600 – Conditional Uses
4. Section 19.1011.3 – Minor Quasi Judicial Review
5. Chapter 19.1400 – Transportation Planning/Design Standards/Procedures
6. Title 16 – Erosion Control
7. Title 18 – Flood Hazard Regulations

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 approval criteria and evaluates testimony and evidence received at the public hearing.

The Commission has the following options:

1. Approve the applications and adopt the recommended findings and conditions in support of approval.
2. Adopt additional findings and conditions in support of approval to comply with the Milwaukie Municipal Code.
3. Deny the applications upon a finding that they do not meet approval criteria.

The final decision on this application, which includes any appeals to the City Council, must be made by September 6, 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

City departments, state and regional agencies, the neighborhood district association, and interested parties reviewed the applicant's proposal. The following is a summary of the comments that were received. See the corresponding attachments for further details.

1. Tom Larsen, City Building Official. See Attachment 6 (Comments) for more detail.
2. Ron Schumacher, Deputy Fire Marshal for Clackamas County Fire District #1. The fire marshal has no recommended conditions of approval. See Attachment 6 (Comments) for more detail.
3. Island Station Neighborhood District Association (NDA). The NDA Land Use Committee has no concerns about or objections to the applications as proposed. See Attachment 6 (Comments) for more detail.
4. Kenneth Gambell, Neighbor. Mr. Gambell is opposed to the applicant's proposal. The proposal, if approved, will significantly diminish his view of the river, which he has enjoyed for the past 23 years. He asks the question: Are waterfront property owners the only property owners entitled to a view? He also claims that his property values will decrease due to the loss of view. See Attachment 6 (Comments) for more detail.

Attachments

1. Findings in Support of Approval
2. Conditions in Support of Approval
3. Zoning Compliance Report
4. Applicant's Narrative (to Planning Commission only)
5. Site Plans and Drawings (to Planning Commission only)
6. Comments

ATTACHMENT 1

Recommended Findings in Support of Approval

1. The applicant proposes to remodel an existing 2-story single-family house at 12015 SE 19th Avenue. The remodel involves raising the main floor of the house by three feet in order to provide three additional feet of height to the daylight basement. The existing daylight basement is approximately seven feet in height and contains one of the structure's two bedrooms. The applicant does not plan to alter the footprint of the existing house.

The property at 12015 SE 19th Avenue is located on the Willamette River. It is in the R-5 zone, the Willamette Greenway (WG) zone, and the 100-year flood plain. Because the property is in the WG zone and the applicant is proposing to substantially alter the appearance of the existing house, the applicant's proposal is subject to the WG zone review criteria. Moreover, all development in the WG zone is a conditional use and is subject to the provisions of Chapter 19.600 Conditional Uses.

2. Applications CU-06-02 and TPR-06-03 have been processed and public notice has been provided in accordance with MMC Section 19.1011.3 – Minor Quasi-Judicial Review and MMC Section 19.320.5 – Willamette Greenway Zone Procedures.
3. The site is located in the Residential Zone R-5 where single-family dwellings are an outright permitted use. As demonstrated by Attachment 3, Zoning Compliance Report, the applicant's proposal complies with all Residential Zone R-5 development standards found in MMC Section 19.303.
4. Transportation Plan Review applies when a proposal is subject to the provisions contained in MMC Chapter 19.1400 – Transportation Planning. MMC Chapter 19.1400 applies to existing single-family structures when the proposal meets the definition for substantial redevelopment. Substantial redevelopment is defined as any renovation, expansion, or alteration of an existing structure that has a development permit value that exceeds fifty percent of the assessed value of the existing structure.

If the proposal meets the definition for substantial redevelopment and the estimated permit value is greater than \$101,296,⁴ then all provisions relating to adequate transportation facilities contained in MMC Chapter 19.1400 apply to the proposal. If, however, the proposal meets the definition for substantial redevelopment but does not exceed the \$101,296 threshold, then only some of the provisions apply. In this case, the proposal meets the definition for substantial redevelopment but does not exceed the \$101,296 threshold. The proposal, therefore, needs to comply with the provisions contained in MMC Section 19.1403.1.B(1–6). As

⁴ MMC Section 19.1403.1.B

conditioned, the applicant's proposal will comply with all relevant transportation requirements. See Attachment 3, Zoning Compliance Report, for more detail.

5. The site is located within the Willamette Greenway Zone. The regulations contained in MMC Chapter 19.320 – Willamette Greenway Zone apply to all land use actions, any changes or intensification of use, and any development permitted in the underlying zone. The definition for intensification in MMC Section 19.320.4 includes any remodeling to the exterior of the structure where the remodeling substantially alters the appearance of the structure. The Planning Commission finds that the applicant's proposal meets the definition for intensification and is subject to the provisions of the WG zone. The review criteria for evaluating development in this zone are contained in MMC Section 19.320.6 – Criteria and are addressed in detail in Findings 6 – 17 below. As conditioned, the application will comply with MMC Section 19.320 – Willamette Greenway Zone.
6. MMC Section 19.320.6.A – Land Committed to an Urban Use. The property located at 12015 SE 19th Avenue is zoned R-5 and has a Comprehensive Plan designation of Moderate Density (MD) residential. The area in which this property is located has been committed to an urban use for many decades.
7. MMC Section 19.320.6.B – Compatibility with River Character. The site is developed with a modest single-family home, which is set back from the river as far as practicable. Residential uses are an outright permitted use in this area, and the site is developed in a similar manner as other adjacent properties
8. MMC Section 19.320.6.C – Protection of Views.

The Planning Commission finds that there are three documents that address views that are relevant to this proposal, and they are as follows:

- Oregon's Statewide Planning Goal 15: Willamette River Greenway
- Milwaukie's Comprehensive Plan: (1) Willamette Greenway Element, and (2) Open Spaces, Scenic Areas, and Natural Resources Element.
- Milwaukie's Zoning Code: (1) Residential R-5 Zone, and (2) Willamette Greenway Zone

Goal 15. The purpose of Statewide Planning Goal 15 (Willamette River Greenway) is to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of the lands along the Willamette River. With regard to views, it specifically states that identified scenic qualities and viewpoints shall be protected.

Willamette Greenway Element. As required by Goal 15 (Willamette River Greenway), the City adopted the Willamette Greenway Element of the

8. MMC Section 19.320.6.C – Protection of Views. (Continued)

Comprehensive Plan in September 2000. Views are addressed in the Goal Statement and Objective #5.

- Goal Statement Summary: The City's inventory of Willamette River Greenway resources and uses identified three recreation areas with river views, namely the Jefferson Street boat ramp, open space at the Kellogg sewage treatment plant, and Spring Park. The downtown area was identified as providing the major viewing opportunities accessible to the public. The only unobstructed view corridor was identified as being on Jefferson Street looking west.
- Objective #5 Summary: The City will evaluate all development proposals within the Willamette River Greenway for their effects on access to visual corridors.

Open Spaces, Scenic Areas, and Natural Resources Element. The City adopted this element of the Comprehensive Plan in December 2002. Views are addressed in Objective #3.

- Objective #3 Summary: The City wants to preserve and protect views to and from the Willamette River for the enjoyment of current and future City residents and visitors. However, the City recognizes that the majority of the unobstructed public views of the river are in the downtown area, as most of the City's waterfront properties are privately owned and in established residential areas.

Residential R-5 and Willamette Greenway Zones. While Goal 15 and the Milwaukie Comprehensive Plan provide important background information and policy direction guidance, it is the zoning ordinance that provides the standards and criteria upon which a development proposal must be reviewed. In this case, MMC Sections 19.303 – Residential Zone R-5 and 19.320 – Willamette Greenway Zone are the relevant zoning ordinances.

- The height limit in the R-5 zone is 35 feet or 2-1/2 stories, whichever is less.
- The WG zone has no such objective standard. It requires the Planning Commission to take the protection of views into consideration when evaluating a development proposal in the WG zone. It also states that waterfront property owners may be allowed to remove trees and vegetation to create one view window from the primary residential structure to the river when suitable views cannot be achieved through pruning or other methods. In other words, even waterfront property owners are not guaranteed a view of the river.
- The WG zone and Goal 15 also require development to be directed away from the river to the greatest possible degree.⁵

⁵ MMC Section 19.320.7 and Goal 15 Section C.3.j

8. MMC Section 19.320.6.C – Protection of Views. (Continued)

The applicant's proposal is well below the 35-foot height limit of the R-5 zone. The existing structure is 12 feet tall and the proposed structure would be 15 feet tall.⁶ Moreover, the front of the applicant's house sits approximately eight feet below street level. The additional three feet of height will minimally impact public views to and from the river to those on the water or on SE 19th Avenue. However, this additional three feet of height will significantly diminish the private views currently enjoyed by the property owner at 12080 SE 19th Avenue, which is across the street from the applicant.

THE PLANNING COMMISSION MAKES THE FOLLOWING FINDINGS WITH REGARD TO THE VIEW IMPACTS OF THE PROPOSAL:

- 8A. The criteria in the WG zone chapter are not objective. They are meant to be taken into consideration when evaluating a development proposal in the WG zone.
- 8B. The nature or amount of views to be protected is not specified in the WG zone chapter. Goal 15 refers to identified viewpoints. The Comprehensive Plan identifies a number of public viewpoints. The view from the applicant's property is not listed as an identified viewpoint.
- 8C. The majority of unobstructed public views of the river are in the downtown area, as most of the City's waterfront properties are privately-owned and in established residential areas. Even waterfront property owners are not guaranteed a view of the river.
- 8D. Zoning and development standards are not meant to prevent property owners from developing their property in a reasonable manner. The applicant's proposal allows for reasonable redevelopment of the property.
- 8E. Zoning and development standards, such as those found in the R-5 and WG zones, are meant to minimize and mitigate—not eliminate—impacts to adjacent property owners.
- 8F. Two R-5 zone development standards, in particular, serve to minimize view impacts to adjacent property owners, namely: height limitations and side yard setbacks. The applicant is proposing to raise the height of her house by three feet, from 12 feet to 15 feet, which is well below the 35-foot height limitation of the R-5 zone. The applicant is not proposing to decrease the existing side yard setbacks. Side yard setbacks serve a number of functions, one of which is to create separation between structures on adjacent

⁶ As measured from the average elevation of the finished grade at the front of the building to the mean height level between the eaves and the ridge.

8. MMC Section 19.320.6.C – Protection of Views. (Continued)

properties. In this case, that space serves as a natural view corridor.

- 8G. In the absence of topographic changes that naturally facilitate views over existing structures, creation and maintenance of view corridors is a widely recognized tool for capturing views. Public rights-of-way are often used in this capacity. The Comprehensive Plan requires that development proposals in the WG zone be evaluated as to their impacts on “visual corridors.” Since the applicant does not propose to decrease the existing side yard setbacks, the applicant’s proposal maintains the existing view corridors.
- 8H. The proposal does not increase the existing structure’s footprint. It therefore does not create additional impervious surface or additional stormwater runoff.
- 8I. The proposal does not place the existing structure closer to the river, which is expressly discouraged by Goal 15 and by MMC Section 19.320.7 of the WG zone.
- 8J. The proposal does not involve new construction in the 100-year flood plain.

In summary, the Planning Commission finds that the applicant’s proposal has a negligible impact on public views either to or from the river. In this particular situation, the view impacts are limited to the private realm and the divergent interests of two private parties. The applicant’s proposal to increase the height of the existing house by three feet is not unreasonable and has the least impact on the river and the 100-year flood plain. As conditioned, the application will comply with the view protection and maintenance provision of the WG zone.

While it is unfortunate that this proposal impacts the views of the property owner across the street, approval of this proposal does not prevent this property owner from redeveloping the property at 12080 SE 19th Avenue, which currently consists of four platted lots that are each 50 feet by 100 feet. Development options include adding a second story to the existing single-story house and/or building new single-family houses that are designed to capture views of the river either over or between the existing houses across the street.

- 9. MMC Section 19.320.6.D – Landscaping, Aesthetic Enhancement, Open Space, and Vegetation. The existing house is more than 150 feet away from the river. The area between the house and the river is mostly composed of grassy open space that slopes gently down toward the river. Adjacent properties are similarly vegetated.
- 10. MMC Section 19.320.6.E – Public Access. The proposal is on private property with no public access to the river.

