

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, July 14, 2009
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Lisa Batey
Scott Churchill
Paulette Qutub
Teresa Bresaw

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelter, Associate Planner
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Chris Wilson
Dick Newman, Vice Chair

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:35 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 May 12, 2009

The following corrections were made to the minutes:

- On 2.1 Page 6, Line 196 was amended to state, “**Commissioner Klein commented that** a Code amendment should have been done for the site instead.”
- On 2.1 Page 11, in Lines 374, 376, 378 and 379, references to “Bella La Vina Farms” were replaced with “**Lovena** Farms.”
- On 2.1 Page 12, the second sentence of Line 427 was corrected to state, “It did not ~~meet~~ **need** a CSU...”

Commissioner Bresaw moved to approve the **May 12, 2009, minutes as corrected.**
Commissioner Batey seconded the motion, which passed 4 to 0 to 1 with
Commissioner Churchill abstaining.

2.2 May 26, 2009

Commissioner Bresaw moved to approve the **May 26, 2009 minutes as presented.**
Commissioner Qutub seconded the motion, which passed 2 to 0 to 3 with **Chair Klein, Commissioner Churchill, and Commissioner Batey** abstaining.

3.0 Information Items

Katie Mangle, Planning Director, distributed the new Transportation Code Chapter 1400 and announced the amendments that would go into effect Thursday, July 16, 2009. The Transportation Code would now be impact-based, and not value-based.

4.0 Audience Participation –This is an opportunity for the public to comment on any

item not on the agenda. There was none.

5.0 Public Hearing

- 5.1 Summary: Milwaukie High School Parking Variance
Applicant/Owner: Garry Kryszak for North Clackamas School District #12
Address: 11300 SE 23rd Ave
File: VR-09-01
Staff Person: Brett Kelter

Chair Klein called the hearing to order and read the conduct of minor quasijudicial hearing format into the record.

Brett Kelter, Associate Planner, cited the applicable approval criteria of the Milwaukie Municipal Code as found on 5.1 Page 8 of the staff report, which was entered into the record. Copies of the report were made available at the sign-in table.

Chair Klein asked if any Commissioners had any ex parte contacts to declare. No Commissioners declared an actual or potential conflict of interest. Commissioners Klein, Bresaw, and Churchill visited the site but no Commissioners visiting the site spoke to anyone at the site or noted anything different from what was indicated in the staff report. No Commissioner's participation was challenged by any member of the audience.

Mr. Kelter presented the staff report via PowerPoint. He distributed 5.1A Addendum – Amended Findings and Proposed Conditions for VR-09-01 dated July 14, 2009, from staff. He stated staff recommended approval of the application given the amended findings and proposed conditions, and responded to questions from the Commission as follows:

- Staff provided Addendum 5.1A to the Commission. The addendum discussed that 28th Ave was not public right-of-way, but was on the school property itself. North Clackamas School District (School District) provided a private access easement to three property owners to allow them access off 28th Ave.
 - The older house on 28th Ave was on a bigger parcel until 1994, when a minor land partition was done to create the front parcel. A memo from the City Engineering Director at that time noted that 28th Ave was private property. The minor land partition was allowed with the understanding that a private access easement existed. This would not be done today because frontage on the public street would be required for both lots.
- The 120-day land use deadline was October 9, 2009, so time would not be an issue if the Commission needed to continue the hearing.
- The access on 28th Ave varied in width from 30 ft between curbs at the mouth, to an average width of 23 to 25 ft at the top. Limiting parking throughout the accessway was based on the City's off-street parking standards. The minimum drive aisle width required for 2-way traffic was 24 ft. Parking for one vehicle on one side of the street would start to restrict access, so both curbs would be painted yellow to prohibit parking.
- Evening school activities in winter would require students to return to the parking lot after dark. Staff had discussed lighting, but no strong opposition existed to installing lighting if the Commission decided it was important for security reasons. However, staff felt that requiring lighting was not proportional to the scale of the request.
- According to the current Code, the school should provide 472 parking spaces, but the school demonstrated that only 341 parking spaces were being provided. It was

acknowledged as a non-conforming parking situation as long as the school secured and recorded some of the shared parking agreements that had not been formalized in the past, and did not go below 341 parking spaces.

Ms. Mangle confirmed that no additional correspondence had been received other than what was included in the material.

Chair Klein called for testimony from the Applicant.

Garry Kryszak, Capital Project Manager, North Clackamas School District #12, 12451 SE Fuller Rd, Milwaukie, presented the Applicant's testimony as follows:

- The School District believed they had 101 parking spaces at St. John the Baptist Catholic Church (St. John's) and 42 at Saint Stephans Serbian Orthodox Church (Saint Stephans). However, when the agreements had to be formalized, St. John's said only 61 could be formalized due to funerals and other large events. Other alternatives were researched, including the Presbyterian Church and local businesses, but parking was not available from them.
- The School District's Board of Directors (School Board) required students to get a permit to bring their cars to school. In the last school year, 50 permits were issued at the high school for off-campus parking. Of the 50 permits, no more than 30 were in affect at one time. This was were the maximum spaces used at St. John's.
 - During the past school year, 29 spaces were unavailable on campus due to construction. In essence, 72 additional spaces would be available this year plus the 29 parking spaces on campus that would be available again. As an incentive to students, only carpools could park on campus. The high school did not have a history of providing on-site parking.
 - The request to use the Lake Rd field was so the criterion of the previous conditional use could be met. They did not anticipate utilizing the field for parking but if needed, they would actually prefer parking closer to the campus. Due to the ages of students, the number driving to school increased slightly toward spring, so the lot might be utilized some in spring when the weather was nice, but there was no history of needing the extra spaces.
 - The cost per parking space increased when the formal negotiation was done to lock in long-term parking agreements. St. John's and Saint Stephans had charged \$1 per space per month, but increased the cost to \$2 per space per day. The increase could not be recouped from the students because the School Board had a set cost for a parking permit.
- The School District had demonstrated they were trying to comply with the issues. The variance was requested so the Applicant could comply. Moreover, he was positive the school would not put additional parking into the community.
- Lighting of the Lake Rd field was not recommended because it would attract people to the parking lot at the wrong times of day.
- Regarding striping of the curb, signage, and walkway, he requested that the walkway not be required. Most football and soccer players walked up through the elementary school, so not many people walked along 28th Ave (driveway). Painting the curbs and a No Parking sign were good ideas, but unless it became a safety issue, a walkway was not needed and would further narrow the driveway area.

Commissioner Bresaw asked if the 4-ft wide walkway was to be striped the entire length of the driveway.

- **Mr. Kryszak** explained that the intent was to paint a walkway all along the driveway. If students had a permit and were caught parking in the community, the policy was to revoke the permit.

Chair Klein asked if the students would be encouraged to park and walk north to the elementary school and through the football field to the school, instead of walking on Lake Rd.

- **Mr. Kryszak** replied that was correct. The School District preferred that students not walk in and out of the driveway. However, that was based on the idea that the Lake Rd parking would be utilized, which he did not believe would be needed.

Commissioner Batey asked what incentive existed to make students get a permit.

- **Mr. Kryszak** replied that students were charged a \$52 penalty if they did not have a permit. In addition to City parking enforcement, a campus monitor enforced student parking rules.

Ms. Mangle clarified that the City had parking enforcement only in the downtown area, but she hoped that parking enforcement would extend to other areas in the future.

Commissioner Batey commented that it appeared the neighbors were not complaining about students parking on 27th Ave. But if neighbors did notice students parking on public streets, who at the school should be contacted to complain?

- **Mr. Kryszak** clarified that an assistant principal was in charge of parking, and students were involved in the Transportation Demand Management (TDM) plan, which was a Planning Commission recommendation that had been very effective.

Chair Klein:

- Asked if safety had ever been an issue at the parking lot. He assumed the field was used during winter for soccer and football practice.
 - **Mr. Kryszak** replied the parking lot was only used during games and mostly on weekends, although there had been a decrease in the use of the fields. Neighbors did notice a lot of evening parking and parking that was not for the designated purposes.
- Expressed alarm that the churches increased the parking space rental to \$2 per day.
 - **Mr. Kryszak** responded that \$2 per day was the going rate, so no one was in the wrong. Now that the parking agreement was formalized, the churches realized that they really did not have the parking spaces on school days. It was not an enormous amount of money, but it did change the perspective.

Commissioner Batey recalled that during the CSU hearing, testimony indicated it was a reciprocal agreement because the churches used the school's lot on Sundays.

- **Mr. Kryszak** responded that it applied more to the use of the athletic facilities. During a football game, the church's parking lot was filled up, but that was a different situation. Parking was a problem during major events.

Chair Klein called for public testimony in favor of, opposed, and neutral to the application.

Armond Schweitzer, 2806 SE Lake Rd, commented that he lived across the street from the school on the corner of 28th Ave and Lake Rd and saw all the traffic. He favored

more parking, but expressed concern that the corner of the school property should have been utilized for diagonal parking for students along one side, leaving the other side for fire truck and ambulance access.

Chair Klein:

- Clarified that the application would not allow parking on both sides of the street.
 - **Mr. Schweitzer** stated that not allowing parking on both sides of the street would make the parking situation worse on baseball and football game days when 28th Ave was jammed.
- Confirmed that Mr. Schweitzer preferred that parking be allowed on that street.
 - **Mr. Schweitzer** affirmed that the more parking allowed on the school side of 28th Ave, the better. When that area was filled, people parked across the street on 28th Ave and drove up and down Lake Rd looking for a parking place. He also suggested that the tennis field could be used for additional parking.
- Clarified that for the current application, Mr. Schweitzer was concerned about parking for ball games year-round and wanted at least one side of the street available for parking.
 - **Mr. Schweitzer** added that Lake Rd was very well lit with streetlights.

Commissioner Batey commented that it seemed that people who might use the area for nefarious activities would move away from lights rather than toward them. She asked if Mr. Schweitzer was concerned about people hanging out in the parking area.

- **Mr. Schweitzer** responded no, and reiterated that lighting in the area was sufficient.

There were no additional comments from staff.

Chair Klein asked what staff recommended for striping the sidewalk because he believed it would deter parking, if parking were allowed there.

- **Mr. Kelter** stated that Mr. Schweitzer, Mr. Olson, and the Menelys, who lived at the intersection, expressed concern about traffic, congestion, and parking problems during after school and weekend activities.
- On one hand, the variance request did not regard parking for those activities, but parking related to the school's daytime needs.
 - Once staff understood 28th Ave was actually school property and recognized a finite width existed according to the off-street parking requirements for a drive aisle, staff then considered the potential of a greater demand for school time parking and what could be done to ensure pedestrian safety along that route.
- Staff recognized that a designated crosshatched or striped area for pedestrians would also restrict prohibited parking in the accessway, maintain a minimum drive aisle width, and help promote some pedestrian safety. This led to staff's condition to paint the walkway.