11. MMC Section 19.320.6.F – Water-oriented and Recreational Uses. The applicant's proposal will increase views to the river from the daylight basement floor of the house.
12. MMC Section 19.320.6.G – Views between the Willamette River and downtown Milwaukie. Not applicable.
13. MMC Section 19.320.6.H – Protection of Water Quality Resource (WQR) Area. The applicant's proposal does not involve any work in the water quality resource area, the edge of which is 50 feet inland from the edge of the Willamette River bank. At the time of submission of a building permit, the applicant will be required to show that the proposed development will not result in direct stormwater discharge to the water quality resource area. As conditioned, the application will comply with MMC Section 19.320.6.H.
14. MMC Section 19.320.6.I – Design Review Committee Recommendations. Not Applicable.
15. MMC Section 19.320.6.J – Conformance with Comprehensive Plan Policies. The property located at 12015 SE 19th Avenue is zoned R-5 and has a Comprehensive Plan designation of Moderate Density (MD) residential. The proposal involves the remodeling of a modest single-family home. Single-family residential uses are consistent with an MD Comprehensive Plan designation.
16. MMC Section 19.320.6.K – Consistent with Division of State Lands (DSL) Plans and Programs. The proposal is consistent with DSL Plans and Programs in that it does not propose any work in or near the Willamette River and it conforms with Goal 15.
17. MMC Section 19.320.6.L – Vegetation Buffer. The applicant is not proposing any work in or near the WG zone vegetation buffer. This section does not apply.
18. MMC Section 19.600 – Conditional Uses. As previously stated, all development in the Willamette Greenway zone is considered a conditional use and is subject to Chapter 19.600 – Conditional Uses. As a result, the review criteria contained in MMC Section 19.601.2 must be met. They are as follows:
 - 18A. MMC Section 19.601.2.A – The use meets the requirements of a conditional use in the zone currently applied to the site. The existing and proposed use is single-family residential, which is an outright permitted use in the underlying zone. As demonstrated by Findings 6 – 17, the proposal meets the requirements of the WG zone.
 - 18B. MMC Section 19.601.2.B – The use meets the standards for the underlying zone. See Attachment 3, Zoning Compliance Report.

- 18C. MMC Section 19.601.2.C – The proposal satisfies the goals and policies of the comprehensive plan which apply to the proposed use. See Findings 6 and 15.
- 18D. MMC Section 19.601.2.D – The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features. The proposal is for the remodel of an existing use, a single-family residence, which has been located on the site for at least 50 years. The surrounding properties are similarly developed with single-family residences.
- 18E. MMC Section 19.601.2.E – The proposed use is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use. The proposal is for the remodel of an established single-family residence. The proposal will have no additional impacts to or on the existing transportation system, public facilities, or local services.
- 18F. MMC Section 19.601.2.F – The proposed use complies with the transportation requirements and standards of Chapter 19.1400. See Attachment 3, Zoning Compliance Report.

As proposed, the application meets the requirements of MMC Section 19.601.2 – Review Criteria.

19. MMC Section 19.602.1 – Yards. This is the only conditional use development standard that applies to the proposal. When a conditional use is proposed in a residential zone, all setbacks shall be equal to at least two thirds (2/3) of the height of the principal structure. The existing house is 12 feet in height, and the proposal involves raising it 3 feet. Since conditional use setbacks are relative to height, increasing the height of the principal structure increases the setback requirement. The required conditional use setbacks for the proposal are detailed in the following table:

Table 1: Conditional Use Setbacks

Setback	Minimum Setback Dimension: Existing Height	Minimum Setback Dimension: Proposed Height	Existing Setback Dimension²
Front	8 feet	10 feet	20 feet
North Side	8 feet	10 feet	5.25 feet
South Side	8 feet	10 feet	6 feet
Rear	8 feet	10 feet	145 feet

As shown in Table 1 above, the existing and proposed side yard setbacks do not conform to the requirements of MMC Section 19.602.1. Since the requirements of this chapter came into effect after the construction of the

existing house, the house is legally nonconforming with regard to this setback requirement. The proposal to raise the house three feet would technically push the house further out of conformance with regard to this side yard setback requirement.

The Planning Commission finds that the increase in the nonconformity is a technical increase and not an actual increase. The existing house is already nonconforming with regard to conditional use side yard setbacks, and the applicant is not proposing to change these setbacks. Moreover, the existing view corridors on either side of the house will remain the same regardless of the outcome of this land use application.

20. 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 will comply with MMC Title 16 – Erosion Control.
21. The property located at 12015 SE 19th Avenue is in a special flood hazard area within the City of Milwaukie. The Planning Commission finds that MMC Title 18 – Flood Hazards applies to the proposed development. MMC Title 18 requires that no structure or land shall be constructed located, extended, converted or altered without full compliance with the provisions of MMC Section 18.04. As conditioned, the application will comply with MMC Title 18 – Flood Hazards.

ATTACHMENT 2

Recommended Conditions in Support of Approval

1. Final site and architectural plans shall be in substantial conformance with the plans approved by this action, which are the architectural plans, site plans, and application submission materials stamped received May 9, 2006 by the Milwaukie Planning Department.
2. Prior to issuance of a building permit the applicant shall:
 - a. Provide a narrative describing all actions taken to comply with conditions of approval.
 - b. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
 - c. Provide a stormwater management plan showing that the proposed development will not result in direct stormwater discharge to the water quality resource area. If a soakage trench is proposed to capture stormwater runoff, the design shall be approved by the Building and Engineering Departments.
 - d. Trim all vegetation along the property's frontage and in the existing view corridors in such a manner so as to not completely obstruct the existing views to the river on either side of the existing house.
 - e. Comply with the applicable criteria of MMC Chapter 18.04 and ORSC Section R323.1.1 regarding flood hazard construction.
 - f. Trim and/or remove all signs, structures, or vegetation in excess of three feet in height at all vision clearance areas on the proposed development property. Limb trees and trim tree branches located in the vision clearance area to a height of 8 feet.
 - g. In the event that the building permit value for the proposed development is greater than the value threshold of MMC Section 19.1403.1(B), apply for a Type II Transportation Plan Review and comply with all applicable criteria of MMC Chapter 19.1400.
 - h. Provide an erosion control plan and obtain an erosion control permit, if necessary.
3. After final building inspection, the applicant shall:
 - a. Maintain the vegetation along the property's frontage and in the existing view corridors in such a manner so as to not completely obstruct the existing views to the river on either side of the existing house.

ATTACHMENT 3

Zoning Compliance Report

Residential Zone R-5 Development Standards			
Standard	Required	Proposed	Staff Comment
1. Minimum lot size	5,000 SQFT	10,000 SQFT	Complies with development standard.
2. Minimum Lot Width	50 feet	50 feet	Complies with development standard.
3. Minimum Lot Depth	80 feet	200 feet	Complies with development standard.
4. Minimum Setbacks	20 feet (front & rear) 5 feet (side)	20 feet (front) 145 feet (rear) 5.25 feet (north side) 6 feet (east side)	Complies with development standard.
5. Off-Street Parking and Loading	Yes	Maintain existing off-street parking	Two parking spaces are required. One covered parking space exists. Property is non-conforming but not going further out of conformance.
6. Height Restriction	2-1/2 stories or 35 feet	15 feet	Complies with development standard.
7. Lot Coverage	35% max.	13%	Complies with development standard.
8. Minimum Vegetation	25% min.	78%	Complies with development standard.
9. Transition Area	No	No	Not Applicable
10. Frontage	35 feet	50 feet	Complies with development standard.
11. Transportation Requirements	Yes	Comply with Vision Clearance standards	As conditioned, application will comply. See Transportation Requirements table on next page.

Transportation Requirements			
MMC Section	Required	Proposed	Staff Comment
1. 19.1409.1.D Required Frontage	Yes	Existing	Complies with development standard. See Item 10 in R-5 Development Standards table on previous page.
2. 19.1409.2 Additional Setbacks	No	No	Not Applicable. The proposal fronts SE 19 th Avenue. SE 19 th Avenue is not a major street. Additional setbacks are only required on major streets.
3. 19.1409.2.B Right-of-Way Dedication	No	No	Complies with development standard. Existing 60-foot right-of-way width exceeds 50-foot requirement for a local street.
4. 19.1409.2.E Vision Clearance	Yes	Will Comply	As conditioned, application will comply.
5. 19.1410.2 Public Sidewalks	No	No	Not applicable. Substantial redevelopment of existing single-family residence is excluded from public sidewalk requirement.
6. 19.1413 Access Management	Yes	Existing	Complies with development standard. Shared driveway approach is wider than 9 feet and narrower than 18 feet.

**CITY OF MILWAUKIE
BUILDING
DEPARTMENT**

Memo

To: Susan Shanks, Associate Planner

From: Tom Larsen, Building Official 

Date: May 16, 2006

Re: CU-06-02, etc.

1. All work shall conform to applicable codes and standards.
2. If a soakage trench is proposed to capture stormwater runoff, the design shall be reviewed and approved by the Building and Engineering Departments.
3. At the time of building permit submittal, detailed plans shall be submitted showing the ability of the existing foundation to carry the additional loads. Structural details shall show the re-connection of the walls after raising the house.

Clackamas County Fire District #1

Fire Prevention Office



E-mail Memorandum

To: Susan Shanks, City of Milwaukie Planning Dept
From: Ron Schumacher, Deputy Fire Marshal, Clackamas County Fire District #1
Date: 6/1/2006
Re: CU-06-02 & TPR-06-03; 12015 SE 19th Ave; Welsh

This review is based upon the current version of the Oregon Fire Code (OFC), as adopted by the Oregon State Fire Marshal's Office. The scope of review is typically limited to fire apparatus access and water supply, although the applicant must comply with all applicable OFC requirements. When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access and water supply may be modified as approved by the fire code official. The following items should be addressed by the applicant:

COMMENTS:

The fire department has no comments on this proposal.

LAND USE DISTRICT REVIEW COMMITTEE MEETING MINUTES
Island Station Neighborhood District
Date: 2006 MAY 18
Milwaukie Grange

Members Present:

Charles Bird, Chair
Gary Michael
Molly Hanthorne
Jim Mishler

- I. CALL TO ORDER
- II. INTRODUCTIONS
- II. LAND USE REFERRALS

- 1) Lynn Welsh, 12015 SE 19th Avenue, raise house 3 feet. Concerns and or recommendations:

The committee discussed the referral. There were no objections to this referral.

- 2) Richard and Alicia Hamilton, 11921 SE 19th, Remodel. Concerns and or recommendations;

The committee expressed that the proposed modifications result in an improvement to the exterior of the house. The committee was impressed with the design and believes that it will be a proud to live next door to the completed project.

The committee also points out that the proposed modification will eliminate at least one dwelling unit. The two units or reportedly, three units that have been occupied in this structure over the past years will be reduced to one. The house will become a single family dwelling. The committee considered this an extremely desirable outcome and gives it full support.

It is believed that by reducing the units will reduce pressure on the limited parking along 19th which has been a problem. This portion of 19 is at the extreme North West corner of the neighborhood. As such the vast majority of vehicle traffic is local. There is virtually no through traffic except for sightseers and users of the bike pedestrian trail through Milwaukie's Water Front Park.

The committee supports the overall projects objective and is pleased with the exterior look depicted in the application package. Details of lay out and structure were between the owner and the city engineering department and not a matter for the committee. The following comments were made on the REQUESTS found in the Executive Summary provided by Susan Shanks, Associate Planner to each committee member:

a. ADJUSTMENT REQUEST, Landscape Strip to 0-feet wide

The Island Station NDA Land Use Committee supports the ADJUSTMENT REQUEST.

b. VARIANCE REQUEST, Side walk, Parking strip, and Street.

The Island Station NDA Land Use Committee supports the VARIANCE REQUEST.

c. EXCEPTION REQUEST, Funds-in-lieu-of construction.

The Island Station NDA Land Use Committee has no objection to this REQUEST.

III. REPORTS

IV. DISCUSSION

V. MATTERS FROM THE COMMITTEE

VI. INFORMATION SHARING

VII. FUTURE MEETING DATE/AGENDA ITEMS:

VIII. ADJURN: Meeting was adjourned at 6:30 pm

Charles Bird, Chair

RECEIVED

MAY 30 2006

CITY OF MILWAUKIE
PLANNING DEPARTMENT

May 28, 2006

City of Milwaukie
Planning Department
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

Dear Susan Shanks, Associate Planner

This letter is to express my concerns regarding the loss of my view if the proposed remodel is allowed.

I purchased my home over 23 years ago from the estate of my Grandparents. The house was designed and built by my Grandfather and Father to look over the existing houses with the purpose of having a view of the river.

The view though temporarily blocked by brush and overgrown trees is still there. I have contacted Miss Welsh and she assured me that she would prune the existing overgrown trees and bushes at 12015 SE 19th Ave. At the time of this letter she has not done so, so I am unable to furnish photos of the view from my property. The previous owner was very courteous and always kept these bushes and trees trimmed. He respected the fact that we also enjoyed the view and was a good neighbor.

I also believe that allowing this permit to raise the house will set a precedent that may affect my other lots and the views of my neighbors and myself in the future. If the views are taken, they will be gone forever. Who is entitled to a view, just the waterfront homes?

Miss Welsh's home is already non-conforming on the height and yard widths, and raising the house will move it further out of conformance. Why set standards if new owners are allowed to keep changing them?

Miss Welsh has told me that she has other options, but this plan is the least expensive. If my view is decreased, so will the value of my home and property.

From the Willamette River Greenway Plan 19.320.6 criteria, the following shall be taken into account in the consideration of a conditional use,

- Compatibility with the scenic, natural, historic, economic and recreational character of the river.
- Protection of views, both toward and away from the river.

Miss Welsh states that since falling in love with the house and purchasing it in November of 2005, she has considered many options to make it more livable. I also love my home and the view of the river. My family has been living in this neighborhood for a very long time. I enjoy a good rapport with my neighbors and would like to see this continue.

Respectfully,



Kenneth M Gambell

12080 SE 19th Avenue
Milwaukie OR
97222

Attachment 6



To: Planning Commission

Through: Katie Mangle, Planning Director *KM*
Paul Shirey, Engineering Director *PS*

From: Susan P. Shanks, Associate Planner *SPS*
Zachary John Weigel, P.E., Civil Engineer *ZJW*

Date: June 13, 2006

File: CU-06-03, TPR-06-06, VR-06-02, HIE-06-02

Applicant: Richard and Alicia Hamilton (property owners)

Site Address: 11921 SE 19th Avenue

NDA: Island Station

Action Requested

Approve applications CU-06-03, TPR-06-06, VR-06-02, and HIE-06-02 and adopt the recommended findings and conditions in support of approval.

Project Description

The applicant proposes to remodel an existing single-family house at 11921 SE 19th Avenue that formerly contained two separate dwelling units. The existing house contains a finished attic, which is currently used as a bedroom; a main floor; and a partially finished basement, which was rented as a separate apartment by the previous owner. For purposes of this review, the proposed remodel involves the conversion of the attic into a second story through the construction of a different roofline, which will result in an increase in the vertical massing of the existing house. The applicant proposes to make only minor alterations to the footprint of the existing house.

Additional proposed work includes the removal of some exterior decking off the rear of the house and the construction of several low retaining walls to create level landscaped areas in the backyard area.

The property at 11921 SE 19th Avenue is located on the Willamette River. It is in the R-5 zone, the Willamette Greenway (WG) zone, and the 100-year flood plain. Because the property is in the WG zone and the applicant is proposing to

substantially alter the appearance of the existing house, the applicant's proposal is subject to the WG zone review criteria. Moreover, all development in the WG zone is a conditional use and is subject to the provisions of Chapter 19.600 Conditional Uses.

Background Information

The existing house was built in 1938 and includes a detached garage, exterior wood decks, and various concrete walkways. As previously stated, the existing house contained two separate dwelling units. The applicant has already removed the second kitchen facility in the basement, and the proposed remodel will unify the once divided house.

Key Issues

1. Has the applicant met the Adjustment and Variance criteria for elimination of the parking strip, landscape strip, and sidewalk? If not, should the applicant build the improvements or pay a fee-in-lieu of construction?
2. Has the applicant met the Variance criteria for elimination of the curb and reduction of the half-street and travel lane widths? If not, should the applicant build the improvements or pay a fee-in-lieu of construction?
3. Has the Willamette Greenway view protection criterion been met?
4. Have the R-5 zone and conditional use setback standards been met?

Analysis of Key Issues

Key Issue #1 – Has the applicant met the Adjustment and Variance criteria for elimination of the parking strip, landscape strip, and sidewalk? If not, should the applicant build these improvements or pay a fee-in-lieu of construction?

The subject property fronts on SE 19th Avenue, a partially developed right-of-way that is 60 feet in width. SE 19th Avenue:

- Is a local street with low-volume traffic
- Has two 5.5-foot wide travel lanes that allow 2-way travel
- Has 11 to 14 feet of paved roadway width
- Has unimproved gravel and vegetated shoulders
- Has significant topographic changes west of the paved roadway

The existing topographic changes limit the area available for street improvements along the property's frontage. Based on a topographic survey provided by the applicant, staff has calculated that only the eastern 22 feet of right-of-way width is available for street improvements. The Engineering Department has determined that it is more important to leave this 22 feet of right-of-way available for additional roadway pavement than to improve it with a parking strip, landscape strip, or sidewalk.

As a result, the required parking strip, landscape strip, and sidewalk would need to be built in the sloped area of the right-of-way. This would require retaining wall construction along the property's entire frontage. If such improvements were required, an unsafe access situation would be created for the applicant. There would be insufficient distance between the new improvements, which would be built at street level, and the front of the applicant's garage for construction of a safely-sloped driveway to access the garage. The applicant would have approximately 16 feet of distance to drop eight feet of elevation.¹

Staff believes that the applicant has met the relevant adjustment and variance criteria for elimination of the parking strip, landscape strip, and sidewalk and recommends approval of these requests.

Key Issue #2 – Has the applicant met the Variance criteria for elimination of the curb and reduction of the half-street and travel lane widths? If not, should the applicant build these improvements or pay a fee-in-lieu of construction?

As indicated above, staff has determined that 22 feet of right-of-way width is available for street improvements along the property's frontage. The existing paved roadway width is 11 to 14 feet. The minimum required paved roadway width is 20 feet, or two 10-foot travel lanes.

In order for staff to recommend approval of the applicant's request to eliminate the curb requirement and reduce the half-street and travel lane width requirements, the applicant must show that there is an unusual condition pertaining to the property or the property's frontage over which the applicant has no control. Staff has determined that the required 10-foot travel lanes and curb will fit within the area available for street improvements on SE 19TH Avenue along the property's frontage. Staff, therefore, cannot recommend approval of the applicant's request to eliminate the curb requirement and reduce the half-street and travel lane width requirements.

In the alternative, staff can recommend approval of an exception request for a fee-in-lieu of construction of these street improvements as long as safety hazards do not exist and will not be created. Staff has determined that a safety hazard does not exist and will not be created by the absence of curb and additional travel lane width. Widening the paved roadway to the required minimum width will effectively double the street width for a length of 50 feet, which is the length of the property's frontage, and would require a substantial asphalt transition at the northern limits of this widened portion of street to transition vehicles back to the existing street width. Staff has determined that widening the street for a distance of 50 feet may create a situation less safe than what currently exists. Due to the amount of width that would be needed to bring SE 19th Avenue up to

¹ These figures are based on the following assumptions: (1) that the applicant adds 9 feet of pavement to the existing paved roadway where the roadway edge currently exists along the property's frontage, and (2) that the applicant constructs an 8-foot wide parking strip, 6-inch wide curb, 5-foot wide landscape strip, and 6-foot wide sidewalk.

the minimum standard, staff believes that this block of SE 19TH Avenue should be widened to a full 20-foot width in one construction project in the future.

Given that a widened street would potentially make SE 19th Avenue less rather than more safe, staff recommends approval of an exception request for a fee-in-lieu of construction costs for curb and additional travel lane width.

Moreover, staff recognizes that the Island Station Neighborhood Association would rather see sidewalk improvements on SE River Road and SE 22nd Avenue than on SE 19th Avenue or other similar streets in the neighborhood. The monies collected through the fee-in-lieu of construction exception process would be put toward other necessary and desired improvements within the neighborhood.

Key Issue #3 – Has the Willamette Greenway view protection criterion been met?

There are three documents that address views that are relevant to this proposal. They are as follows:

- Oregon's Statewide Planning Goal 15: Willamette River Greenway
- Milwaukie's Comprehensive Plan: (1) Willamette Greenway Element, and (2) Open Spaces, Scenic Areas, and Natural Resources Element.
- Milwaukie's Zoning Code: (1) Residential R-5 Zone, and (2) Willamette Greenway Zone

There are a number of ways to interpret the various policies, goal statements, and review criteria contained in these documents with regard to existing and proposed development projects that are located in the Willamette Greenway (WG) zone. Public and private views of the Willamette River are desirable on many levels, yet the documents cited above provide only limited direction with regard to their creation and protection.

Planning Goal 15 requires protection of identified viewpoints. Milwaukie's Comprehensive Plan identifies a number of viewpoints, all of which are public in nature. The Comprehensive Plan recognizes that most riverfront property in Milwaukie is privately owned. Staff interprets these statements to mean that it is less realistic to protect views to and from the river when the property in question is privately owned. The review criteria contained in the WG zone, however, does not distinguish between public and private views. It simply requires that views be taken into consideration when evaluating a development proposal in the WG zone.

Generally speaking, each use zone has its own height limitation, and this limitation is applied to all properties in that zone regardless of location. In this case, the property in question is in the R-5 zone, and the height limitation for this zone is 35 feet. The applicant is not proposing to exceed the height limitation of the R-5 zone, and there is nothing in the WG zone that requires waterfront property owners to either provide views over existing or proposed structures and/or to build at a lower height.

The existing structure is 14.5 feet tall and the proposed structure would be 20.5 feet tall.² Since the existing house already obstructs the view, the additional six feet of height will minimally impact the existing public views to and from the river to those on the water or on SE 19th Avenue. Staff is unaware of any private views currently enjoyed by adjacent property owners that would be impacted by this proposal. The property immediately across the street at 11912 SE 19th Avenue is composed of three separate platted lots that are each 50 by 130 feet. An existing house straddles the property line between the two northernmost lots and is not directly affected by this proposal. However, the southernmost platted lot is directly across the street from the subject property, is currently vacant, and could potentially be developed with a single-family residence. The view from this vacant lot would be the one most impacted by this proposal. See Photos 1 and 2 on the following page for more detail.

Staff believes that strictly applying the Willamette Greenway zone's view criterion to waterfront property would unfairly restrict these property owners from developing their properties in a manner similar to their neighbors. In other words, staff believes that the City can encourage but should not require waterfront property owners to provide views over existing or proposed structures.

² As measured from the average elevation of the finished grade at the front of the building to the mean height level between the eaves and the ridge.

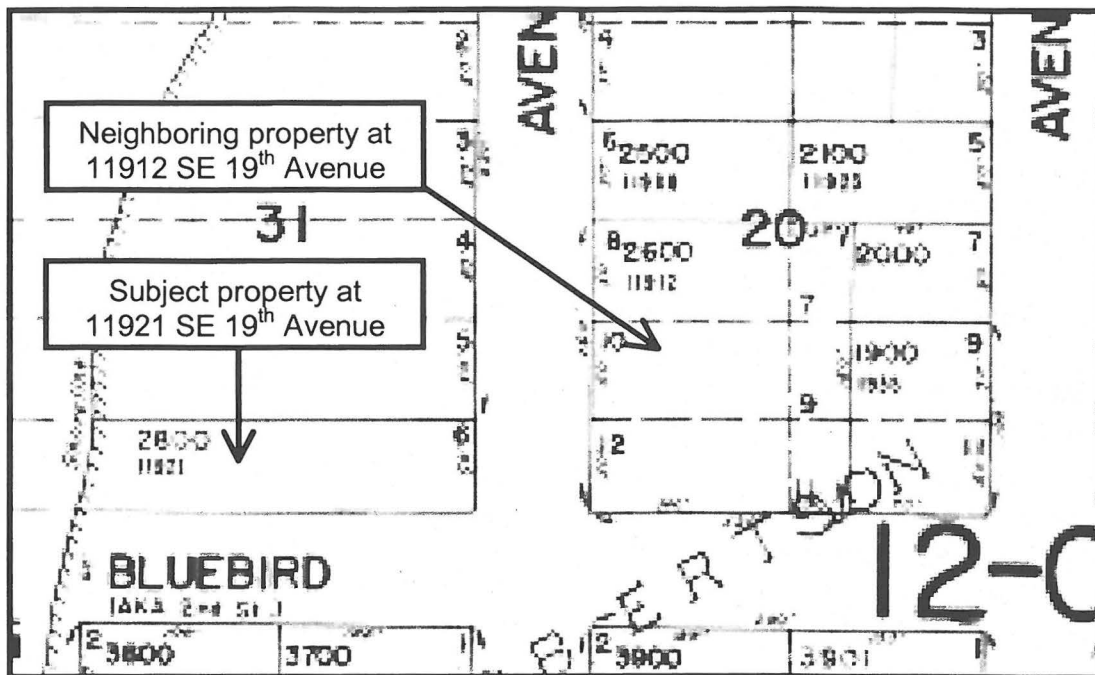


Photo 1: Tax map showing subject property in relation to neighboring properties.

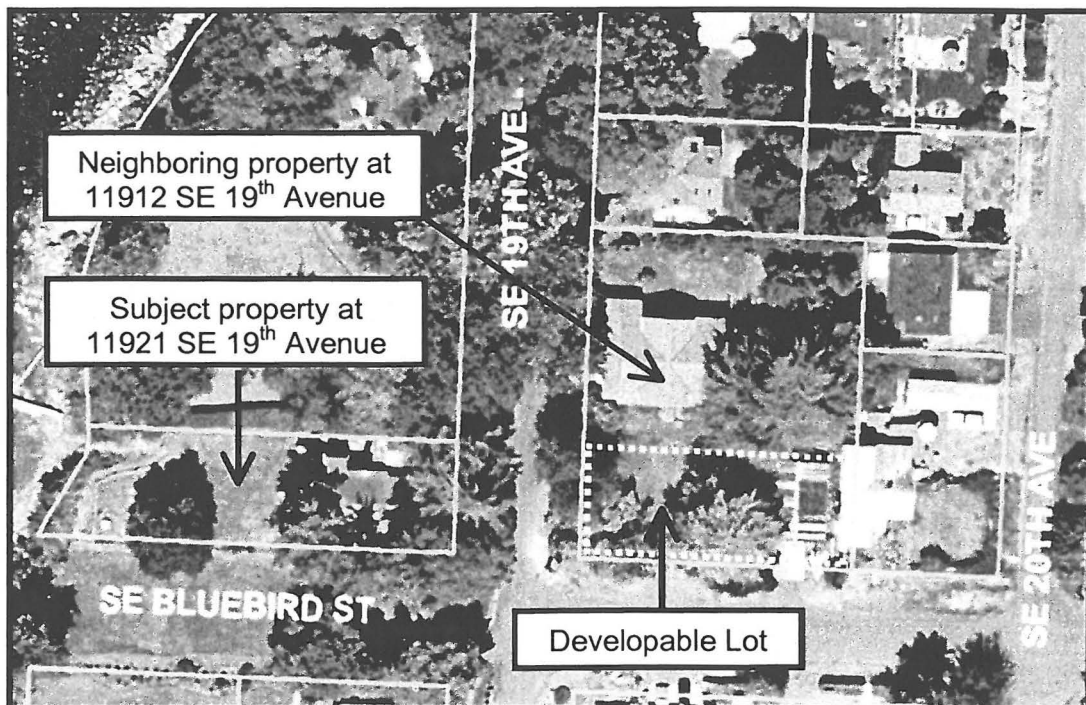


Photo 2: Aerial photo showing subject property in relation to neighboring properties.