Commissioner Batey:

- Believed it would be safer for pedestrians to walk on the grass above the curb.
 - **Mr. Kelter** replied it might not be great when the grass was wet, and while an actual sidewalk would be ideal, it was disproportionate to the scale of the request for the application.
 - **Ms. Mangle** said staff did recommend including striping for the sidewalk, with the understanding that it was not public right-of-way.

- Asked if a variance was the correct tool, or if the School District should revisit the requirement of 341 parking spaces.
- Expressed concern about how parking for events impacted the neighbors, although that was not the focus of the discussion.

Chair Klein responded that what happened outside of school hours was a different issue. The application was for 341 parking spaces for students during school hours. After school activities did not dictate coming and going, otherwise parents coming to watch ball games would have to be issued parking permits as well. It was not public right-of-way, so the City could not dictate who could and could not park there. During football games, parking could line the area, which was not necessarily a great idea.

Commissioner Batey acknowledged it was a different question that also went to the issue of shared use of the fields by North Clackamas Parks District, et cetera.

- **Mr. Kelter** responded that the ball fields were approved as a CSU. If the City had the ability to revisit a CSU, they might be able to reevaluate the current standing of their public benefits versus impacts, and determine if the activities outside of school hours were within the original intent of the CSU.

Bill Monahan, City Attorney, agreed the parking standards did not address after hour activities, but the CSU overlay allowed for a revisiting to see if the conditions were adequate.

Mr. Kelter responded that it was up to the Applicant to evaluate whether 341 parking spaces were adequate. At this time, the Applicant had decided not to pursue that avenue. If the Commissioners wanted to revisit a past CSU, a more detailed analysis could be completed regarding whether the school was meeting Code requirements versus what they had provided historically and what the school's current performance was with regard to their TDM program.

- Staff believed changing the parking requirement was another option, but the school wanted to resolve the parking issue to allow for full use of all the improvements in a timely fashion. He agreed it was something to revisit in the future, but did not know if it had to be initiated by the school, staff, or the City. The current demand did not require the 341 spaces, but it was best to leave the number as is than reduce it and later require all the spaces. However, it could be revisited at a later date.

Ms. Mangle added that approving the variance did not preclude further actions on parking management, parking supply, or requirements, which could still be considered in the future.

Mr. Kelter drew a diagram to clarify the intended yellow crosshatched walkway.

Chair Klein closed the public testimony portion for VR-09-01.

Planning Commission Discussion

Commissioner Batey stated she was inclined to vote in favor of the application, including the crosshatched walkway, and ask the City to follow up on the event parking though it was a different issue than the application currently before the Commission.

Chair Klein commented that Mr. Schweitzer wanted more parking built between the driveway and fence, and that it was unusual to have someone ask for more pavement in place of open space. Leaving the entranceway as it was worked best, but with the crosshatch lines and no parking across the street, the amount of parking on that street would be limited. The school, not the City, would be enforcing the parking as they chose.

Ms. Mangle clarified that the school would be violating the condition of approval for the permit if parking restrictions were not enforced. The City would not enforce the parking; it would be a zoning compliance/enforcement issue.

Commissioner Batey asked if staff would want to revisit allowing parking on one side of the street with no parking on the other side.

Commissioner Qutub asked how many parking spaces would result.

Chair Klein replied 6 parking spaces might result.

Commissioner Churchill commented that he had walked that drive many times and agreed there was an event parking issue. There was some merit to having a striped walkway for pedestrian safety. People were not driving recklessly, but sometimes the focus was on getting to the corner and turning around, so drivers were not aware of pedestrian access.

- There were seasonal issues with walking on the grass. He supported a striped walkway. Additional parking on the street would narrow the drive aisle width, and the drive apron did not align with the curb, so people cut through.
- Perhaps No Parking signs would be better than crosshatch lines to ensure people did not park there. He supported no parking on either side of the street, but the walkway was necessary.
- He understood Mr. Schweitzer's concerns about overflow parking, but did not think adding 4 or 6 parking spaces would help. Installing additional parking spaces would actually cause more congestion and create potential hazards for pedestrians given the 30-ft width of 28th Ave.

Mr. Kelter clarified that the mouth of 28th Ave was 30 ft wide curb to curb at Lake Rd, but the street narrowed to an average of 23 to 25 ft.

Chair Klein understood Mr. Schweitzer's concerns about parking in the area, but agreed parking should not be located along one side of the street. Once the spaces on Lake Rd and 28th Ave were filled, the 6 to 10 cars would park on 29th Ave. He preferred having the pedestrian access, although he did not think it would be used for a long time.

- Keeping the requirement at 341 parking spaces was good, because even if all the spaces were not currently needed, school populations did fluctuate and more spaces might be needed.

Commissioner Batey said she was not concerned with football because there were not many home football games per year, but the City should monitor the parking usage during other seasons and summer events.

Chair Klein suggested sporting events could be monitored if parking enforcement was expanded.

Commissioner Bresaw agreed with Commissioner Churchill's comments about the driveway, and added it would be nice to consider a different striping design for the pedestrian walkway, although safety was the important issue.

Commissioner Churchill suggested a single line with wording such as "Walkway" of "Pedestrian Walkway", and "Stop" to avoid having the walkway look like a loading zone or creating a big painting project for the Applicant.

Ms. Mangle suggested that removing the word "crosshatched" from the Finding 8b, the fourth paragraph on 5.1 Page 16 and in Condition 1, 5.1A would allow enough flexibility for staff to work with the Applicant.

Chair Klein summarized that the variance and signage were acceptable with no parking on either side of the street and a single walkway strip would be designated with a "to be determined" pedestrian-friendly logo.

Commissioner Batey moved to adopt VR-09-01 with the amendments to the findings and conditions of approval on Addendum 5.1A submitted by staff and deleting "crosshatched" from Condition 1, and Finding 8b. Commissioner Qutub seconded the motion, which passed unanimously.

Chair Klein read the rules of appeal into the record.

6.0 Worksession Items

- 6.1 Summary: Transportation Growth Management Code Assessment project briefing
Staff Person: Katie Mangle

Katie Mangle, Planning Director, stated the City had received the Transportation Growth Management (TGM) Code Assessment Grant and had begun work on the project. She introduced the worksession topic with the following comments:

- The Code Assessment project would focused on four general areas:
 - The City's Residential Design Standards were not high enough according to comments from the community indicating that more should be required.
 - The Downtown Plan requirements were generally good, but very specific standards existed for the form and use of buildings, especially for the ground floor. The question was whether it was realistic in today's market in that the City was getting uses and activities downtown, not just buildings.
 - The Manufacturing (M) and Business Industrial (BI) Zones would be reviewed to ensure the Code was achieving what the Comprehensive Plan intended.
 - The Code's Administrative section, including variance criteria, nonconforming uses, etc., would also be examined to determine if there was a better way of doing and organizing things, since the Code was so old.
- The memorandum from the City's consultant Mary Dorman was very thorough. Due to Ms. Dorman's presence, the worksession would focus on Residential Design and Downtown Standards. The other two issues would be addressed by staff at a later date.
- She sought input from the Commission because residential building design was not usually discussed at Planning Commission. Building permit decisions were made by

staff and based on fair and objective criteria. The Commission did not review building design of single-family homes but the lot creation, variance, etc.

- She showed examples of good and bad single-family home construction and remodels in Milwaukie via PowerPoint. The poorly constructed examples had met standards and went through proper channels, but did not produce desirable results.

Key discussion points regarding the presented examples were as follows:

- Good taste is hard to legislate; however, diverse housing styles existed in Milwaukie and housing design should honor that diversity.
- Quality of materials and integrity of design were important in residential construction.
- The City had very strict requirements for retail on Main St, so several potential tenants for the North Main Building had been turned down. A tongue in cheek interpretation was that the Downtown Zoning Code preferred vacancies to activities. There were reasons why the Code was written as it was and the Downtown Plan and Code were not being questioned, but some flexibility might be needed considering the current market in Milwaukie.

Mary Dorman, Angelo Planning Group, Inc., reviewed the information provided in her memorandum with key items displayed via PowerPoint. She requested the Commission's input about whether the right problems had been captured, what options were preferred or disliked, and what other solutions should be investigated further.

- Angelo Planning Group was familiar with approaches used in other jurisdictions and could identify problems and gaps in the existing Code and review other codes as examples. The State's model development Code used best practices for smart development. Options and possible solutions could be identified and combined with direction from Planning Commission and City Council.
- A handout was distributed to the Commission reflecting the current Residential Design Standards that applied to the new construction of single-family dwellings and duplexes, which was also reviewed.

Key discussion points were as follows:

- The Residential Design Standards only apply to new construction, not major expansions. A major expansion could have no windows, for example, because that was not addressed by Code. Many jurisdictions have similar types of Design Standards for single-family. For example, Portland's only applied to new construction; Canby's applied if the existing footprint was expanded by 50%, as did the DLCDC model code.
- It was common for city codes to use a menu approach, allowing builders to choose 3 items from among 12 options, for example. Most jurisdictions addressed garages, but Milwaukie did not currently have standards relating to the size of a garage or the percentage of frontage that could be for a garage. The City currently gave builders points in the menu option for attached garages, but in older Milwaukie neighborhoods, detached set back garages were more common.
- **Bill Monahan, City Attorney**, had not seen any home size limitations placed in zones compared to neighboring homes, though Banks considered sizing differences.
- **Commissioner Churchill** suggested researching Mill Valley and Corte Madera, CA, and Bellevue and Kirkland, WA, as good examples for bulk and mass design requirements. In San Francisco, height limitation was based on the midline of adjacent roof ridges.

- **Susan Shanks, Senior Planner**, noted Milwaukie's Code currently required an average for front yard setbacks, so there were ways to use averages to fit more appropriately into an existing development. Milwaukie did not have size limitations based on zoning, but tools for making appropriate requirements for single-family construction should be researched.
- Floor area ratios (FAR) were also used by other jurisdictions, restricting sizes to 45% FAR for example, where the total of all livable space of the building could not be more than 45% of the overall size of the lot. Exceptions could be made above that, but a very good case had to be made. It created a base level for size; almost anything could be done if the improvement was within the base level, but above that, more scrutiny was put on design review.
- Design review in Milwaukie was currently addressed through the building permit review process. Some communities tried to address design review for certain neighborhoods through code requirements. For example, by requiring plans to show existing dwellings on either side, and whether the new construction was within a percentage of their height. This complicated the process. Someone looking at a vacant property in Milwaukie could look at the zoning Code and know the height limits, setbacks, massing, etc., and what could be constructed.
- Currently in Milwaukie, floor area requirements, or footprint, also included attached or detached garage area and storage buildings, which could be up to 30% maximum lot coverage.
- Milwaukie has large lots, so FARs might not be an effective tool, as illustrated by the Columbia Care Services, Inc.'s Balfour House project. A very large building could still be under the FAR. Ideally, the structure should be representative of the surrounding houses.
 - With FAR, builders could do what they wanted, but it did not necessarily mean the structure would fit within the existing neighborhood structures. As a neighborhood develops and the averages begin to increase, then a remodel could take place, which could be a downfall. Guidelines were needed to avoid placing a McMansion next to a cracker box house.
 - FAR worked well when lot sizes were consistent, but did not help with a double lot. FAR worked better for infill conditions.
- View corridor regulations for tall buildings and trees obstructing views were not currently in the Code, but perhaps were implementable. The goal was to develop a smart Code that resulted in smart development. Smart Code consisted of requirements that could be implemented effectively and followed.
 - The Willamette Greenway (WG) zone was the only place with view controls. It was difficult to identify the view that needed preserving and who it was important to. View corridor regulations in other jurisdictions were a nightmare to deal with.

The Commission discussed and suggested that the following also be considered for the City's Residential Design Standards:

- The menu could be expanded beyond the main entry and window requirements or could require more than 3 elements, making it possible to have more uniformity among homes.
 - **Commissioner Batey** noted manufactured homes were a concern as was the necessity of making houses not look like manufactured homes. More than 3 menu element requirements might be important to avoid the manufactured home look.

- A 12% window requirement was very minimal and should be increased. Under the current Code, the required windows could include garage windows, which was a pet peeve of staff.
- Requiring buried power lines and preventing metal garages were added to the list.
- Housing variety was confusing in the existing Code, with many different layers of regulation and processes that did not clearly describe what was allowed.
 - Current Code standards for Accessory Dwelling Units (ADUs) are very confusing and often conflicting. Staff received many inquiries about ADUs to house extended family members. Often the reaction was that ADUs were a densification tool that should be controlled, which was a valid concern.
 - Housing variety must be considered as families evolve and the population aged. How can the City accommodate people so they can stay in Milwaukie? That was the tone staff wanted to present to the community.
 - Having a regular kitchen facility was the key factor in designating an ADU. Milwaukie's stringent ADU construction standards, such as a 15 ft height maximum requirement, helped prevent ADUs above garages.
- 3? or 4 attached units should be allowed in other zones. Because of design changes required to fit 2 duplexes on a lot, as shown in a displayed photo, having 4 townhouses would have looked better.
 - **Commissioner Batey** cited Norm Scott's original application to build 3 attached units. He was told he could build 2 townhouses, but not 3 attached units because it was one lot and the zoning did not allow multifamily structures.
 - Townhouses could not be built in R7 zoning.
 - The only way to construct 3 attached units was through a Planned Unit Development.
 - Multifamily was allowed in many zones but townhouses were not allowed. Some flexibility was needed to reintroduce townhouses as a construction element.
 - A duplex could look like a townhouse but both units would be on one lot, so it was strange that the Code allowed a duplex, but not 2 attached houses on their own lots.
- Staff clarified that multifamily design was allowed in some zones, and defined as 3 or more units on the same lot, regardless of ownership. A 4-plex could not be constructed with separate land ownership. The City allowed 4-, 5-, or 6-plexes on one lot with separated land ownerships in the appropriate zone, but no 4-plexes or larger could be built without separate land ownership for the residents.

Ms. Dorman reviewed the challenges of the City's Downtown zones, uses, and standards via PowerPoint and as outlined in her memorandum.

Ms. Mangle noted Attachment 3 was an assessment of nonconforming uses in the downtown area. Of 153 businesses in the downtown area, 18% of the properties appeared to be in Downtown residential zoning and nonconforming with regard to use. In the Downtown Office Zone, closer to 90% of the uses were nonconforming. The number for structural nonconformities was much higher.

- The Code was very strict about what buildings in nonconforming uses could do. The question was how to push toward compliance with the vision without being so prescriptive that vacancies were encouraged. The vision was important, so standards were necessary, but it might be a few years before Milwaukie could warrant the rents that would allow for multiunit, multistory redevelopment of nonconforming sites.

The following discussion ensued, including suggestions for changes to the Downtown Plan:

- Inquiries had been made regarding minor changes to some nonconforming uses downtown. For example, Clackamas Credit Union wanted to lease some space for offices, but as a nonconforming use they were limited and that use could not be expanded. The bowling alley would be a bowling alley until it was completely redeveloped.
 - The Bernard property south of the garage came before the Commission for a Use Exception because the existing building was not designed to accommodate an outright allowed use.
- **Commissioner Batey** believed more flexibility was desirable in some aspects, but the ground floor retail was still an important aspect for downtown. North Main Village was sitting vacant, but before allowing an office in the building, she wanted to know the differences in rent between offices versus retail.
- Filled buildings were important, but it was also important to fill with the most desirable businesses and not just rent it as office space. It was important to help Milwaukie's market get to the point where it would support the kind of development in the vision. Some could argue that filled storefronts would improve the rents, property values, the level of activity, and the desirability of Milwaukie as a place over time, and attract businesses that would benefit from the foot traffic.
 - Buildings sitting empty for several more years would not help the City reach the vision. Perhaps sunsetting some of the businesses would be the answer, allowing offices to utilize the new spaces for a specified period of time. The Code was written for the purpose of addressing such concerns.
- **Mr. Monahan** said the implications of [allowing offices to use downtown space for a specific time period] were very negative or very costly. If something had to be changed within a time period, a reasonable amortization period must be created based on the useful life.
 - A 5-year amortization period would be needed for either a new or existing space, so it could take a long time to get cured.
- Filled buildings would promote the downtown area, but it was not desirable to give up and allow nonretail when the economy was bad and light rail was 6 or 7 years away. The City could be stuck with office uses that could not be extracted.
- **Ms. Dorman** said that as some incremental improvements were made and land values increased, higher rents could be commanded and restaurants and retail that could pay more for the space would move in. New buildings had to be designed right to work for retail. It was not wise to let a bank come in and construct a building that would always be an office. Adapting existing buildings was difficult in terms of what to allow that would encourage gradual change.
- **Commissioner Bresaw** noted that nonconforming itself was not bad, except for perhaps remodeling, which could be challenging. Having residential near or in downtown was very important and should not be changed.
- The Commission agreed that allowing ADUs as attached units was fine as long as the design was nice, fit on the lot, and looked good. Currently, the Code required that ADUs be attached.
 - Remodels of ADUs or homes were not subject to Residential Design Standards. The ADU review process should be streamlined and have more clear and objective standards.

- The Commission agreed that addressing Residential Design Standards should take priority over multifamily or the Downtown Zone Standards

Ms. Mangle stated that the next step was to talk with City Council on August 4. Ms Dorman would then develop an action plan, utilizing feedback from the Commission and staff to determine the plan of action if additional money was available.

6.2 Summary: Title 13 Habitat Conservation Areas project briefing
Staff Person: Katie Mangle and Brett Kelter

Ms. Mangle said she wanted the Title 13 material in the Commissioners' hands to demonstrate that the City had started to implement Metro's model code. However, it was more important to figure out Milwaukie's version of the Habitat Conservation Areas (HCAs). She and Mr. Kelter had worked on the Title 13 project over the past year, but due to lack of time tonight, she would follow up at the next meeting with more details regarding what compliance with what the HCAs would mean for Milwaukie.

7.0 Planning Department Other Business/Updates

Ms. Mangle updated that because Mr. Parecki had changed his project and did not do the expansion off the back of his Jefferson St project, it would not have triggered Design Review except to ensure that prohibited materials were not used. Though the completed project was not exactly as approved by the Commission, it was acceptable and a nice project.

- She confirmed no prohibited materials were used for the awnings. Awnings shown in the proposal were similar to those ultimately installed, but they were in a different configuration, so it was a little confusing. The plans had changed week by week. One proposal had shown a similar awning over the upper floors as well.

Commissioner Qutub announced that she was leaving Monday for Africa and the Middle East for about 6 weeks. She did not know how much that would impact the Commission.

- **Ms. Mangle** responded that the Portland Parks and Recreation Maintenance Building hearing was scheduled for the next meeting, so staff would be sure to have a quorum present.

Commissioner Churchill commented that the Milwaukie Candy Company tenant indicated they had been treated harshly regarding the painting of the Dietrich Building façade and the entire process was being held up.

- **Ms. Mangle** replied staff had contacted the contractor, not the tenant. The Milwaukie Candy Company was a tenant, but the whole building was involved. The Main St side was being painted, but the exterior north and back siding was being replaced, triggering a Type II Design Review. No permits had been requested, but the contractor did request a right-of-way permit to close the sidewalk to do some work, which was denied because of the required Type II Design Review.
- Staff talked to the contractor several times, who was not able to reach Mr. Dietrich, the property owner, so Mr. Dietrich may not be aware of it at this point. Staff had tried to get the project moving for several weeks without response from the property owner. She understood it was a hassle for the tenants and was working to bring the owner into the office to try to move things forward as quickly as possible.

8.0 Planning Commission Discussion Items – This is an opportunity for comment or discussion for items not on the agenda. There were none.

9.0 Forecast for Future Meetings:

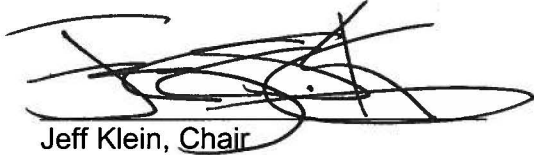
July 28, 2009

1. Public Hearing Continued: CSU-09-02 Portland Parks Maintenance Building
2. Worksession: Title 13 Habitat Conservation Areas project briefing.