Just as the WG zone does not distinguish between public and private views, neither does it distinguish between views over structures and views between structures. The Comprehensive Plan, on the other hand, requires development proposals to be evaluated for their impact on "visual corridors". Staff believes that requiring waterfront property owners to create and/or maintain view corridors is more realistic and reasonable than requiring property owners to provide views over existing or proposed structures.

All residential zones have side yard setback requirements. Side yard setbacks serve a number of functions, one of which is to create separation between structures on adjacent properties. In this case, that space serves as a natural view corridor toward the river. The applicant proposes to decrease the existing north side yard setback by less than one foot and to maintain the existing south side yard setback. The proposal, therefore, will substantially maintain the existing view corridors on either side of the house. Additionally, there is an undeveloped public right-of-way (SE Bluebird Street) that abuts the site to the south that serves as a view corridor to and from the river (see Photo 3).



Photo 3: View of river from SE 19th Avenue through undeveloped right-of-way (SE Bluebird Street) view corridor, which abuts the property at 11921 SE 19th Avenue to the south.

Key Issue #4 – Have the R-5 zone and conditional use setback standards been met?

As shown in Table 1, the existing house does not meet the setback standards of the R-5 zone for the front and south side yard setbacks. Moreover, the applicant proposes to decrease the front yard setback.

Table 1: R-5 Zone Setbacks

Setback	Minimum Setback Dimension	Actual Setback Dimensions	
		Existing	Proposed
Front	20 feet	15.5 feet	13 feet
North Side	5 feet	10 feet	9.5 feet
South Side (street side)	15 feet	1 foot	1 foot
Rear	20 feet	64 feet	58 feet

Since the R-5 development standards came into effect after the construction of the existing house, the house is legally nonconforming with regard to the existing front and south side yard setback requirements. Generally speaking, a legal structure is allowed to continue and be maintained as a nonconforming structure. Modifications to nonconforming structures are allowed as long as the modifications conform to current development standards and do not push the structure further out of conformance. Since the applicant does not propose to change the south side yard setback, the structure is not being pushed further out of conformance and is, therefore, allowed to continue in its present location.

The proposed front yard setback, on the other hand, is pushing the structure further out of conformance and is not outright allowed by the zoning code. There is a provision, however, in MMC Chapter 19.700 – Variances, Exceptions, and Home Improvement Exceptions that grants property owners relief from the strict provisions of the zoning code for setbacks and lot coverage. To that end, the applicant has applied for a Home Improvement Exception per MMC Section 19.707, and has included the appropriate forms, fees, and materials with this application. As demonstrated by Attachment 3, Zoning Compliance Report, the application qualifies for a home improvement exception, which remedies the proposed nonconforming front yard setback.

In addition to the R-5 zone setback requirements, the proposal must comply with all relevant conditional use setback requirements. As previously stated, all development in the Willamette Greenway zone is considered a conditional use and is subject to Chapter 19.600 – Conditional Uses. When a conditional use is proposed in a residential zone, all setbacks shall be equal to at least two thirds (2/3) of the height of the principal structure.³ The existing height of the house is 14.5 feet, and the proposed height is 20.5 feet. Since conditional use setbacks

³ MMC Section 19.602.1

are relative to height, increasing the height of the principal structure increases the setback requirement. The required conditional use setbacks for this proposal are detailed Table 2:

Table 2: Conditional Use Setbacks

Setback	Minimum Setback Dimensions		Actual Setback Dimensions	
	Existing Height	Proposed Height	Existing	Proposed
Front	9.67 feet	13.67 feet	15.5 feet	13 feet
North Side	9.67 feet	13.67 feet	10 feet	9.5 feet
South Side	9.67 feet	13.67 feet	1 foot	1 foot
Rear	9.67 feet	13.67 feet	64 feet	58 feet

As shown in Table 2, the existing south side yard setback and the proposed front and side yard setbacks do not conform to the requirements of Chapter 19.600 Conditional Uses. Since the requirements of this chapter came into effect after the construction of the existing house, the house is legally nonconforming with regard to the existing setback requirement. However, with the proposed increase in height and the concomitant increase in setbacks, the proposal to increase the height of the house would technically push the house further out of conformance with regard to the proposed front and side yard setback requirements. The applicant's application for a Home Improvement Exception remedies these nonconformities. See Attachment 3, Zoning Compliance Report, for more detail.

Summary

In summary, staff supports this proposal for the following reasons:

- It does not create an unsafe transportation situation on SE 19th Avenue along the property's frontage.
- It satisfies transportation facility requirements for SE 19th Avenue along the property's frontage.
- It maintains the existing view corridors on either side of the house.
- It does not negatively impact any views currently enjoyed by neighboring property owners.
- It results in a minimal increase to the existing structure's footprint and a decrease in the amount of hard surface deck areas. The net effect of these proposed changes results in more landscaped area than currently exists, thereby improving the site's stormwater infiltration capacity.

Code Authority and Decision Making Process

City of Milwaukie Zoning Ordinance references:

1. Section 19.303 – Residential Zone R-5

2. Chapter 19.320 – Willamette Greenway Zone
3. Chapter 19.600 – Conditional Uses
4. Chapter 19.700 – Variances, Exceptions, and Home Improvement Exceptions
5. Section 19.1011.3 – Minor Quasi Judicial Review
6. Chapter 19.1400 – Transportation Planning/Design Standards/Procedures
7. Title 16 – Erosion Control
8. Title 18 – Flood Hazard Regulations

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 Commission has the following options:

1. Approve the applications and adopt the recommended findings and conditions in support of approval.
2. Adopt additional findings and conditions in support of approval to comply with the Milwaukie Municipal Code.
3. Deny the applications upon a finding that they do not meet approval criteria.

The final decision on this application, which includes any appeals to the City Council, must be made by September 7, 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

City departments, state and regional agencies, the neighborhood district association, and interested parties reviewed the applicant's proposal. The following is a summary of the comments that were received. See the corresponding attachments for further details.

1. Tom Larsen, City Building Official. See Attachment 6 (Comments) for more detail.
2. Ron Schumacher, Deputy Fire Marshal for Clackamas County Fire District #1. The fire marshal has no recommended conditions of approval. See Attachment 6 (Comments) for more detail.
3. Island Station Neighborhood District Association (NDA). The NDA Land Use Committee supports all of the applications as proposed. See Attachment 6 (Comments) for more detail.

Attachments

1. Findings in Support of Approval
2. Conditions in Support of Approval
3. Zoning Compliance Report
4. Applicant's Narrative (to Planning Commission only)
5. Site Plans and Drawings (to Planning Commission only)
6. Comments

ATTACHMENT 1

Recommended Findings in Support of Approval

1. The applicant proposes to remodel an existing single-family house at 11921 SE 19th Avenue that formerly contained two separate dwelling units. The existing house contains a finished attic, which is currently used as a bedroom; a main floor; and a partially finished basement, which was rented as a separate apartment by the previous owner. For purposes of this review, the proposed remodel involves the conversion of the attic into a second story through the construction of a different roofline, which will result in an increase in the vertical massing of the existing house. The applicant proposes to make only minor alterations to the footprint of the existing house.

Additional proposed work includes the removal of some exterior decking off the rear of the house and the construction of several low retaining walls to create level landscaped areas in the backyard area.

The property at 11921 SE 19th Avenue is located on the Willamette River. It is in the R-5 zone, the Willamette Greenway (WG) zone, and the 100-year flood plain. Because the property is in the WG zone and the applicant is proposing to substantially alter the appearance of the existing house, the applicant's proposal is subject to the WG zone review criteria. Moreover, all development in the WG zone is a conditional use and is subject to the provisions of Chapter 19.600 Conditional Uses.

2. Applications CU-06-03, TPR-06-06, VR-06-02, and HIE-06-02 have been processed and public notice has been provided in accordance with MMC Section 19.1011.3 – Minor Quasi-Judicial Review and MMC Section 19.320.5 – Willamette Greenway Zone Procedures.
3. The site is located in the Residential Zone R-5 where single-family dwellings are an outright permitted use. As demonstrated by Attachment 3, Zoning Compliance Report, the applicant's proposal complies with all Residential Zone R-5 development standards found in MMC Section 19.303 with the exception of setbacks.
4. The existing house does not meet the setback standards of the R-5 zone for the front and south side yard setbacks. Moreover, the applicant proposes to decrease the front yard setback. The Planning Commission finds that the house is legally nonconforming with regard to the existing front and south side yard setback requirements. The Planning Commission also finds that the applicant's application for a Home Improvement Exception remedies the proposed nonconforming front yard setback as demonstrated by Attachment 3, Zoning Compliance Report.
5. Transportation Plan Review applies when a proposal is subject to the provisions contained in MMC Chapter 19.1400 – Transportation Planning. MMC Chapter 19.1400 applies to existing single-family structures when

the proposal meets the definition for substantial redevelopment. Substantial redevelopment is defined as any renovation, expansion, or alteration of an existing structure that has a development permit value that exceeds fifty percent of the assessed value of the existing structure.

If the proposal meets the definition for substantial redevelopment and the estimated permit value is greater than \$101,296,⁴ then all provisions relating to adequate transportation facilities contained in MMC Chapter 19.1400 apply to the proposal. If, however, the proposal meets the definition for substantial redevelopment but does not exceed the \$101,296 threshold, then only some of the provisions apply. In this case, the Planning Commission finds that the proposal meets the definition for substantial redevelopment and exceeds the \$101,296 threshold. The proposal, therefore, needs to comply with all relevant provisions contained in MMC Chapter 19.1400, which are addressed in detail in Findings 6 – 19 below. As conditioned, the applicant's proposal will comply with all relevant transportation requirements.

6. MMC Section 19.1404(C) authorizes the Engineering Director to approve adjustments to transportation facility design standards. The applicant requests an adjustment to eliminate the landscape strip requirement along the property's frontage. MMC Table 19.1409.3 requires a 5-foot landscape strip on local streets. SE 19TH Avenue is classified as a local street.

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

- A. Elimination of the planter strip 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 existing topography within the SE 19TH Avenue right-of-way along the property's frontage limits the area available for street improvements. The landscape strip will not fit within the available street improvement area without major structural improvements to the existing slope. Strict compliance with the landscape strip requirement is deemed infeasible due to engineering limitations of the existing topography.
7. MMC Section 19.1404(D) authorizes the Engineering Director to approve exceptions to transportation facility design standards. The applicant requests to pay a fee-in-lieu of construction costs to the City of Milwaukie for any remaining required street improvements along the property's frontage that the Planning Commission does not eliminate through the adjustment and variance review process.

Staff supports the applicant's request to eliminate the landscape strip, parking strip, and sidewalk requirements but does not support the

⁴ MMC Section 19.1403.1.B

applicant's request to eliminate the curb requirement and reduce the travel lane width requirement. Staff does, however, support the applicant's request to pay a fee-in-lieu of construction for any remaining required street improvements along the property's frontage that the Planning Commission does not eliminate through the adjustment and variance review process

The Engineering Director can recommend approval of an exception request only if safety hazards do not exist and will not be created. The Engineering Director has determined that a safety hazard does not exist and will not be created by the absence of curb and additional travel lane width. Widening the paved roadway to the required minimum width will effectively double the street width for a length of 50 feet, which is the length of the property's frontage, and would require a substantial asphalt transition at the northern limits of the widened street to transition vehicles back to the existing street width. The Engineering Director has determined that widening the street for a distance of 50 feet may create a situation less safe than what currently exists. Due to the amount of width that would be needed to bring SE 19th Avenue up to the minimum standard, this block of SE 19th Avenue should be widened to a full 20-foot width under one construction project.

The Planning Commission finds that the exception will not create a safety hazard and approves the exception request.

8. MMC Section 19.1404(E) requires any requests for variances to transportation facility design standards to comply with criteria contained in MMC Section 19.700 – Variances. The applicant requests a variance to eliminate the parking strip and sidewalk requirement along the property's frontage. The criteria for granting variances per MMC Section 19.702.1 are as follows:

- A. 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.