Meeting adjourned at 9:09 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription, Inc. for
Alicia Stoutenburg, Administrative Specialist II



Jeff Klein, Chair



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday July 14, 2009, 6:30 PM

**MILWAUKIE CITY HALL
10722 SE MAIN STREET**

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
 - 2.1 May 12, 2009
 - 2.2 May 26, 2009
- 3.0 Information Items**
- 4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse
 - 5.1 Summary: Milwaukie High School Parking Variance
Applicant/Owner: Garry Kryszak for North Clackamas School District #12
Address: 11300 SE 23rd Ave
File: VR-09-01
Staff Person: Brett Kelter
- 6.0 Worksession Items**
 - 6.1 Summary: Transportation Growth Management Code Assessment project briefing
Staff Person: Katie Mangle
 - 6.2 Summary: Title 13 Habitat Conservation Areas project briefing
Staff Persons: Katie Mangle and Brett Kelter
- 7.0 Planning Department Other Business/Updates**
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
 - July 28, 2009
 - 1. Public Hearing Continued: CSU-09-02 Portland Parks Maintenance Building
 - 2. Worksession: Title 13 Habitat Conservation Areas project discussion

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

1. **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. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@ci.milwaukie.or.us. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.cityofmilwaukie.org
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.cityofmilwaukie.org
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

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.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Jeff Klein, Chair
Dick Newman, Vice Chair
Lisa Batey
Teresa Bresaw
Scott Churchill
Paulette Qutub
Chris Wilson

Planning Department Staff:

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelter, Associate Planner
Ryan Marquardt, Associate Planner
Li Alligood, Assistant Planner
Alicia Stoutenburg, Administrative Specialist II
Paula Pinyerd, Hearings Reporter

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, May 12, 2009
6:30 PM

COMMISSIONERS PRESENT

Jeff Klein, Chair
Dick Newman, Vice Chair
Teresa Bresaw
Lisa Batey
Paulette Qutub
Lisa Batey

STAFF PRESENT

Katie Mangle, Planning Director

COMMISSIONERS ABSENT

Scott Churchill
Chris Wilson

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:45 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 March 24, 2009

Commissioner Batey:

- Corrected 2.1 page 6 line 203, "Before further discussion about [Code amendments], she wanted to know what incentives existed *and what rental rates were for different types of* for businesses..."
- Corrected 2.1 page 13, line 420, "Commissioner Batey said *that in discussion with Susan Shanks*, she had *the Commission* suggested that staff reports contain the letters sent to the applicant regarding deficiencies or missing items.
- Corrected 2.1 page 17, line 563, "...that *and* the real *reviewers* of whether it complied rested with the Planning Commission on that particular application."

Commissioner Bresaw moved to approve the **March 24, 2009 minutes as corrected**. Vice Chair Newman seconded the motion, which passed unanimously.

3.0 Information Items

Katie Mangle, Planning Director, announced that the City Council hearing for the

Transportation Code Amendments was scheduled for June 2, 2009. Planning Commissioners were all welcome to attend, but she asked that the Commission also designate one Commissioner to represent the Commission as a whole.

Commissioner Bresaw asked if 500 sq ft could be a compromise between the Planning Commission's preferred 200 sq ft and City Council's 1,500 sq ft as the trigger for public area improvements.

Chair Klein:

- Asked if the City Council was looking for unanimous decision on the proposal.
 - **Ms. Mangle** stated staff did not know. Susan Shanks was still trying to contact Councilors Joe Loomis and Susan Stone directly to understand their issues. She believed they probably wanted more removed from the proposal.
- Was not certain that those changes put teeth into the City's Code. There was certainly an inevitable transportation impact from increasing the size of a home.
 - The two opposing Councilors seemed to say that the proposal would not fund what the City wanted, accomplish the goals the City had set, and would limit people from building on their property. She clarified this was false.
- Believed other possibilities existed to address the City's street improvement shortfall, but did not believe the proposal should be thrown out. The City required the same requirements of new construction.
- Suggested adjusting the percentage of the requirement. For a substantial remodel to a home, \$3,000 to \$4,000 was not a breaking point. A 1,500 sq ft remodel typically cost more than \$40,000, so the Code would add 10% for the cost of street improvements.
- Supported other options to supplement the proposal, but did not believe it should be thrown out to appease two people, especially after all the work that went into the changes.
 - **Ms. Mangle** reminded that the Planning Commission had also grappled with the issue. It was a fair policy debate and having the Commission share with Council the discussion leading to its decision might be helpful.
 - While scheduling the City Council/Planning Commission joint worksession for June 2nd might be possible, the Commission needed to find the best way to communicate with Council to avoid waiting for a joint worksession for each Code amendment package.

79

80 **Commissioner Batey** noted that the language Council was considering was unknown,
81 so the Commission could not yet take a firm position.

82

83 **Chair Klein** believed the Commission could take a firm position on the recommendation
84 that the Commission had decided upon.

85

86 **Commissioner Batey** confirmed that City Council was given samples of typical street
87 improvement costs.

- 88 • **Ms. Mangle** added that Ms. Shanks did a special, hour-long worksession with
89 Council on this issue alone. Council was well informed, but it was a policy difference
90 regarding how much contribution should be expected of single-family residences.
91 • Staff had proposed 1,500 sq ft as a counter proposal because it was the average
92 size of an existing home in Milwaukie. Essentially, the requirement would be waived
93 for most expansions, but should be required for remodels equivalent to building a
94 new home.

95

96 **Chair Klein** suggested the fees could be tweaked or that portion of the Code suspended
97 for one year to see if a rush of people applied to expand their houses, which would then
98 prove what Council was saying.

99

100 **Commissioner Batey** agreed that was a great idea.

101

102 **Ms. Mangle** explained she was personally comfortable with the 1,500 sq ft counter
103 proposal because the provision would not affect that many applications per year based
104 on all the past home expansions that had triggered transportation improvements.

- 105 • After the year-and-a-half of work invested in the project, she preferred to have as
106 many Councilors supporting the proposal as possible, because it would still be
107 controversial. She wanted to tell developers that it was City policy and supported by
108 City Council. For the handful of 500- to-800-sq ft additions per year, it might not be
109 worth losing some votes.
110 • She explained that most other cities did not require residential expansions to do
111 street improvements at all. The requirement had existed in Milwaukie for years, so
112 the proposal would be continuing existing policy, though it is more aggressive than
113 some cities. She reiterated that it was a fair policy debate.

114

115 **Chair Klein** noted that streets in other cities were not in the same condition as those of
116 Milwaukie. Much more planning was done on streets in Portland, Oregon City, and other
117 areas, so it did not do Milwaukie justice to just toss out the proposal. He was willing to
118 consider the difference in the cost of fees.

119

120 **Commissioner Qutub:**

- 121 • Asked if there were other funding sources to draw from.
- 122 • **Ms. Mangle** believed Kenny Asher, Community Development & Public Works
123 Director, would say the proposal was an important part of the City's approach to
124 improving its streets. Councilors had discussed other funding sources, such as a
125 street maintenance fund, which would be a separate project.
- 126 • **Commissioner Batey** commented it was hard enough to pass a street
127 maintenance fund, but it was more successful than expected. Perhaps some of
128 that money could be reallocated.
- 129 • Believed a Code amnesty would be interesting to see how many people had actually
130 been holding back to avoid the fee. When remodeling, all costs were considered,
131 even an extra \$500.

132

133 **Chair Klein** added that offering an amnesty now would provide local stimulus because it
134 would encourage people do something to their property now and might encourage local
135 contractors to offer discounts. After a 24- to 36-month window, the City could determine
136 whether to return to the Code as written, or extend the amnesty, with the hope that
137 people would remodel, which was the ultimate goal.

138

139 **Commissioner Batey** expressed concern about offering amnesty before addressing
140 other Code design issues, such as massing and scale. She agreed that amnesty was a
141 good idea in general, but no one wanted a number of people suddenly deciding to build
142 mini-McMansions.

143

144 **Chair Klein** asked if there was a rush in getting the Code amendment through Council.

- 145 • **Ms. Mangle** replied there was no need to rush the amendment unnecessarily
146 because getting it right was more important. The current policy caused problems
147 for many different applications, which was why staff had focused on it. Delaying a
148 few weeks was not the end of the world, as long as it got done.

- She clarified that Council had already opened the hearing, but the Planning Commission could request that it return to them for further discussion. City Council would have to deny the amendment for it to return to the Planning Commission. However, she did not think the issue was worth it because many other important issues needed to be addressed as well.

Commissioner Bresaw suggested the Commission support that any remodel larger than 500 sq ft require a street improvement in an effort to understand Council's position. If the Commission agreed to 500 sq ft versus the original 200 sq ft, it might be fair to both sides.

Chair Klein added that the applicant would then only have to give up the right-of-way up to 500 sq ft.

- **Ms. Mangle** suggested continuing discussion to the next Commission meeting to allow Ms. Shanks to continue working with Council and then report back to the Commission about the June 2, 2009, City Council meeting.

Chair Klein did not believe getting a unanimous decision through City Council was the ultimate goal, because he did not think it was possible.

There was a brief discussion regarding the number of City Councilors that would be present to vote at the June 2, 2009, public hearing.

4.0 Audience Participation—This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings—None.

6.0 Worksession Items

6.1 Work Program Discussion

Staff Person: Katie Mangle

Katie Mangle, Planning Director, directed the Planning Commission to a list of hearings, worksessions, and trainings they participated in over the last year. The purpose of the worksession was to discuss how the Commission worked together as a

group and any lessons learned. She believed the Commissioners did a good job discussing differing opinions and crafting final decisions.

The Commission and Ms. Mangle offered the following comments and discussion points about the Planning Commission's work over the last year as follows:

- The wetlands tour (capped?) was great because it prompted review of the Commission's decisions and how those decisions might have been considered differently. Taking additional tours whenever possible would be helpful.
- The Favorite Appeal (AP-08-01) was the Planning Director's denial of the property line adjustment (PLA-08-01) for the people living at 12293 SE 40th, next to the church. It was noted that when overturning a Planning Director's decision/denial?, the Commission had to determine what the Director had done wrong.
 - A Code amendment should have been done for the site instead.
 - **Commissioner Bresaw** said she was happy how the appeal had turned out because it added value to the lot.
- Some projects did not turn out as expected.
 - **Vice Chair Newman** questioned how the Commission could have approved the Ukrainian Bible Church behind Linwood Elementary School, yet the sign for the Bridge City Community Church on Harrison, which he thought would be in the way, turned out to be no big deal. He questioned why the Commission had not asked about the materials proposed for the Ukrainian Bible Church.
 - **Ms. Mangle** explained some items could be considered for a Community Service Use (CSU), but they had to be careful about how those items were raised. For the Immovable Foundation Church (IFC), the design review type was very limited, but the result was better than it would have been otherwise.
 - Story poles, as mentioned by Commissioner Churchill, would have been helpful for the Ukrainian Bible Church. While there were issues of comparative scale and construction materials, the church did ultimately function well within the neighborhood.
 - The Commission should be sure to receive the scaling of the proposed project and surrounding buildings.
 - **Ms. Mangle** wished staff would have asked more of the school district. For instance, the Milwaukie High School arts annex could have been better connected to Main St. Staff missed an opportunity to positively influence the project.