The existing topography constrains the existing SE 19th Avenue right-of-way along the property's frontage by limiting the area for street improvements. Based on a topographic survey provided by the applicant, staff has calculated that only the eastern 22 feet of right-of-way width is available for street improvements of the 60 feet of right-of-way width available on SE 19th Avenue. Street improvements wider than 22 feet will likely have significant impact on driveway slope and off-street parking. The required sidewalk and parking strip will not fit within the 22 feet of right-of-way available for street improvements.

- B. There are no feasible alternatives to the variance, and 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.

There are no feasible alternatives to the variance. Construction of the parking strip and sidewalk will require retaining wall construction along the entire frontage of the proposed development. The retaining wall will likely eliminate the defacto off-street parking space in front of the applicant's garage and increase the slope of the driveway approach to an unsafe condition. The variance to eliminate the parking strip and sidewalk requirement will allow the applicant the use of their driveway access and defacto off-street parking area in substantially the same way as others in the surrounding area.

- C. Adverse effects upon other properties that may be the result of this variance shall be mitigated to the extent feasible.

The adverse effects upon other properties that result from the variance are an elimination of on street parking and elimination of a future pedestrian connection via sidewalk. Due to the topographic constraints within the SE 19TH Avenue right-of-way, there is no feasible mitigation to provide on street parking or a sidewalk for pedestrian access.

The Planning Commission finds that the applicant meets the variance criteria and approves the variance to eliminate the sidewalk and parking strip requirement along the property's frontage on SE 19TH Avenue.

9. The applicant requests a variance to eliminate the curb requirement and reduce the travel lane width to a minimum of 5.5 feet along the property's frontage. The criteria for granting variances per MMC Section 19.702.1 are as follows:

- A. 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 a 4–6-foot vertical drop along the western edge of the right-of-way next to a shared driveway access with the adjacent neighbor. Widening the street and constructing a curb creates an unusual condition and challenging construction issue. There are 3 significant trees, one of which is a 74-inch diameter Sequoia, located in the existing right-of-way along the property's frontage that would have to be removed to construct these half-street improvements.

Staff: The existing topography constrains the existing SE 19TH Avenue right-of-way along the property's frontage by limiting the area for street improvements. Based on a topographic survey provided by the applicant, staff has calculated that only the eastern 22 feet of right-of-way width is available for street improvements of the 60 feet of right-

of-way width available on SE 19TH Avenue. According to MMC Section 19.1409.2(C)(3), the minimum width for a half-street improvement shall be 20 feet. The required curb and street widening to 20 feet will fit within the 22 feet available for street improvements without removal of any of the significant trees.

- B. There are no feasible alternatives to the variance, and 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: The variance allows the applicant the use of their property in a manner substantially the same as others in the surrounding areas.

Staff: Staff has determined that the required 10-foot travel lanes and curb will fit within the area available for street improvements on SE 19TH Avenue along the property's frontage. In the event that another property in the surrounding area were to redevelop and MMC Chapter 19.1400 applied, the same standards would apply.

- C. Adverse effects upon other properties that may be the result of this variance shall be mitigated to the extent feasible.

Applicant: The variance to eliminate the curb requirement and reduce the lane width to a minimum 5.5 feet mitigates the impact to adjacent property owners by retaining the existing pavement width and vegetated areas.

Staff: The adverse effect upon other properties that result from the variance is the elimination of a future standard two-lane roadway on SE 19TH Avenue. According to MMC Table 19.1409.3, the minimum allowed travel lane width for a local street is 10 feet.

The Planning Commission finds that the applicant does not meet the variance criteria and denies the variance request to eliminate the curb requirement and reduce the travel lane width to a minimum of 5.5 feet along the property's frontage on SE 19TH Avenue.

10. MMC Section 19.1405.5 establishes approval criteria for transportation review applications and ensure impacts are mitigated.

As previously indicated, the Planning Commission made the following determinations:

- Approval of an adjustment to eliminate the landscape strip requirement.
- Approval of a variance to eliminate the sidewalk and parking strip requirement.
- Approval of an exception for the applicant to pay a fee-in-lieu of construction costs for all remaining required street improvements, namely street widening and curb construction.

The Planning Commission finds that the proposed development and related transportation improvements comply with procedures, requirements, and standards of MMC Chapter 19.1400 and the Transportation Design Manual.

11. MMC Section 19.1407 requires streets, sidewalks, and transportation facilities to be adequate at the time of development or shall be made adequate in a timely manner.

The proposed development does not increase the number of vehicular, pedestrian, transit, or bike trips on the City of Milwaukie transportation system. In the cases of *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, the United States Supreme Court has ruled that local governments can impose exactions only if the exaction is directly related to and roughly proportional to an impact of the development. Any exaction that is not directly related to or roughly proportional to an impact of the development is an unconstitutional exaction. The City is bound to act in a constitutional manner and will not apply its standards if those standards would result in an unconstitutional exaction. As a result, the City of Milwaukie cannot require the applicant to construct street improvements as required by MMC Chapter 19.1400.

However, streets, sidewalks, and transportation facilities must be adequate at the time of development. Staff cannot approve a development permit until the portion of SE 19TH Avenue along the property's frontage is made adequate in accordance with MMC Chapter 19.1400.

The City of Milwaukie does not have a public improvement project scheduled on SE 19TH Avenue within the next 5 years. In order to continue with the processing of their development proposal, the applicant has volunteered to provide and/or pay a fee-in-lieu of constructing the necessary improvements, as determined by the Planning Commission, to SE 19TH Avenue along the property's frontage.

As conditioned, the Planning Commission finds that the transportation facilities on SE 19TH Avenue along the property's frontage will comply with MMC Section 19.1407.

12. MMC Section 19.1408 requires submission of a transportation impact analysis documenting the development impacts on the surrounding transportation system.

The proposed development did not score the 100 points necessary to require a transportation impact analysis in accordance with the Transportation Design Manual.

As proposed, the Planning Commission finds that a transportation impact analysis is not required.

13. MMC Section 19.1409 establishes standards for street design and improvement.

The proposed development has approved access to a public street.

The existing 60-foot right-of-way width on SE 19TH Avenue along the property's frontage is wider than the 50-foot local street right-of-way width requirement per MMC Table 19.1409.3.

Required transportation elements have either been eliminated or excepted through the adjustment, variance, and/or exception review process.

As conditioned, the Planning Commission finds that SE 19TH Avenue along the property's frontage will comply with MMC Section 19.1409.

14. MMC Section 19.1409.2(E) establishes standards for vision clearance.

There are no existing or proposed signs, structures, or vegetation in excess of three feet in height in the "vision clearance areas" where the property's existing access and SE 19TH Avenue intersect.

As proposed, the Planning Commission finds that the application complies with standards for vision clearance.

15. MMC Section 19.1409.2(F) establishes additional setbacks from Major Streets.

The property fronts SE 19TH Avenue. According to MMC Table 19.1409.2, SE 19TH Avenue is not a major street. No additional setbacks are required.

As proposed, the Planning Commission finds that the application complies with MMC Section 19.1409.2(F).

16. MMC Section 19.1410 establishes standards for pedestrian facilities.

As previously indicated, the Planning Commission made the following determination:

- Approval of a variance to eliminate the sidewalk and parking strip requirement.

As proposed, the Planning Commission finds that the application complies with MMC Section 19.1410.

17. MMC Section 19.1411 establishes standards for bicycle facilities.

The portion of SE 19TH Avenue along the property's frontage is not classified as a bike route in the Transportation System Plan. As a result, bike lane improvements are not required.

As proposed, the Planning Commission finds that the application complies with MMC Section 19.1411.

18. MMC Section 19.1412 establishes standards for transit facilities.

The portion of SE 19TH Avenue along the property's frontage is not classified as a transit route in the Transportation System Plan. As a result, transit improvements are not required.

As proposed, the Planning Commission finds that the application complies with MMC Section 19.1412.

19. MMC Section 19.1413 establishes standards for access management.

The existing property has a shared access with the adjacent property to the north. The existing driveway access is less than 18 feet and greater than 9 feet in width.

As proposed, the Planning Commission finds that the application complies with MMC Section 19.1413.

20. The site is located within the Willamette Greenway Zone. The regulations contained in MMC Chapter 19.320 – Willamette Greenway Zone apply to all land use actions, any changes or intensification of use, and any development permitted in the underlying zone. The definition for intensification in MMC Section 19.320.4 includes any remodeling to the exterior of the structure where the remodeling substantially alters the appearance of the structure. The Planning Commission finds that the applicant's proposal meets the definition for intensification and is subject to the provisions of the WG zone. The review criteria for evaluating development in this zone are contained in MMC Section 19.320.6 – Criteria and are addressed in detail in Findings 21 – 32 below. As conditioned, the application will comply with MMC Section 19.320 – Willamette Greenway Zone.

21. MMC Section 19.320.6.A – Land Committed to an Urban Use. The property located at 11921 SE 19th Avenue is zoned R-5 and has a Comprehensive Plan designation of Moderate Density (MD) residential. The area in which this property is located has been committed to an urban use for many decades.

22. MMC Section 19.320.6.B – Compatibility with River Character. The site is developed with a modest single-family home, which is set back from the river as far as practicable. Residential uses are an outright permitted use in this area, and the site is developed in a similar manner as other adjacent properties

23. MMC Section 19.320.6.C – Protection of Views.

The Planning Commission finds that there are three documents that address views that are relevant to this proposal, and they are as follows:

- Oregon's Statewide Planning Goal 15: Willamette River Greenway
- Milwaukie's Comprehensive Plan: (1) Willamette Greenway Element, and (2) Open Spaces, Scenic Areas, and Natural Resources Element.
- Milwaukie's Zoning Code: (1) Residential R-5 Zone, and (2) Willamette Greenway Zone

Goal 15. The purpose of Statewide Planning Goal 15 (Willamette River Greenway) is to protect, conserve, enhance, and maintain the natural,

23. MMC Section 19.320.6.C – Protection of Views. (Continued)

scenic, historical, agricultural, economic, and recreational qualities of the lands along the Willamette River. With regard to views, it specifically states that identified scenic qualities and viewpoints shall be protected.

Willamette Greenway Element. As required by Goal 15 (Willamette River Greenway), the City adopted the Willamette Greenway Element of the Comprehensive Plan in September 2000. Views are addressed in the Goal Statement and Objective #5.

- Goal Statement Summary: The City's inventory of Willamette River Greenway resources and uses identified three recreation areas with river views, namely the Jefferson Street boat ramp, open space at the Kellogg sewage treatment plant, and Spring Park. The downtown area was identified as providing the major viewing opportunities accessible to the public. The only unobstructed view corridor was identified as being on Jefferson Street looking west.
- Objective #5 Summary: The City will evaluate all development proposals within the Willamette River Greenway for their effects on access to visual corridors.

Open Spaces, Scenic Areas, and Natural Resources Element. The City adopted this element of the Comprehensive Plan in December 2002. Views are addressed in Objective #3.

- Objective #3 Summary: The City wants to preserve and protect views to and from the Willamette River for the enjoyment of current and future City residents and visitors. However, the City recognizes that the majority of the unobstructed public views of the river are in the downtown area, as most of the City's waterfront properties are privately-owned and in established residential areas.

Residential R-5 and Willamette Greenway Zones. While Goal 15 and the Milwaukie Comprehensive Plan provide important background information and policy direction guidance, it is the zoning ordinance that provides the standards and criteria upon which a development proposal must be reviewed. In this case, MMC Sections 19.303 – Residential Zone R-5 and 19.320 – Willamette Greenway Zone are the relevant zoning ordinances.

- The height limit in the R-5 zone is 35 feet or 2-1/2 stories, whichever is less.
- The WG zone has no such objective standard. It requires the Planning Commission to take the protection of views into consideration when evaluating a development proposal in the WG zone. It also states that waterfront property owners may be allowed to remove trees and vegetation to create one view window from the primary residential structure to the river when suitable views cannot be achieved through

23. MMC Section 19.320.6.C – Protection of Views. (Continued)

pruning or other methods. In other words, even waterfront property owners are not guaranteed a view of the river.

- The WG zone and Goal 15 also require development to be directed away from the river to the greatest possible degree.⁵

The applicant's proposal is well below the 35-foot height limit of the R-5 zone. The existing structure is 14.5 feet tall and the proposed structure would be 20.5 feet tall.⁶ Moreover, the front of the applicant's house sits below street level. The additional height will minimally impact public views to and from the river to those on the water or on SE 19th Avenue and does not diminish any private views currently enjoyed by neighboring property owners.