- 219 • Prior to applications coming to the Commission, she wanted to improve staff's
220 role as influencers on projects and not just focus on their regulatory role.
- 221 • When an application was not complete or failed in some areas, the Commission
222 needed to send it back to the applicant for completion, or recommend denial and
223 let the applicant redo it.
- 224 • The Jefferson St Parecki project was a big lesson learned because the
225 Commission approved something different from what the Design & Landmark
226 Committee (DLC) thought they had approved.
- 227 • When the Commission considered granting a new CSU, such as the IFC, it would
228 be good to consider a financial breakdown of the tax base that could be
229 generated for the City with comparable houses in the area.
- 230 • **Ms. Mangle** clarified that a financial breakdown was now a consideration
231 during the staff review. No new CSUs had been proposed yet, only
232 modifications to current CSUs.
- 233 • It was important that new Commissioners realize there were no dumb questions, and
234 that usually someone else had the same questions. Asking questions also helped
235 one gain confidence; you had to trust yourself.
- 236 • Asking questions also benefitted the public process because the audience, while
237 they might not agree with the decision, could witness the Commission's decision
238 process.
- 239 • Neighborhood notice was another item that could be improved.
- 240 • After the North Clackamas Park ball fields, the Commission learned about lighting,
241 and the lights at the Milwaukie High School football field worked well without much
242 overspill.
- 243 • Staff heard complaints when the field was being used by adult leagues, but the
244 lights did not seem to be a problem after an adjustment was made.
- 245 • The Commission should go see the Logus Rd improvements because the street
246 represented the future of street design. Essentially, stormwater runoff was now
247 treated on-site with no need for pipes to take it elsewhere. There had been many
248 public complaints, but now people were happy with it.
- 249 • Some things could not be anticipated in the time the Commission had to review an
250 application.
- 251 • **Vice Chair Newman** said the application and review processes had greatly
252 improved. Staff presentations were clear, so he was not sure what else could be
253 done to reduce the occasional unpredictable project outcome. He believed there

- 254 might be some dishonesty on the applicants' part.
- 255 • **Ms. Mangle** added that in some ways, applicants were trying to sell their product,
- 256 which put staff was in a tough spot because they had worked with the applicant
- 257 to set them up for success.
- 258 • Many applications never came before the Planning Commission because they
- 259 did not meet Code criteria. For applicants who could be successful, staff tried to
- 260 influence the project to meet the criteria, but staff also had to be careful not to be
- 261 part of any sales pitch. Staff's job was to present the project and help the
- 262 Commission understand how it met the Code.
- 263 • The Commission could review impact items such as glare, continuity, materials,
- 264 etc., but could not do much about aesthetics. The Code allowed the Planning
- 265 Commission to set conditions on specific items, such as tree preservation or
- 266 neighborhood impacts, but not to dictate design. The Commission had more
- 267 influence on CSUs with regard to aesthetics, but less on private projects.
- 268 • The Planning Commission could include CSUs in the DLC's scope as a tool when
- 269 needed, but the Commission had to be very clear about what the DLC should review.
- 270 • An applicant was not required to present final drawings of a project if the project met
- 271 the City's building guidelines. As long as no prohibited materials were used in
- 272 downtown, changes could be made to the project.
- 273 • Projects that came to the Commission were generally approvable because staff
- 274 spent a lot of time working with the applicant to make the application fit the Code
- 275 criteria. On some difficult projects, however, staff presented both findings in support
- 276 of approval and denial.
- 277 • The constraints of the 120-day land use clock made influencing projects more
- 278 difficult for staff because of their focus on preparing the application for the
- 279 Commission.
- 280 • Commissioners should read through the packet and call staff with questions,
- 281 especially regarding deal-breaking issues, well before the meeting date. Some
- 282 answers might be found buried in the meeting packet, while others staff could
- 283 research and bring more information to the meeting, if needed.. This also enabled
- 284 staff to notify the applicant about specific issues and enable them to respond, which
- 285 was most important.
- 286 • Suggestions for future tours included another Wetlands Tour and a housing tour of
- 287 the Housing Authority of Portland's New Columbia in North Portland.
- 288 • Touring the new I-205 light rail line was suggested; however, other light rail sites

- 289 might be more beneficial for the Commission because of differences in scale and
290 environment.
- 291 • The I-205 light rail water crossing at Johnson Creek might be helpful to see
292 because of the water quality resource (WQR) review near Kellogg Creek.
- 293 • The Planning Commission would review some light rail elements, but most of the
294 project was in the right-of-way and would not be subject to land use review.
- 295 • In addition to the WQR review, the Commission might also do design review for a
296 substation building on private property, and possibly a park and ride facility. The
297 DLC might be asked for an advisory design review.
- 298 • The light rail project already had a state land use approval to exist as a
299 transportation corridor. Local jurisdictions could do a land use review if a CSU, or
300 WQR, etc., were triggered; however, the City was only able to help shape the
301 project through design review, not deny the use.
- 302 • Suggestions for future training sessions included learning how to read and what to
303 look for when reviewing plan sets, and understanding elements of architectural
304 design, such as floor area ratios, height, bulking and mass, and their differences, etc.
- 305 • The Commission also welcomed any suggestions by staff of training courses that
306 might be helpful to the Commission.
- 307 • Training on WQRs and water crossing would be beneficial because upcoming
308 projects included the Kellogg for Coho Project, Riverfront Park, the Trolley Trail,
309 and Title 13 requirements regarding habitat preservation and the expansion of
310 the WQR areas. The Kellogg Creek restoration and bridge replacement, the dam,
311 light rail crossing the dam and the creek, were also projects being addressed by
312 the Planning Department.
- 313 • **Ms. Mangle** clarified that nothing official was happening at the parking lot across the
314 street from City Hall; Metro and the City each still owned half of the property.
- 315 • Attachment 3 6.1 page 9 of the meeting packet summarized the City's Code revision
316 projects, which included the Transportation, Parking, Residential Design, and Sign
317 codes.
- 318 • Key issues for the Commission to address this next year were discussed as follows:
- 319 • Addressing design standards for single-family housing was one of the most
320 pressing issues. The project should progress quickly given the Transportation
321 Growth Management grant and consulting provided (Attachment 3, Zoning Code
322 Assessment, Code Section 19.400).
- 323 • The Residential Facilities Code was also a high priority in order to fix how the

- 324 City dealt with federally protected housing categories. A worksession would be
325 scheduled soon. Code fixes would only address definitions.
- 326 • **Chair Klein** wanted the Planning Commission to take a more active role in long-
327 range planning, such as addressing how to make all City streets more livable and
328 how to get street improvements funded. He believed the Commissioners should
329 at least make their opinions known and work toward such long-term planning
330 items.
- 331 • **Ms. Mangle** noted that two projects were slated for long-term planning next
332 year, but funding was no longer available for the Comprehensive Plan
333 update.
- 334 • She clarified that cell phone towers had been a substantial issue 4 years ago
335 because no Code prevented them from being placed just about anywhere.
336 With advances in technology, smaller units could be placed on existing poles,
337 so the issue only came up about once a year. The Code might also be
338 working to discourage them.
- 339 • The Commission discussed the possibility of requiring that power lines be placed
340 underground in residential areas. Key discussion points included:
- 341 • Zach Weigel, Civil Engineer, had said burying power lines property by property
342 did not make sense, but it could be done in new subdivisions.
- 343 • **Ms. Mangle** said she would check with JoAnn Herrigel, Community Services
344 Director, about setting a goal to have PGE power lines buried underground within
345 a 30- to 40-year horizon.
- 346 • PGE could have buried the lines when Lake Rd was widened, but City Code did
347 not require it, so the lines would be overhead.
- 348 • The McLoughlin project would have cost another \$1.5 million to bury the lines.
- 349 • Power lines at Riverfront Park would be moved to avoid having them go through
350 the middle of the park, but they would not be buried underground because a
351 major trunk line was involved.
- 352 • In winter, Milwaukie suffered from significant power outages due to damage from
353 trees. The City tried to preserve trees and views, but having the wires
354 everywhere hindered the City's beautification efforts.
- 355 • Requiring that power lines be buried from the street to the house would facilitate
356 the move to bury power lines in the future.
- 357 • Harmony Rd could be widened as far as the expressway to reduce traffic congestion
358 getting out of town. A 4-lane road might be practical as long as they only went to the

expressway.

- **Ms. Mangle** offered to report about other regional projects, such as the Urban Growth Boundary (UGB) expansion, because such items affected long-range planning issues addressed by the Commission. Often, no time was available at meetings with full agendas to discuss other projects.
- The Commission briefly discussed traffic issues at Sunnybrook Rd resulting from actions by Clackamas County. City Council wanted to take bolder steps, but would start by sending a letter voicing concerns about the issue. The Harmony Park Apartments did annex into the City and received all the necessary approvals.
- **Chair Klein** wanted to work with the County on the Urban Growth Management Area (UGMA) to facilitate a better process at the City level rather than just at the County level.
- **Ms. Mangle** explained that staff was improving their contacts and network with County staff to coordinate better on projects; however, until a property was annexed into the City, it was subject to County rules.
- Staff was working closely with County staff on Bella La Vina Farms, which needed a sewer connection. Staff had to remind the County that the City had an agreement with the owners of Bella La Vina Farms. Under state law, they were subject to the County's Comprehensive Plan until annexed into the City.
- The County did not tend to influence projects toward annexing into the City. Bella La Vina Farms had construction that was relabeled by the County. If done correctly, it would have forced annexation into the City. The owners were working with the City and County to determine the rules to follow.
- Another training idea for a plans reading workshop was to have the Commission tour completed projects with an architect and the project plans in order to compare the finished project with the plans submitted in the application.
- The Commission briefly discussed the changes at Ardenwald Elementary School and their preferences.

Ms. Mangle clarified that trees along Jackson St would be replaced with trees from the street tree list because the sidewalks would be widened for the bus stops. Most trees downtown were weedy and not proper street trees. She would check to see if some trees could be saved.

- The Southgate Park and Ride and Jackson St projects were moving forward. The outstanding issue of how to handle stormwater had been resolved, so the building

permit plans were being reviewed this week.

- She updated that the staff trailer was no longer in the budget; \$25,000 would be used to move the Engineering Department to the Operations Building. The good news was that the City had no layoffs. New staff positions were proposed but not approved. The Planning Department's consultant budget was approved at \$50,000 as requested.
- The City did not have enough staff as it was; Milwaukie could not be compared to other small cities and their budgets, space, or staff because Milwaukie's staff also addressed regional projects that were always changing outside the city.

Additional comments from the Commission included:

- The planning team Ms. Mangle had assembled was fantastic and well-liked on both professional and personal levels. Their character and hard work were appreciated.
- The Commission did a great job of feeding off each other and asked a lot of good questions which lead to good answers.
- The fact that the Commissioners did not always agree and the alignments were not always the same was a testament to the good work being done. No one could predict which way any Commissioner might vote.

7.0 Other Business/Updates from Staff

7.1 Code Tables – preview of proposed amendments

Ms. Mangle explained the Code Tables regarded housekeeping items in preparation of republishing the Code. The public hearing for the Code Tables was scheduled for the next Planning Commission meeting, where the Transportation Code amendments would also be discussed.

8.0 Planning Commission Discussion Items – This is an opportunity for comment or discussion for items not on the agenda.

Chair Klein suggested Commissioners go see the Logus Rd improvements. He would bring pictures of the project to a future meeting.

Ms. Mangle confirmed that Riverfront Park was almost complete. It did not meet a CSU because it was zoned for parks, but the Design Review, Willamette Greenway, and

Water Quality Resource would be reviewed by the Commission in July.

9.0 Forecast for Future Meetings:

May 26, 2009 1. Public Hearing: ZA-09-03 Code Tables

June 9, 2009 1. Public Hearing: CSU-08-03 Trolley Trail *tentative*

Chair Klein asked to have a minimum quorum and only one agenda item for May 26 since it was the day after Memorial Day. Confirmation of attendance would be sent through email.

Meeting adjourned at 8:15 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription, Inc. for
Alicia Stoutenburg, Administrative Specialist II

Jeff Klein, Chair

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, May 26, 2009
6:30 PM

COMMISSIONERS PRESENT

Dick Newman, Vice Chair
 Teresa Bresaw
 Paulette Qutub
 Chris Wilson

STAFF PRESENT

Katie Mangle, Planning Director
 Susan Shanks, Senior Planner
 Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Jeff Klein, Chair
 Scott Churchill
 Lisa Batey

1.0 Call to Order – Procedural Matters

Vice Chair Newman called the meeting to order at 6:32 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 April 14, 2009

Commissioner Bresaw moved to approve the April 14, 2009 meeting minutes as presented. **Commissioner Qutub** seconded the motion, which passed unanimously.

3.0 Information Items—None

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There were no comments.

5.0 Public Hearings

5.1 Summary: Code Tables

Applicant: Katie Mangle/City of Milwaukie

File: ZA-09-03

Staff Person: Katie Mangle

Vice Chair Newman called the hearing to order and read the conduct of legislative hearing format into the record.

Katie Mangle, Planning Director, explained the proposed Milwaukie Municipal Code (MMC) table amendments were primarily housekeeping items to clean up the tables in MMC Titles 14, 17, and 19, and related to the republication of MMC Titles 1 through 19. Planning staff worked with Pat Duval, City Court Recorder, to set up the syntax, grammar, and formatting standards for the Code with the primary objective of making the document easier to read and work with.

- The Code was set up in an outline structure with special formatting including indents and spaces, which were difficult to maintain in the current two-column format. The Planning Department preferred a one-column format because copies were often given to applicants, developers, and the public, and the two-column format was difficult to follow.
- Most of the proposed changes did not require legislative approval, but there was enough content change that staff wanted to be sure to cover their bases through the legislative process.
- She briefly named the key solutions proposed, noting that Attachment 1 Exhibit B, 5.1 page 8 of the packet, would be most helpful in terms of identifying the proposed changes.
- The amendments were important so that the cleaner table format was in place before the Planning Commission reviewed the upcoming Parking Code amendments.

Vice Chair Newman called for public testimony in favor of, opposed, and neutral to the application. There was none.

Commissioner Bresaw confirmed that the amendments would result in no policy changes at this time. The Code would simply be easier to understand and reference. Policy changes could still be made in the future.

Commissioner Bresaw moved to approve ZA-09-03 initiating the proposed Code amendments and recommending that City Council adopt the amendments to MMC Titles 14, 17, and 19 with the recommended findings in support of approval.

Commissioner Wilson seconded the motion, which passed unanimously.

6.0 Worksession Items – None

7.0 Planning Department Other Business/Updates

7.1 Transportation Code Amendments—update prior to Council hearing on June 2

Ms. Mangle noted the Transportation Code Amendments (TCA) were on the City Council agenda for June 2, 2009. Susan Shanks would update the Commission about the TCA's status at Council and check who would represent the Planning Commission at the Council meeting and what their expectations might be.

Susan Shanks, Senior Planner, distributed a copy of the staff report provided to City Council at the April 21 worksession that focused on the TCA pertaining to single-family residential expansions.

- The Planning Commission recommended an incremental exaction approach that included 6 square footage categories: expansions of 0 sq ft to 199 sq ft were exempt; 200 sq ft to 449 sq ft were potentially required to complete one improvement. Essentially, as more square footage was added, more street improvements were required.
- The staff report described why staff and the Commission proposed the incremental exaction approach and how it would work. Real data was used to show how the proposed Code would apply under similar situations in the future.
 - The right hand table on the last page of the staff report noted the City building permits issued between July 1, 2006, and June 30, 2008. Of the 44 single-family expansion building permits issued, 6 would have been exempt, 17 would have had to provide one street improvement, etc.
- Feedback from City Council included support from Councilors Greg Chaimov and Deborah Barnes, who were concerned about safety, specifically regarding the lack of sidewalks. Councilors Susan Stone and Joe Loomis were opposed to exacting any kind of transportation improvements from single-family residential expansions. The interim mayor at that time, Mayor Jeremy Ferguson, was unclear in his position. There was a general desire to have consensus on the issue, so staff was asked for alternatives.
- Staff discussed various alternatives, including exempting all single-family residential exactions and how that was reviewed and rejected by the Planning Commission. Another alternative was to lower the threshold below 200 sq ft, which was also rejected by the Commission. Another was to raise the threshold to 400 sq ft or 500 sq ft. And lastly, a non-incremental approach of all or nothing

- 111 was presented, such that above a certain point, the owner paid for all street
112 improvements, and below a certain point, the owner paid for no street
113 improvements.
- 114 • After discussion, Council determined that the threshold needed to be reworked as
115 possibly an all-or-nothing approach. Staff revised the proposal for the May 5 hearing,
116 which was continued because Councilor Stone would not be present and the Council
117 wanted to think about the proposal and hopefully get more consensus.
 - 118 • The revised proposal provided via email by the Planning Director was to exempt
119 single-family expansions of less than 200 sq ft, and require right-of-way dedications,
120 if needed, for expansions of 200 sq ft to 1,499 sq ft. Expansions greater than 1,500
121 sq ft would be required to provide full street improvements, if needed.
 - 122 • The Engineering Department made it clear that it was crucial to at least get right-
123 of-way for future whole block improvements or Capital Improvement Program
124 (CIP) projects. Right-of way dedication could add a lot of cost and time to a
125 project. Without right-of-way along certain property frontages, projects become
126 more complicated because the right-of-way had to be acquired and/or
127 condemned.
 - 128 • In the proposal recommended by the Planning Commission, any requirements
129 were always contingent upon need. If a frontage already had a sidewalk,
130 landscape strip, curb, and full road width, then nothing would be required
131 because the frontage would be considered complete.
 - 132 • Councilors Loomis and Stone still appeared opposed to the proposal, although she
133 did not know what that meant in terms of a vote. Based on her conversations with
134 Mayor Ferguson, and Councilors Chaimov and Barnes, they were likely to support
135 the proposal.
 - 136 • Staff hoped others, including the City's Code amendment consultant, Engineering
137 Director, and City Attorney, would speak in support of the proposal because it also
138 included the long-needed, full rewrite of the transportation regulations and other
139 Code sections it affected.
- 140
- 141 **Commissioner Bresaw** offered to represent the Planning Commission and recalled that
142 other cities such as Lake Oswego and Portland were not as aggressive in requiring
143 transportation improvements for single-family expansions. The City of Portland had a lot
144 of sidewalks, and Milwaukie needed sidewalks.

- 145 • **Ms. Shanks** agreed the amendment was generally tailored to Milwaukie. She
146 believed that although Portland might not require the actual improvements, it did
147 require fees in lieu of construction (FILOC). She offered to verify that information.
- 148 • She noted that following the worksession discussion, some Councilors expressed
149 interest in developing a street improvement program for building sidewalks, curbs, or
150 stormwater systems. They recognized the need for street improvements, not just
151 street maintenance.
- 152 • Staff would clarify at the Council hearing that the proposed Code amendments
153 were not the City's plan to improve Milwaukie's streets, but was the City's
154 approach about what could be required of development so that the existing
155 system did not become further deficient when more impacts were added.
- 156 • Guidelines were written into the proposed new Code addressing whether an
157 improvement, such as curb and stormwater drainage improvements, was feasible or
158 would create an unsafe situation. The Engineering Director would then determine if it
159 was more appropriate to accept FILOC, which had to be voluntary.
- 160 • According to the past data shown in the table, the current proposal requiring full
161 street improvements would only be applied to a very limited number of single-family
162 home expansions.

163
164 **Commissioner Wilson** expressed some discomfort with the proposal, stating that he
165 understood that for a single-family expansion, the owner would be forced to use one of
166 the five proposals.

- 167 • **Ms. Shanks** explained that the Planning Commission's recommended proposal was
168 revised after the City Council hearing. The current, revised proposal was available
169 online. An owner would only be potentially required to fund or build street
170 improvements along the frontage of their home if they added more than 1,500 sq ft.

171
172 **Commissioner Qutub** inquired whether a homeowner doing an expansion of more than
173 1,500 sq ft could opt to do FILOC or were the improvements required.

- 174 • **Ms. Shanks** clarified that FILOC had to be voluntary. If the proposed amendments
175 were approved, and the Code was triggered by an expansion larger than 1,500 sq ft,
176 the owner would have to request to pay FILOC versus actually building the
177 improvement. The Engineering Director would evaluate whether or not the request
178 was approvable based on guidelines now built into the Code.

- In general, City policy was, and continued to be under the proposed Code, that when it made sense, build the improvements. FILOC did not actually pay for what it really cost to pay for the improvements, so it was always better to require the developer to pay for the improvements. However, if not feasible based on specific language in the Code, the Engineering Director might determine it was appropriate to accept FILOC.

Bill Monahan, City Attorney, added that in the case of a last remaining section of sidewalk, the applicant really did not have an option because the Engineering Director would require the improvement.

Commissioner Bresaw inquired about the required dedicated right-of-way encroaching into a homeowner's 20-ft setback.

- **Ms. Shanks** clarified that the proposed Code gave the Engineering Director much more discretion in determining the appropriate right-of-way width. For example, the homes along the east side of 19th Ave in Island Station were very close to and sometimes encroached into the right-of-way. It did not make sense to be tied to a specific right-of-way width based solely on street classification.
- A range of what was appropriate for the existing built and natural environment was now provided, covering topography and water quality resource issues, etc., for more built-in flexibility.
- Many lots in Milwaukie had non-conforming setbacks, so not maintaining required setbacks was not unusual. If the street improvement was needed or extra roadway was needed, the goal of providing the facility might outweigh meeting a setback requirement. Providing flexibility was necessary to avoid having the street too close to the house. Sidewalk width was also considered, as well as whether the sidewalk was on one side or both sides of the street.