THE PLANNING COMMISSION MAKES THE FOLLOWING FINDINGS WITH REGARD TO THE VIEW IMPACTS OF THE PROPOSAL:

- 23A. The criteria in the WG zone chapter are not objective. They are meant to be taken into consideration when evaluating a development proposal in the WG zone.
- 23B. The nature or amount of views to be protected is not specified in the WG zone chapter. Goal 15 refers to identified viewpoints. The Comprehensive Plan identifies a number of public viewpoints. The view from the applicant's property is not listed as an identified viewpoint.
- 23C. The majority of unobstructed public views of the river are in the downtown area, as most of the City's waterfront properties are privately-owned and in established residential areas. Even waterfront property owners are not guaranteed a view of the river.
- 23D. Zoning and development standards are not meant to prevent property owners from developing their property in a reasonable manner. The applicant's proposal allows for reasonable redevelopment of the property.
- 23E. Zoning and development standards, such as those found in the R-5 and WG zones, are meant to minimize and mitigate—not eliminate—impacts to adjacent property owners.
- 23F. Two R-5 zone development standards, in particular, serve to minimize view impacts to adjacent property owners, namely: height limitations and side yard setbacks. The applicant proposes to increase the height of the existing house by six feet, from 14.5 feet to 20.5 feet, which is well below the 35-foot height limitation of the

⁵ MMC Section 19.320.7 and Goal 15 Section C.3.j

⁶ As measured from the average elevation of the finished grade at the front of the building to the mean height level between the eaves and the ridge.

23. MMC Section 19.320.6.C – Protection of Views. (Continued)

R-5 zone. The applicant proposes to maintain the south side yard setback and decrease the north side yard setback by less than one foot. Side yard setbacks serve a number of functions, one of which is to create separation between structures on adjacent properties. In this case, that space serves as a natural view corridor.

23G. In the absence of topographic changes that naturally facilitate views over existing structures, creation and maintenance of view corridors is a widely recognized tool for capturing views. Public rights-of-way are often used in this capacity. The Comprehensive Plan requires that development proposals in the WG zone be evaluated as to their impacts on “visual corridors.” Since the applicant proposes to minimally decrease the existing north side yard setback, the applicant’s proposal, for all practical purposes, maintains the existing view corridors. Moreover, a view corridor exists immediately to the south of the property along SE Bluebird Street, which is undeveloped public right-of-way.

23H. The proposal minimally increases the existing structure’s footprint and decreases the amount of hard surface deck areas. The net effect of these proposed changes results in more landscaped area than currently exists, thereby improving the site’s stormwater infiltration capacity.

In summary, the Planning Commission finds that the applicant’s proposal to increase the height of the existing house by six feet is not unreasonable and has a negligible impact on public and private views either to or from the river.

24. MMC Section 19.320.6.D – Landscaping, Aesthetic Enhancement, Open Space, and Vegetation. The existing house is more than 50 feet away from the top of the river’s bank. The area between the house and the river is mostly composed of grassy open space that slopes gently down toward the river. Adjacent properties are similarly vegetated.
25. MMC Section 19.320.6.E – Public Access. The proposal is on private property with no public access to the river.
26. MMC Section 19.320.6.F – Water-oriented and Recreational Uses. The applicant’s proposal will increase views to the river from the second story of the house.
27. MMC Section 19.320.6.G – Views between the Willamette River and downtown Milwaukie. Not applicable.
28. MMC Section 19.320.6.H – Protection of Water Quality Resource (WQR) Area. The applicant’s proposal does not involve any work in the water quality resource area, the edge of which is 50 feet inland from the edge of the Willamette River bank. At the time of submission of a building permit,

the applicant will be required to show that the proposed development will not result in direct stormwater discharge to the water quality resource area. As conditioned, the application will comply with MMC Section 19.320.6.H.

29. MMC Section 19.320.6.I – Design Review Committee Recommendations. Not Applicable.
30. MMC Section 19.320.6.J – Conformance with Comprehensive Plan Policies. The property located at 11921 SE 19th Avenue is zoned R-5 and has a Comprehensive Plan designation of Moderate Density (MD) residential. The proposal involves the remodeling of a modest single-family home. Single-family residential uses are consistent with an MD Comprehensive Plan designation.
31. MMC Section 19.320.6.K – Consistent with Division of State Lands (DSL) Plans and Programs. The proposal is consistent with DSL Plans and Programs in that it does not propose any work in or near the Willamette River and it conforms with Goal 15.
32. MMC Section 19.320.6.L – Vegetation Buffer. The applicant is not proposing any work in or near the WG zone vegetation buffer. This section does not apply.
33. MMC Section 19.600 – Conditional Uses. As previously stated, all development in the Willamette Greenway zone is considered a conditional use and is subject to Chapter 19.600 – Conditional Uses. As a result, the review criteria contained in MMC Section 19.601.2 must be met. They are as follows:
 - 33A. MMC Section 19.601.2.A – The use meets the requirements of a conditional use in the zone currently applied to the site. The existing and proposed use is single-family residential, which is an outright permitted use in the underlying zone. As demonstrated by Findings 21 – 32, the proposal meets the requirements of the WG zone.
 - 33B. MMC Section 19.601.2.B – The use meets the standards for the underlying zone. See Attachment 3, Zoning Compliance Report.
 - 33C. MMC Section 19.601.2.C – The proposal satisfies the goals and policies of the comprehensive plan which apply to the proposed use. See Findings 21 and 30.
 - 33D. MMC Section 19.601.2.D – The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features. The proposal is for the remodel of an existing use, a single-family residence, which has been located on the site for 68 years. The surrounding properties are similarly developed with single-family residences.

- 33E. MMC Section 19.601.2.E – The proposed use is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use. The proposal is for the remodel of an established single-family residence. The proposal will have no additional impacts to or on the existing transportation system, public facilities, or local services.
- 33F. MMC Section 19.601.2.F – The proposed use complies with the transportation requirements and standards of Chapter 19.1400. See Key Issues #1 and #2 and Findings 5 – 19 for more detail. As conditioned, the application will comply with all relevant transportation requirements.

As conditioned, the application will comply with the requirements of MMC Section 19.601.2 – Review Criteria.

34. MMC Section 19.602.1 – Yards. This is the only conditional use development standard that applies to the proposal. When a conditional use is proposed in a residential zone, all setbacks shall be equal to at least two thirds (2/3) of the height of the principal structure. The existing house is 14.5 feet in height, and the proposal involves increasing the height by six feet. Since conditional use setbacks are relative to height, increasing the height of the principal structure increases the setback requirement. The required conditional use setbacks for the proposal are detailed in the following table:

Table 1: Conditional Use Setbacks

Setback	Minimum Setback Dimensions		Actual Setback Dimensions	
	Existing Height	Proposed Height	Existing	Proposed
Front	9.67 feet	13.67 feet	15.5 feet	13 feet
North Side	9.67 feet	13.67 feet	10 feet	9.5 feet
South Side	9.67 feet	13.67 feet	1 foot	1 foot
Rear	9.67 feet	13.67 feet	64 feet	58 feet

As shown in Table 1 above, the existing south side yard setback and the proposed front and side yard setbacks do not conform to the requirements of Chapter 19.600 Conditional Uses. Since the requirements of this chapter came into effect after the construction of the existing house, the house is legally nonconforming with regard to the existing setback requirement. However, with the proposed increase in height and the concomitant increase in setbacks, the proposal to increase the height of the house would technically push the house further out of conformance with regard to the proposed front and side yard setback requirements. The Planning Commission finds that the applicant's application for a Home

Improvement Exception remedies these nonconformities as demonstrated by Attachment 3, Zoning Compliance Report.

35. 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 will comply with MMC Title 16 – Erosion Control.
36. The property located at 11921 SE 19th Avenue is in a special flood hazard area within the City of Milwaukie. The Planning Commission finds that MMC Title 18 – Flood Hazards applies to the proposed development. MMC Title 18 requires that no structure or land shall be constructed located, extended, converted or altered without full compliance with the provisions of MMC Section 18.04. As conditioned, the application will comply with MMC Title 18 – Flood Hazards.

ATTACHMENT 2

Recommended Conditions in Support of Approval

1. Final site and architectural plans shall be in substantial conformance with the plans approved by this action, which are the architectural plans, site plans, and application submission materials stamped received May 10, 2006 by the Milwaukie Planning Department.
2. Prior to issuance of a building permit the applicant shall:
 - a. Provide a narrative describing all actions taken to comply with these conditions of approval.
 - b. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
 - c. Pay a fee-in-lieu of construction for street improvements approved through the exception process in the amount of \$2,355.80 to the City of Milwaukie.
 - d. Provide a stormwater management plan showing that the proposed development will not result in direct stormwater discharge to the water quality resource area. If a soakage trench is proposed to capture stormwater runoff, the design shall be approved by the Building and Engineering Departments.
 - e. Comply with the applicable criteria of MMC Chapter 18.04 and ORSC Section R323.1.1 regarding flood hazard construction.
 - f. Provide an erosion control plan and obtain an erosion control permit, if necessary.

ATTACHMENT 3

Zoning Compliance Report

Residential Zone R-5 Development Standards			
Standard	Required	Proposed	Staff Comment
1. Minimum lot size	5000 SQFT	7825 SQFT	Complies with standard.
2. Minimum Lot Width	50 feet	50 feet	Complies with standard.
3. Minimum Lot Depth	80 feet	200 feet	Complies with standard.
4. Minimum Setbacks	20 feet (front & rear) 5 feet (side) 15 feet (street side)	13 feet (front) 58 feet (rear) 9.5 feet (side) 1 foot (street side)	Street side yard setback is non-conforming and not going further out of conformance. Front and side yard setbacks are non-conforming and going further out of conformance. Front and side yard nonconformities are remedied by Home Improvement Exception application (see Home Improvement Exception table below), which allows for reduction of required setbacks.
5. Off-Street Parking and Loading	Yes	Maintain existing off-street parking	Two parking spaces are required. One covered parking space exists. Property is non-conforming but not going further out of conformance.
6. Height Restriction	2-1/2 stories or 35 feet	20.5 feet	Complies with standard.
7. Lot Coverage	35% max.	26%	Complies with standard.
8. Minimum Vegetation	25% min.	77%	Complies with standard.
9. Transition Area	No	No	Not Applicable.
10. Frontage	35 feet	50 feet	Complies with standard.
11. Transportation Requirements	Yes	Request Adjustment, Variances, and Exceptions to allow for elimination and/or funds-in-lieu of construction of various transportation elements	See Analysis and Findings for more detail. As conditioned, the application will comply with all relevant transportation requirements.

Home Improvement Exception Requirements			
MMC Section	Requirement	Proposed	Staff Comment
1. 19.707.1 Total Floor Area Allowed by Exception	Less than 250 SQFT	Front Projection = 2.5ft x 9ft = 22.5 sqft Side Projection = 0.5ft x 16.5ft = 8.25 sqft	Total floor area extending into required setback areas = 30.75 square feet. Complies.
2. 19.707.2.A Addition to SFR in R-10, R-7, R-5, R-3 zones	Yes	Remodel of SFR in R-5 zone	Complies.
3. 19.707.2.C Date of Occupancy of Structure	House constructed more than 5 years ago	House constructed in 1938	Complies.
4. 19.707.2.D Most Exterior Walls to Remain	75% Minimum	25.5 linear feet = 15% of total linear feet	Existing walls = 170 linear feet. 25.5 linear feet to be demolished to accommodate projections = demolition of 15% of existing walls. Complies.
5. 19.707.2.E Maximum Yard Requirement Reduction	Not less than 50% reduction and not less than 5 feet	Front setback = 13 ft. Side setback = 9.5 ft.	Required front setback = 20 ft (R-5) and 13.67 ft. (Conditional Use). Required side setback = 5 ft. (R-5) and 13.67 (CU). Neither reduced by more than 50% or less than 5 feet. Complies.
6. 19.708.1.A Only Minor Exterior Changes	Yes	Front projection extends 2.5 feet beyond building face. Side projection extends 0.5 feet beyond building face.	Complies.
7. 19.708.1.B Sustains Integrity of Neighborhood	Yes	Architecturally designed house	Complies.
8. 19.708.1.C Avoids Negative Impacts	Yes	Yes	No appreciable impacts to neighboring properties. Complies.
9. 19.708.1.D Permitted Use	Yes	Single-Family Residential	Single-Family Residential is a permitted use in the R-5 zone and WG zone. Complies.
10. 19.708.1.E Consistent with Comp Plan and Title 19	Yes	Yes	Complies with Comp Plan and Title 19. See Findings.

**CITY OF MILWAUKIE
BUILDING
DEPARTMENT**

Memo

To: Susan Shanks, Associate Planner

From: Tom Larsen, Building Official 

Date: May 16, 2006

Re: CU-06-03, etc.

-
1. All work shall conform to applicable codes and standards.
 2. If a soakage trench is proposed to capture stormwater runoff, the design shall be reviewed and approved by the Building and Engineering Departments.
 3. The decks and their supporting construction shall be designed by a engineer licensed in the State of Oregon and shall be anchored and connected to resist flotation, collapse or permanent lateral movement resulting from hydrodynamic and hydrostatic loads and stresses, including the effects of buoyancy. [ORSC Section R323.1.1].

Clackamas County Fire District #1

Fire Prevention Office



E-mail Memorandum

To: Susan Shanks, City of Milwaukie Planning Dept
From: Ron Schumacher, Deputy Fire Marshal, Clackamas County Fire District #1
Date: 6/1/2006
Re: CU-06-03, TPR-06-06, VR-06-02, HIE-06-02; 11921 SE 19th Ave; Hamilton

This review is based upon the current version of the Oregon Fire Code (OFC), as adopted by the Oregon State Fire Marshal's Office. The scope of review is typically limited to fire apparatus access and water supply, although the applicant must comply with all applicable OFC requirements. When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access and water supply may be modified as approved by the fire code official. The following items should be addressed by the applicant:

COMMENTS:

The fire department has no comments on this proposal.