Vice Chair Newman:

- Verified this was the last item holding up the TCA and could not be set aside because the street improvements were very integrated into the Code. As a recommending body, it was important that Council understood what the Planning Commission meant in its recommendation.
- **Ms. Shanks** added staff had strategies to work through should the item become a sticking point, but hoped City Council would support the package as a whole.

215

216 **Commissioner Bresaw** asked if obtaining right-of-way dedication was most important
217 on minor arterials and collector streets because of the increased likelihood of those
218 streets being improved as a CIP Project.

- 219 • **Ms. Shanks** clarified that right-of-way dedication had many layers of importance.
220 Logus Rd was both a school and transit route and although not a collector, it was
221 an important CIP project.

222

223 **Vice Chair Newman** assured that Commissioner Wilson's views were always welcomed
224 and appreciated.

225

226 **Commissioner Wilson** understood that the Planning Commission had already voted on
227 the TCA issue.

- 228 • **Ms. Shanks** replied that the proposal was revised based on City Council's
229 direction, and the amendments were not yet finalized.

230

231 **8.0 Planning Commission Discussion Items** – This is an opportunity for comment
232 or discussion for items not on the agenda. There were none.

233

234 **9.0 Forecast for Future Meetings:**

235 June 9, 2009 1. Worksession: Title 13 Nature in Neighborhoods update
236 tentative

237 June 23, 2009 1. Public Hearing: CSU-08-03 Trolley Trail *tentative*

238 2. Public Hearing: CSU-09-02 Portland Parks &
239 Recreation Maintenance Bldg *tentative*

240

241 **Ms. Mangle** stated staff would not be ready to present the Title 13 Nature in
242 Neighborhoods update on June 9. Staff was still determining what was required and
243 what could be done if the overarching goal was to protect habitat in Milwaukie.

- 244 • She tentatively proposed canceling the June 9, 2009 meeting. The Commission's
245 hearing schedule would become busier with the Trolley Trail and the Portland Parks
246 and Recreation building's expansion of use hearings scheduled for June 23. Other

projects, like Riverfront Park and the Wastewater Master Plan, were also expected to be reviewed this summer.

- She clarified that the flag lots application on Home Ave would only come before the Commission if appealed. She suggested Commissioner Wilson discuss flag lots with Ryan Marquardt, Associate Planner.
- She confirmed that the Jackson St. Improvement project was in the design phase and construction would not begin until next summer. The project was being funded by federal stimulus money, so certain milestones had to be met. Some work would begin by September.

Commissioner Bresaw moved to cancel the June 9, 2009 meeting. Commissioner Wilson seconded the motion, which passed unanimously.

Meeting adjourned at 7:12 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription, Inc. for
Alicia Stoutenburg, Administrative Specialist II

Jeff Klein, Chair



To: Planning Commission
Through: Katie Mangle, Planning Director
From: Brett Kelter, Associate Planner
Date: July 7, 2009, for July 14, 2009, Public Hearing
Subject: **File:** VR-09-01
Applicant: Garry Kryszak for North Clackamas School District #12
Owner: North Clackamas School District #12
Address: 11300 23rd Ave (Milwaukie High School)
Legal Description (Map & Taxlot): 1S1E36BC05600 (main school campus);
 1S1E36CA01200 (Lake Rd fields)
NDA: Historic Milwaukie

ACTION REQUESTED

Approve application VR-09-01 and adopt the Recommended Findings in Support of Approval found in Attachment 1. This action would allow Milwaukie High School to count 39 parking spaces at its Lake Rd fields facility as shared parking in order to comply with the off-street parking requirement established as a condition of approval of CSU-07-05.

BACKGROUND INFORMATION

The applicant, North Clackamas School District #12 ("the District" or "the applicant"), is seeking land use approval to allow Milwaukie High School ("the school") to count 39 off-street parking spaces at its Lake Road ball fields facility ("Lake Rd fields") as shared parking. The school is required to provide at least 341 off-street parking spaces as a condition of approval from land use file CSU-07-05 (see Land Use History in Section D, below, for more detail; see also Attachment 3 – Conditions of Approval from CSU-07-05). The conditions of approval specify that the required spaces may be located on the main school campus or provided through shared parking agreements as long as the shared parking locations are within 300 feet of the school campus.

Currently, the school provides a total of 302 off-street spaces, with 200 spaces on the main campus, 42 spaces at St. Stephen's Serbian Church on 27th Ave, and 60 spaces at St. John's

Catholic Church on Washington St. The parking lot at the Lake Rd fields is located at the corner of Lake Rd and 28th Ave, approximately 600 feet from the nearest boundary of the main school campus (measured as the crow flies). The District improved the 39 parking spaces at the Lake Rd fields with an asphalt overlay in 2008, which was reviewed and approved as a minor modification to the existing community service use (see Attachment 4 – 2008 Minor Modification Approval for Lake Rd fields)

The Lake Rd fields parking lot is accessible from the main campus via two existing pedestrian routes starting at Willard St and 27th Ave (see Pedestrian Routes map in Attachment 2 – Applicant's Narrative and Supporting Documentation). The shortest route is approximately 1300 lineal feet, traveling north on 27th Ave to the southern entrance of Milwaukie Elementary School, east to a pedestrian path, and then south into the parking lot. The route via public rights-of-way is approximately 1500 lineal feet, traveling south on 27th Ave to Lake Rd, west to 28th Ave and then north into the parking lot..

The applicant is not proposing to construct any additional parking spaces but requests that the spaces at the Lake Rd fields be counted towards the 341 spaces required as a condition of approval of CSU-07-05.

A. Site and Vicinity

The main campus of Milwaukie High School is located at 11300 Washington St. The 14-acre site contains a number of classroom buildings, a gymnasium, a fine arts building, and athletic fields. A variety of parking lots and parking areas are scattered across the site, providing 200 off-street parking spaces. The largest parking lot is on the south side of the campus and is accessible from Lake Rd at Willard St; a smaller lot on the north side of the campus is accessible from Washington St.

The area surrounding the school campus consists of a mix of residential, professional office, and other community service use properties. To the north is St. John's Catholic Church as well as several professional medical offices. To the west is a mix of professional medical offices and commercial space. To the south are residential properties, professional offices, and St. Stephen's Serbian Church. To the east are single- and multi-family residences and Milwaukie Elementary School.

The Lake Rd fields, on a 9.6-acre parcel with no street address, are located at the corner of Lake Rd and 28th Ave. The site provides a paved parking area with 39 striped spaces as well as three athletic fields that are used for baseball, football, and soccer practices and games. Although 28th Ave public right-of-way exists at this location, it is not improved to City standards as a full street.

The Lake Rd fields are surrounded primarily by single-family residences, with Milwaukie Elementary School accessible via a path to the north and single- and multi-family residences directly across Lake Rd from the fields.

B. Zoning Designation

Most of the school campus is zoned Residential R-2, with a small portion of the fine arts building on the west side of the campus zoned Downtown Office (DO) and the parking lots at the northwestern corner zoned Residential-Business office-Commercial (R-1-B).

The Lake Rd fields site is zoned Residential (R-7).

C. Comprehensive Plan Designation

Main School Campus

- **Public (P)** – Most of the campus is designated P.
- **Mixed Use (C/HD)** – The tennis courts and parking area at the southeastern corner of the site to the south of Willard St, as well as a portion of the parking lot at the northwestern corner of the campus, are designated C/HD.
- **High Density residential (HD)** – A small portion of the fine arts building near 21st Ave is designated HD.
- **Town Center (TC)** – A small portion of the fine arts building near 21st Ave is designated TC.

Lake Rd fields

- **Public (P)** – The entire Lake Rd fields site is designated P.

D. Land Use History

Main School Campus

- **2008:** (no file number) – (Approved) Minor modification to community service use for remodeling and small addition to the gymnasium building. (Submitted while CSU-07-05 application was still in process.)
- **2007:** CSU-07-05 (with TPR-07-13, VR-07-07) – (Approved) Major modification to community service use to allow replacement of the main athletic field, an addition to the auditorium building, and improvements to the gymnasium. The variance request was to allow the light poles at the athletic field to exceed the 45-foot maximum height of the R-2 Zone. The Planning Commission found that the school was nonconforming with regard to the minimum number of required off-street parking spaces as per the standards of MMC 19.503.9. Conditions of approval were established, including requirements to provide a minimum of 341 spaces (including shared parking as necessary) and to establish a Transportation Demand Management (TDM) program (see Attachment 3 – Conditions of Approval from CSU-07-05).
- **2007:** (no file number) – (Approved) Minor modification to community service use for installation of a 35-foot flagpole between the track and the softball field.
- **1999:** CSO-99-05 (with TPR-99-06) – (Approved) Major modification to community service use for interior remodeling in the main classroom building, construction of a practice gym, and establishment of new surface parking west of the main building and north of the gymnasium. One of the conditions of approval was a requirement that the school establish an incentive program to encourage carpooling by staff and students and to dedicate 37 on-site parking spaces to the program.
- **1993:** CSO-93-02 – (Approved) Major modification to community service use to vacate a portion of 23rd Ave in the middle of the campus to construct a new cafeteria/commons building and demolish two school buildings to expand the surface parking area established in 1986 in the southwestern corner of the campus (see note below). One condition of approval required submission of a site and landscaping plans showing the final parking layout.

- **1988:** CSO-88-02 – (Approved) Major modification to community service use to locate two temporary modular classroom buildings on the school campus. No relevant conditions of approval.
- **1986:** CSO-86-04 – (Approved) Revised proposal from CSO-86-01 (below). Major modification to community service use to provide additional on-site parking by vacating a portion of Willard St between Lake Rd and 23rd Ave and demolishing two houses in the southwestern corner of the campus. Conditions of approval required submission of a detailed site plan with parking layout and circulation patterns as well as a prohibition on cutting down the large cedar tree at Lake Rd and 23rd without approval by the Planning Commission.
- **1986:** CSO-86-01 – (Denied) Major modification to community service use to establish additional on-site parking by closing 23rd Ave through the school campus to establish a pedestrian mall with parking and loading at the north and south ends. Proposal included demolishing two houses at the southwestern corner of the campus to establish a new parking area. Planning staff recommended a condition to require that the new north parking lot not be used for bus loading and unloading. Planning Commission voted 6-0 to deny the application, finding that the proposal to close 23rd Ave did not meet the public benefits test. Concerns included the impacts of street closure to existing businesses as well as to fire and police access.