Attachment 6

LAND USE DISTRICT REVIEW COMMITTEE MEETING MINUTES
Island Station Neighborhood District
Date: 2006 MAY 18
Milwaukie Grange

Members Present:

Charles Bird, Chair
Gary Michael
Molly Hanthorne
Jim Mishler

- I. CALL TO ORDER
- II. INTRODUCTIONS
- II. LAND USE REFERRALS

- 1) Lynn Welsh, 12015 SE 19th Avenue, raise house 3 feet. Concerns and or recommendations:

The committee discussed the referral. There were no objections to this referral.

- 2) Richard and Alicia Hamilton, 11921 SE 19th, Remodel. Concerns and or recommendations;

The committee expressed that the proposed modifications result in an improvement to the exterior of the house. The committee was impressed with the design and believes that it will be a proud to live next door to the completed project.

The committee also points out that the proposed modification will eliminate at least one dwelling unit. The two units or reportedly, three units that have been occupied in this structure over the past years will be reduced to one. The house will become a single family dwelling. The committee considered this an extremely desirable outcome and gives it full support.

It is believed that by reducing the units will reduce pressure on the limited parking along 19th which has been a problem. This portion of 19 is at the extreme North West corner of the neighborhood. As such the vast majority of vehicle traffic is local. There is virtually no through traffic except for sightseers and users of the bike pedestrian trail through Milwaukie's Water Front Park.

The committee supports the overall projects objective and is pleased with the exterior look depicted in the application package. Details of lay out and structure were between the owner and the city engineering department and not a matter for the committee. The following comments were made on the REQUESTS found in the Executive Summary provided by Susan Shanks, Associate Planner to each committee member:

a. ADJUSTMENT REQUEST, Landscape Strip to 0-feet wide

The Island Station NDA Land Use Committee supports the ADJUSTMENT REQUEST.

b. VARIANCE REQUEST, Side walk, Parking strip, and Street.

The Island Station NDA Land Use Committee supports the VARIANCE REQUEST.

c. EXCEPTION REQUEST, Funds-in-lieu-of construction.

The Island Station NDA Land Use Committee has no objection to this REQUEST.

III. REPORTS

IV. DISCUSSION

V. MATTERS FROM THE COMMITTEE

VI. INFORMATION SHARING

VII. FUTURE MEETING DATE/AGENDA ITEMS:

VIII. ADJURN: Meeting was adjourned at 6:30 pm

Charles Bird, Chair

MEMORANDUM

To: City of Milwaukie Planning Commission
From: Katie Mangle, City of Milwaukie Planning Director
Cc: Mike Swanson, Kenny Asher
Date: June 6, 2006

Re: Planning Department Activities

As background information for the Planning Commission, it should give you a sense of the planning-related activity in the community. I'm happy to discuss any of these items with you in greater detail.

Planning Projects

- Transportation System Plan – Big news! The City received a grant to fund a TSP update in 2006.
- Downtown Parking Management – developing short and mid-term implementation strategy
- Spring Park Master Plan – preparing to adopt the Plan, as part of the City Comprehensive Plan
- Library Parking lot expansion - developing plans to increase the number of parking spaces
- Key Bank frontage improvements –curb extensions and angle parking on Monroe east of Main St.
- Metro's Nature in Neighborhoods initiative (see attached information regarding the new ordinance)

Current Planning

- Planner of the Day – continuous calls and visits requesting information (subdivisions, decks, etc.)
- Land Use Applications
 - Two Conditional Uses in Willamette Greenway zone (both on SE 19th)
 - CSO application for Cingular wireless joint use pole (Type II review)
 - CSO application for Immovable Foundation Church on Lake Road
 - Transition Area Review (Safeway gas station on Harrison)
 - Home Improvement Exception for home remodel (Type I review)
 - Final plats for several land division applications
- Building permits
 - Several new infill single family houses
 - Gramor development – submitted comments on the final plans
 - Lewelling Park – construction began 5/30!
 - Clackamas Park – submitted comments on the final plans
 - Panattoni Office Park - final CO pending riparian plantings
- Pre-application conferences
 - Ardenwald School redevelopment proposal
- Updating application fees for FY 2007 – new (lower) fee for small CSO applications, increase to pre-application conference fees
- Coordinating with Clackamas County's research project to build and fund Essential Pedestrian Network

Code Maintenance

- CSO code revision going to City Council 6/20
- Sign ordinance revision preparing for Planning Commission review
- Section 1400 / Transportation Design Manual revision – beginning drafts
- Code inconsistencies – initiating quarterly code maintenance to fix "bite size" code problems

Code Compliance

- Foxy's – wrote letter notifying owner of non-compliance, currently negotiating acceptable solution

Interoffice Memorandum

To: Planning Commission

From: Katie Mangle

CC: Mayor Bernard, Mike Swanson, Kenny Asher

Date: June 5, 2006

Re: Metro Title 13 - Nature in Neighborhoods Initiative

Metro's new Title 13 ordinance aims to conserve, restore, and protect fish and wildlife habitat throughout the region. The ordinance is currently under review by the state Department of Land Conservation and Development, and Metro is soliciting public comment. Over the past year, City staff has worked with Metro staff to identify ways the Milwaukie Municipal Code could be improved to implement the new regional Nature in Neighborhoods policy.

Please see the attached documents, for your information, on the new Metro Title 13:

1. Letter from Metro to Mayor Bernard
2. General information on the Nature in Neighborhoods program
3. Title 13 ordinance, currently under public review
4. Exerpt from a draft Metro report on how Milwaukie's current code addresses habitat protection during the land development process.

Many of the goals and policies set forth in Title 13 are already adressed in Milwaukie's code. Over the next year, the Planning department will address additional standards that the City could adopt to further encourage property owners to use habitat-friendly development practices. In the meantime, let me know if you have any concerns or questions.



METRO

RECEIVED
MAY 30 2006
CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

May 25, 2006

The Honorable James M (Chip) Bernard
City of Milwaukie
10722 SE Main Street
Milwaukie OR 97222-7606

Dear Mayor Bernard:

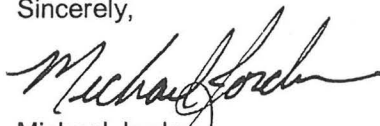
As you are aware, the Metro Council adopted Ordinances No. 05-1077C and No. 05-1097A, creating a new Title 13 of the Urban Growth Management Functional Plan called "Nature in Neighborhoods." These ordinances were adopted in compliance with Statewide Planning Goals 5 and 6 to ensure that fish and wildlife habitat across the region is conserved and restored and to protect water quality. Metro has submitted these ordinances to the Oregon Department of Land Conservation and Development for acknowledgment review.

Enclosed are copies of the public notice that Metro is providing to interested persons informing them of the opportunity to review these ordinances and the public record supporting their adoption. It directs that any objections to the ordinances be made in writing and received by Department of Land Conservation and Development no later than 21 days from the date of the notice. Over 5,200 notices were mailed to interested parties on May 26, 2006.

The Metro Council is looking forward to implementing the Nature in Neighborhoods initiative to enhance and continue regional partnerships to maintain water quality, access to nature and the high quality of life we enjoy within our region. Metro has staff available to provide technical assistance to local governments with Title 13 implementation. If you have any questions regarding the enclosed notice or Metro's Nature in Neighborhoods ordinances, please do not hesitate to contact me or staff planner Paul Ketcham at 503-797-1726.

Thank you.

Sincerely,


Michael Jordan
Chief Operating Officer

cc: Planning Directors

Enclosure: DLCD Acknowledgment Review Public Notice (10 copies)

QUICKLINKS

SITE MAP | CONTACT

SEARCH

ADVANCED SEARCH



Nature in Neighborhoods

CALENDAR | PUBLIC COMMENT
NEWS | JOBS | CONTRACTS[HOME](#) > [NATURE](#) > [NIN ORDINANCES](#) > **ORDINANCE 05-1077**E-mail this page to a friend
Send feedback to Metro
Print-friendly format

Nature in Neighborhoods ordinance and maps

On Sept. 29, the Metro council unanimously adopted the Nature in Neighborhoods ordinance that is designed to help local communities meet the requirements of [Statewide Planning Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources](#). The ordinance amends Metro's Regional Framework Plan and will be implemented by cities and counties.

The ordinance relies on voluntary, incentive-based approaches for development in upland areas. The proposed ordinance includes new regulations on future urban areas. The ordinance will conserve and protect fish and wildlife habitat, but will not prohibit development.

The ordinance will use regulation to protect the region's highest value streamside habitat, which has been designated as "habitat conservation areas," while also encouraging protection of other valuable habitat through a combination of incentives and voluntary efforts.

Emphasis on flexibility

The ordinance includes a range of strategies, such as flexible standards, education, restoration, monitoring and habitat-friendly development practices.

The ordinance will establish development standards for streamside and wetland area property and promote habitat-friendly development for the most valuable streamside habitat areas. These standards require habitat-friendly practices and efforts to avoid, minimize or mitigate impacts to highly valued habitat lands.

The standards will vary depending on the economic potential of the property. The most flexible standards apply to the land with the greatest economic potential.

Building on existing protections

Standards already apply in many streamside habitat areas. Existing water quality and floodplain regulations remain in effect in the region's cities and counties. The proposed ordinance builds on protections that have been implemented by some cities and counties in the region.

Additional design standards are proposed to help protect habitat. The added protections of the proposed Metro ordinance will address conditions such as

10.2 4

tree canopy, erosion control and ways to develop property with the lowest impacts to the habitat.

The ordinance also includes a model ordinance that cities and counties can choose to adopt or modify, or they can develop their own approach to comply with the regional requirements.

Map information in the exhibits below can also be found, for your property specifically, using Metro's interactive map tool.

Exhibit C, attachment 2 and exhibit F, attachment 6 are related to the Tualatin Basin program so documents and maps are available at the Washington County web site or you can view a hard copy at Metro.

Ordinance 05-1077C amending the Regional Framework Plan and the Urban Growth Management Functional Plan relating to Nature in Neighborhoods (ordinance, exhibits)

[ord_05-1077c_with_exhibits_092305.pdf](#) | 14.5M Adobe Acrobat PDF | Published September 27, 2005

Ordinance 05-1077C amending the Regional Framework Plan and the Urban Growth Management Functional Plan relating to Nature in Neighborhoods (ordinance only)

[092305-1_ord_05-1077c.pdf](#) | 33K Adobe Acrobat PDF | Published September 27, 2005

Exhibit A: Regionally significant fish and wildlife habitat inventory map

[092305-2_ord_05-1077c_ex_a_habitat_inventory.pdf](#) | 17.4M Adobe Acrobat PDF | Published September 27, 2005

Exhibit B to Ordinance 05-1077C - Regional framework plan amendments

[092305-3_ord_05-1077c_ex_b_rfp_amend.pdf](#) | 69K Adobe Acrobat PDF | Published September 27, 2005

Exhibit C to Ordinance 05-1077C - Title 13: Nature in Neighborhoods

[092305-4_ord_05-1077c_ex_c_t13.pdf](#) | 232K Adobe Acrobat PDF | Published September 27, 2005

Exhibit C, Attachment 1: habitat conservation area map

[092305-4_ord_05-1077c_ex_c_att_1_hca_map.pdf](#) | 3.2M Adobe Acrobat PDF | Published September 27, 2005

Exhibit C, Attachment 3: wetland inventory map

[092305-4_ord_05-1077c_ex_c_att_3_wetland_inventory.pdf](#) | 4.0M Adobe Acrobat PDF | Published September 27, 2005

Exhibit C, Attachment 4: economic development value map

[092305-4_ord_05-1077c_ex_c_att_4_econ_dev_value.pdf](#) | 2.6M Adobe Acrobat PDF | Published September 27, 2005

Exhibit C, Attachment 5: vegetative cover map

BEFORE THE METRO COUNCIL

AMENDING THE REGIONAL FRAMEWORK)	ORDINANCE NO. 05-1077C
PLAN AND THE URBAN GROWTH)	
MANAGEMENT FUNCTIONAL PLAN)	Introduced by Michael Jordan, Chief
RELATING TO NATURE IN NEIGHBORHOODS)	Operating Officer, with the concurrence of
)	David Bragdon, Council President

WHEREAS, nature in neighborhoods is critical to maintaining and improving the high quality of life, livability, and standard of living enjoyed by the people of the Metro region; and

WHEREAS, the Metro Council has expressed, as one of four central goals for the region, the aspiration that, "The region's wildlife and people thrive in a healthy urban ecosystem," and identified this goal as a priority for action; and

WHEREAS, the Metro region places a high priority on the protection of its streams, wetlands, and floodplains to maintain access to nature, sustain and enhance native fish and wildlife species and their habitats, mitigate high storm flows and maintain adequate summer flows, provide clean water, and create communities that fully integrate the built and natural environment; and

WHEREAS, the Regional Framework Plan provides that Metro will adopt programs to maintain and improve water quality and to protect fish and wildlife habitat in the region; and

WHEREAS, Metro adopted Title 3 to the Urban Growth Management Functional Plan in 1998 to maintain and improve water quality and protect people and property from flood hazards; and

WHEREAS, Title 3 also provides for Metro to study and develop a program for the protection and conservation of fish and wildlife habitat; and

WHEREAS, the Metro Policy Advisory Committee, comprised of elected officials and other citizens representing the region's cities and counties, adopted a "Vision Statement" in 2000 ("MPAC Vision Statement") to guide, inform, and be the philosophical underpinnings for the study, identification, and development of a fish and wildlife habitat protection program; and

WHEREAS, the MPAC Vision Statement established an overall goal to conserve, protect, and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with the surrounding urban landscape; and

WHEREAS, the MPAC Vision Statement recognized that this vision would have to be achieved through conservation, protection, and appropriate restoration of streamside corridors through time; and

WHEREAS, the Nature in Neighborhoods initiative has been proposed in Resolution No. 05-3574, which provides for Metro to implement a coordinated regional program to ensure that the region's natural areas and greenspaces are restored and protected; and

WHEREAS, Metro has undertaken the development of a fish and wildlife habitat protection program as one element of the Nature in Neighborhoods initiative consistent with Statewide Planning Goal 5, which is intended "to protect natural resources and conserve scenic and historic areas and open spaces," and with Oregon Administrative Rules chapter 660, Division 23, adopted by the Land Conservation and Development Commission to implement Goal 5 (the "Goal 5 Rule"); and

WHEREAS, Metro analyzed city and county habitat protection programs and concluded that habitat protection standards varied widely from city to city, and that the most regionally consistent standards were those adopted by cities and counties to comply with Metro's Title 3 water quality standards; and

WHEREAS, Metro has completed a region-wide inventory of regionally significant fish and wildlife habitat comprising 80,000 acres that has been located and classified for its ecological value and mapped to provide an information base for the region; and

WHEREAS, Metro has conducted an analysis of the economic, social, environmental, and energy (ESEE) consequences of protecting or not protecting the inventoried habitat in two phases and has developed this fish and wildlife habitat protection program based on that analysis; and

WHEREAS, through the study and development of the fish and wildlife habitat protection program, Metro identified new scientific information relating to water quality, and is therefore also adopting much of this element of the Nature in Neighborhoods initiative pursuant to Statewide Planning Goal 6, which is intended, in relevant part, "to maintain and improve the quality of the . . . water . . . resources of the state;" and

WHEREAS, fish and wildlife depend on clean, clear water in order to thrive, and all actions that protect water from becoming polluted by increased sedimentation, increased temperature, excessive nitrogen and nutrient levels, toxic chemicals, and other such pollutants is necessarily and inseparably linked with providing healthy, ecologically viable and stable fish and wildlife habitat; and

WHEREAS, as stated in Exhibit C, this ordinance is in furtherance of a comprehensive program in the Metro region for water pollution control, as a matter of protecting the public health and safety;

WHEREAS, the Federal Water Pollution and Control Act Amendments of 1972, 33 U.S.C. §1251 et seq. (the "Clean Water Act"), directs the administrator of the United States Environmental Protection Agency "in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes." 33 U.S.C. §1252; and

WHEREAS, as stated in Exhibit C, this ordinance is in furtherance of a comprehensive program in the Metro region to conserve the region's waters for the protection and propagation of

fish and wildlife, recreation purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes, as required by the Clean Water Act; and

WHEREAS, the Endangered Species Act, 16 U.S.C. §1531 et seq., was enacted “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species . . .” 16 U.S.C. §1531(b); and

WHEREAS, Metro has catalogued the endangered and threatened species within the Metro region and this ordinance is in furtherance of a comprehensive program to conserve the ecosystem upon which endangered and threatened species depend; and

WHEREAS, in adopting new functional plan requirements as part of the comprehensive Nature in Neighborhoods initiative, Metro is committed to protecting the interests of property owners by implementing Statewide Ballot Measure 37 through a fair, efficient, and open claims process to be adopted on or before the effective date of this Ordinance; and

WHEREAS, Metro recognizes that local governments’ implementation of the new functional plan requirements of the Nature in Neighborhoods initiative may give rise to Measure 37 claims by property owners against local governments and Metro is willing to assume responsibility for addressing those claims; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. The Regionally Significant Fish and Wildlife Habitat Inventory Map (the “Inventory Map”), attached hereto as Exhibit A and hereby incorporated by reference into this ordinance, is hereby adopted.

SECTION 2. Metro has analyzed the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit uses that conflict with the resource sites identified on the Inventory Map, consistent with Statewide Planning Goal 5 and OAR 660, Division 23. Based on Metro’s ESEE analysis, Metro has determined to allow some conflicting uses and to limit some conflicting uses, but not to prohibit any conflicting uses. Metro’s determination is reflected in tables 3.07-13b and 3.07-13c in Exhibit C to this ordinance. Sections 4 through 9 of this ordinance are hereby adopted to implement Metro’s determination to allow some conflicting uses and to limit some conflicting uses pursuant to Statewide Planning Goal 5.

SECTION 3. All parts of Sections 4 through 9 of this ordinance that require the region’s cities and counties to substantially comply with new requirements applicable to areas within the Metro Urban Growth Boundary on the date this ordinance is adopted are hereby also adopted to maintain and improve water quality pursuant to Statewide Planning Goal 6. In addition, all parts of Sections 4 through 9 of this ordinance that will require the region’s cities and counties to substantially comply with new requirements applicable to areas that will be identified as regionally significant riparian habitat that is brought within the Metro Urban Growth Boundary after the date this ordinance is adopted are hereby also adopted to maintain and improve water quality pursuant to Statewide Planning Goal 6.

- SECTION 4.** The Regional Framework Plan is amended as provided in Exhibit B, which is attached and hereby incorporated by reference into this ordinance.
- SECTION 5.** The Urban Growth Management Functional Plan, Metro Code chapter 3.07, is amended to add Title 13, entitled "Nature in Neighborhoods," as provided in Exhibit C, which is attached and hereby incorporated by reference into this ordinance.
- SECTION 6.** The Urban Growth Management Functional Plan, Metro Code chapter 3.07, is further amended as provided in Exhibit D, which is attached and hereby incorporated by reference into this ordinance.
- SECTION 7.** The Title 13 Nature in Neighborhoods Model Ordinance, attached as Exhibit E, is hereby adopted and incorporated by reference into this ordinance.
- SECTION 8.** The Findings of Fact and Conclusions of Law in Exhibit F (the "Findings") are hereby adopted and incorporated by reference into this ordinance. The Findings explain how this ordinance complies with state law, the Regional Framework Plan, and the Metro Code. All attachments to the Findings are part of the Findings and are also hereby incorporated by reference into this ordinance.
- SECTION 9.** The provisions of this ordinance are separate and severable. In the event that any one or more clause, sentence, paragraph, section, subsection, or portion of this ordinance or the application thereof to any city, county, person, or circumstance is held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this ordinance or its application to other cities, counties, persons, or circumstances shall not be affected.
- SECTION 10.** The map revisions described in Exhibit G are hereby approved. The Chief Operating Officer shall prepare final copies of all maps adopted with this ordinance to reflect the map revisions described in Exhibit G and all other provisions of this ordinance. The Chief Operating Officer shall also produce an updated Attachment 5 to Exhibit F to reflect these map revisions. The Chief Operating Officer shall complete the updated table and final maps, including quadrangle 1:28,000 scale Inventory and HCA maps, and make them available to the public not later than the effective date of this ordinance.
- SECTION 11.** This ordinance shall take effect 90 days after it is adopted.

ADOPTED by the Metro Council this _____ day of _____, 2005.

David Bragdon, Council President

Attest:

Approved as to Form:

Milwaukie

The city of Milwaukie has 20,755 residents, measures 4.6 square miles, and is almost fully developed. There are 206 acres of Habitat Conservation Areas (HCAs) within the city's boundaries. About 91 of these acres are considered developed, 54 acres are located within parks, and 52 acres are vacant but environmentally constrained. Only 8 acres of the City's HCAs are vacant and environmentally unconstrained. The habitat-friendly development practices review comes at an opportune time because Milwaukie is carrying out a review of its codes in 2006.

Avoidance

The City's Water Quality Resource Area regulations require development to avoid the resource area, minimize and then mitigate adverse impacts (See Appendix F). Clustering is allowed in Planned Unit Developments (PUDs) on a site with a minimum of two acres. Flexible site design allows for residential densities in PUDs to exceed those of the underlying zone. Density transfers are permitted so that open space can be conserved while still allowing full development potential to be attained. PUDs have not been constructed in Milwaukie, however, since being used twice in the 1970s [check for more recent examples of cluster developments used to protect wetlands, streams, flood areas].

Hydrologic Impacts

Milwaukie has taken a number of steps to reduce hydrologic impacts of development. Stream crossings within flood hazard areas must be as close to perpendicular to the stream as practicable. Shared driveways are encouraged by the city of Milwaukie in commercial, industrial, and multi-family areas. Shared parking is allowed when there is no conflict in operating hours between lots uses. Several codes allow for parking lot space reductions with mass transit proximity and mixed-use developments.

Pervious pavers are permitted within Milwaukie. However the city's code does not explicitly address their usage. City code allows curb cuts that permit stormwater to enter vegetated areas, but retrofitting curb cuts on existing streets presents many challenges such as run-off collection. An example of habitat-friendly development is Milwaukie's Maplewood subdivision, which was constructed with curb tight sidewalks (without a landscape strip) to avoid an adjacent wetland. The development, consisting of 17 lots, directed stormwater runoff from six lots into a vegetated buffer while the remaining runoff went into a piped stormwater system.

According to Milwaukie's off-street parking and loading code, parking and loading areas, as well as walkways, are required to have a durable and dust-free hard surface. No language addresses whether the surface can or cannot be paved with pervious surface materials. Cul-de-sacs are discouraged, but there is no included language to provide vegetated islands in the middle to reduce the impact of impervious surfaces. All driveway approaches between the curb line and the property line must be constructed of Portland cement concrete, which increases impervious surface area.

Wildlife and Fish Habitat

The City's flood hazard regulations requires bridges to be used instead of culverts wherever practicable. Recently, the Panattoni industrial development installed a bottomless arched culvert in a stream corridor and crossing on Menthorn Springs, a tributary to Kellogg Creek, to minimize disturbance to fish populations. The city has Title 3 water quality resource area protection around Kellogg Lake, which has been dammed since the 1930s. There is also a possibility that the dam may be deconstructed and the former creek channel and associated floodplain restored.

Miscellaneous

The city has several provisions to assist in preserving trees within its water quality resource overlay and for preserving existing trees to meet off-street parking standards. These guidelines help protect existing vegetation and require mitigation efforts for cases where tree removal is permitted.

Light-spill is already addressed by Milwaukie within the water quality resource area. The types, sizes, and intensities of lights must be placed so that they do not shine directly into the natural resource locations. There are no requirements, however, to install light shields in habitat conservation areas.

Concerns

The concerns of Milwaukie's staff members focused primarily on providing incentives and education to engage people in environmentally minded behavior. There was a general consensus that the current planning system needs to do more to create interest in and momentum for habitat friendly development practices. One possible incentive is a reduced treatment fee for those who do not discharge runoff into the public stormwater system.

Education is a vital component for the implementation of habitat-friendly development practices. The positive effects of practices, such as placing light shields in lots adjacent to habitat conservation areas, are well documented but there is little awareness surrounding these issues. The costs and benefits associated with the installation and maintenance of habitat friendly development practices (such as pervious pavers) needs to be readily accessible and widely available to interested parties and the general public. This would help facilitate increased awareness, interest, and utilization of low impact development practices.

Recommendations

- Include a definition for habitat friendly development practices, Habitat Conservation Areas, and regionally significant fish and wildlife habitat areas within municipal code.
- Establish language to allow building setback flexibility outright.
- Allow landscaping requirements to be met by protecting regionally significant fish and wildlife habitat.
- Create provisions to implement site capacity incentives into applicable zones such as density bonuses or reductions in density in exchange for permanently protecting regionally significant fish and wildlife habitat.

- Expand flexible site design provisions to allow their use within regionally significant fish and wildlife habitat.
- Modify zoning code language to allow use of pervious paving materials and pre-approved alternative materials and designs.
- Allow alternative stormwater management practices such as rain gardens, bioretention cells, green roofs, rain barrels, and treatment trains.
- Add language to city codes allow reduction in impervious surfaces such as reducing sidewalk and street coverage, similar to the strong codes supporting shared driveways and street length reduction,
- Revise street requirements and design standards to allow narrow street rights-of-way through stream corridors, add code language to allow wildlife crossings, and add code language to identify habitat friendly culvert designs.
- Encourage the use of native plants throughout developments and locate landscaping adjacent to regionally significant fish and wildlife habitat areas. Allow credit for preserving regionally significant fish and wildlife habitat areas to fulfill landscaping requirements.
- Broaden existing light-spill codes to reduce light from affecting habitat areas.