Lake Rd fields

- **2008:** (no file number) – (Approved) Minor modification to the community service use to allow paving of the existing parking area and installation of a stormwater drainage system under the athletic fields. No conditions of approval were included (see Attachment 4 – 2008 Minor Modification Approval for Lake Rd fields).
- **1992:** CSO-91-02 – (Approved) Major modification to the community service use to install dugouts at one of the baseball fields and a concession stand and press box at the other. No relevant conditions of approval.
- **1971:** C-71-09 – (Approved) Establishment of the Lake Rd fields as a conditional use. Conditions of approval included requirements to provide fencing along property lines and to separate the parking area from playgrounds; parking for no more than 50 cars; a 20-foot-wide driveway with sidewalk entering the property; no permanent structures or lighting without Planning Commission approval; barriers at the ends of 30th Ave and 31st Ave; parking to start north of the existing easement; and plans for the parking lot to be submitted and approved by the City.

E. Proposal

The applicant is seeking land use approval for a variance to the shared parking standards of Milwaukie Municipal Code (MMC) Subsection 19.503.2. The proposal includes the following:

1. Count the 39 off-street parking spaces at the Lake Rd fields toward the minimum 341 off-street spaces that are required as per conditions of approval of CSU-07-05. The parking lot at the Lake Rd fields is accessible via two pedestrian routes that are approximately 1300 and 1500 feet from the nearest border of the main school campus, which exceeds the maximum 300-foot distance allowed for shared parking as per MMC 19.503.2

2. Access to the Lake Rd fields from the southeastern corner of the main school campus would be provided via two existing routes starting at Willard St and 27th Ave. The shortest route is north on 27th Ave to the southern entrance of Milwaukie Elementary School, east to a pedestrian path, and then south into the parking lot. The other route is south on 27th Ave to Lake Rd, west to 28th Ave, and then north into the parking lot.

Refer to Attachment 2 (Applicant's Narrative and Supporting Documentation) for more detail.

The project requires approval of the following application:

1. VR-09-01 (Variance Request)

KEY ISSUES

Summary

Staff has identified the following key issue for the Planning Commission's deliberation. Aspects of the proposal not listed below are addressed in the Recommended Findings in Support of Approval (see Attachment 1) and generally require less analysis and discretion by the Commission.

- A. Does the application meet the variance criteria?

Analysis

A. Does the application meet the variance criteria?

MMC 19.702.1 provides three criteria for granting variances. The request must demonstrate that (1) the subject property has unusual conditions over which the applicant has no control, (2) that there are no feasible alternatives to the variance and that the request is the minimum necessary to allow use of the property, and (3) that any adverse effects on other properties that might result from the variance will be mitigated.

- (1) Unusual Conditions – The main campus of Milwaukie High School is located in downtown Milwaukie. The surrounding urban area is already largely built out with residential properties, professional offices, and several churches. There is very little opportunity for shared parking arrangements within 300 feet.

In addition, the school campus itself includes a significant amount of open space in the form of athletic fields and tennis courts that are considered prior legally existing structures or facilities. As such, the fields and courts themselves constitute an unusual condition as outlined in MMC 19.702.1.A. To compel the applicant to alter or remove this unusual condition in order to provide additional on-site parking would deprive the applicant of a key basis on which to request the variance.

Finally, the separated nature of the school facilities constitutes another unusual condition. In an ideal situation, the athletic facilities at the Lake Rd fields would be on the same site as the main school campus instead of a quarter mile apart. The school's urban location has been constrained by surrounding uses for a long time. If the Lake Rd fields were an integrated part of the main school campus, there would be no need

for the variance request since any parking associated with the fields would be considered to be part of the off-street parking for the entire school property.

Staff believes that the site has unusual conditions that warrant the granting of the variance request.

- (2) No Feasible Alternatives/Minimum Necessary – The alternatives available to the District are limited by the existing development that surrounds the school and the expense of building structured parking on school property.

The District has secured shared use agreements with St. John's Church and St. Stephen's Church and has considered shared use agreements with other surrounding property owners. The lots at Milwaukie Presbyterian Church on Lake Rd are not available for shared parking during school hours. The various professional offices at the northwest corner of the school campus have regular business hours that overlap with school hours, so those lots are also unavailable for shared parking. The parking lot adjacent to Adams St and south of the buildings at 11138 Main St and 2036 21st Ave does not have enough spaces to meet the school's current need; shared parking at this location would not necessarily eliminate the applicant's need for the variance. The City cannot require other property owners to share parking with the school (in the case of the parking lot on Adams St) or to share more spaces than they already do (in the case of St. John's Church).

Providing additional parking spaces on the campus is not a viable alternative. Doing so would require either construction of a parking structure or removal of some of the various existing buildings and athletic fields. The school, however, utilizes all of the existing facilities and staff is not aware that any are expendable. Staff believes that constructing a parking structure on the main campus in place of one or more of the existing parking lots would be disproportionate to the need for 39 additional parking spaces.

Providing additional parking off campus is not a viable alternative. As it has on at least one occasion in the past, the District could purchase nearby residential properties, remove the existing houses, and establish a surface parking lot (see Land Use History in Section D, above). However, staff is not aware of any nearby properties currently on the market and finds that this would also be disproportionate to the number of needed parking spaces. Furthermore, demolishing existing houses or office buildings to establish a paved parking area is not an activity that staff believes is in the best interests of the community.

Reducing the parking requirement is an alternative that is not in the best interest of the community. This alternative would require the District to request that the Planning Commission modify Condition 5-H of CSU-07-05, which requires the school to provide at least 341 off-street parking spaces. The parking formula provided in MMC 19.503.9 requires a senior high school of the size and capacity of Milwaukie High School to provide at least 472 off-street spaces (see Finding 7-A in Attachment 1 – Recommended Findings in Support of Approval). The school is already nonconforming with regard to this standard. Staff does not believe it is prudent or feasible to further reduce the requirement for off-street parking for the school. In case the demand for parking was to increase in the future in spite of an active TDM program, staff believes that it is unwise to further reduce the number of off-street parking spaces that the school is required to provide.

The variance is the minimum variance necessary to meet the school's parking requirements. The 39 parking spaces at the Lake Rd fields are on school property, with access available from the main campus via two different pedestrian routes along public streets with sidewalks or through public property at Milwaukie Elementary School, with an average one-way walking time of 4 to 5 minutes depending on the route (see Pedestrian Routes map in Attachment 2 – Applicant's Narrative and Supporting Documentation). The residential properties adjacent to the Lake Rd fields on the west are fully developed and there is no readily apparent opportunity to acquire additional property to provide a more direct link between the Lake Rd fields and the school campus. Furthermore, the applicant has indicated that the Lake Rd fields would be a last option for school-permitted parking, after first issuing permits for all on-site spaces and then for shared spaces at St. John's and St. Stephen's churches (see E-mail to staff dated June 29, 2009, in Attachment 2 – Applicant's Narrative and Supporting Documentation).

It is worth noting that in its preliminary discussions regarding proposed changes to the City's off-street parking code, the Planning Commission has indicated that it is amenable to raising the allowable distance between the principal use and shared parking from 300 to 1000 feet.

Staff believes that there are no feasible alternatives and that the request is the minimum necessary to allow use of the property.

- (3) Mitigation of Impacts –Sarah Lander, Code Compliance Assistant for the City, as well as several neighborhood residents, has indicated that there is not currently a problem with on-street parking in the surrounding neighborhood by students during the daytime (see Comments, below). According to Ms. Lander, there does not currently appear to be enough parking demand at the high school to generate significant use of the shared parking spaces at St. Stephen's Church, which is much closer to the main school campus than the Lake Rd fields. As required by one of the conditions of approval of CSU-07-05, the school has established a Transportation Demand Management (TDM) program to encourage alternative modes of travel to school and to reduce the demand for parking (see Attachment 3 – Conditions of Approval from CSU-07-05).

Approval of this variance request may result in an increase of foot traffic between the main school campus and the Lake Rd fields, although student-athletes reportedly already walk between the campus and the Lake Rd fields for practices during certain sports seasons. Whether those students park on the campus or at the Lake Rd fields during school hours, they will likely still make at least two pedestrian trips between the two properties.

The two primary routes between the campus and the Lake Rd fields are along public streets and over public property. One of the purposes of public right-of-way is to facilitate transportation by various modes, so it is reasonable to expect pedestrian use of the public rights-of-way and other publicly accessible pathways such as the one at Milwaukie Elementary School.

The parking lot at the Lake Rd fields is located on the westernmost side of the property and is directly adjacent to only five residential properties to the west. There is a vegetated buffer along the western edge of the parking lot that screens it from neighboring properties to the west. No lighting is proposed at this time. No changes are proposed to the existing access onto Lake Rd. The proposal would not create any new

parking spaces at the Lake Rd fields, so there would be no loss of landscaping or open space.

The parking lot at the Lake Rd fields is currently underutilized during regular school hours. The variance request would essentially formalize the use of an existing school facility. Staff believes it is reasonable to allow the school to get credit toward meeting its parking requirement for directing students to park at the Lake Rd fields through its own permitting process.

Staff believes that any impacts as a result of this variance would be minimal and that no mitigation is necessary.

CONCLUSIONS

A. Staff recommendation to the Planning Commission is as follows:

1. Approve the application to grant a variance to the shared parking standard of MMC 19.503.2 that requires shared parking to be within 300 feet of the principal structure or use. This would result in the applicant meeting Condition 5-H from the approval of CSU-07-05, which requires the school to provide a minimum of 341 off-street parking spaces during school hours.
2. Adopt the attached Recommended Findings in Support of Approval.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC).

- MMC Subsection 19.1011.3 – Minor Quasi-Judicial Review
- MMC 19.321 – Community Service Use
- MMC 19.500 – Off-street Parking and Loading
- MMC 19.700 – Variances, Exceptions, and Home Improvement Exceptions

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 four decision-making options as follows:

- A. Approve the application subject to the recommended findings and conditions of approval.
- B. Approve the application as proposed by the applicant, with modified findings and conditions of approval. Such modifications need to be read into the record or may require staff to draft new findings and conditions of approval to be adopted at a future meeting date.
- C. Continue the hearing to a later date. This option should be exercised if the Planning Commission requires more time for deliberation or needs additional information about the

application, or if new information is presented at the hearing that affects the approvability of the application.

- D. Deny the application upon finding that it does not meet approval criteria. Staff would need direction from the Planning Commission for drafting the findings for denial.

The final decision on these applications, which includes any appeals to the City Council, must be made by **October 9, 2009**, 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 by submitting a 120-day waiver to the decision deadline.

COMMENTS

Notice of the variance request was given to the following agencies and persons for review and comment on June 11, 2009: City of Milwaukie Community Services Department, and Historic Milwaukie Neighborhood District Association (NDA).

The written comments received by the City can be found in Attachment 5. The following is a summary of all comments received, with staff responses provided as appropriate:

- **Sarah Lander, City of Milwaukie Code Compliance Assistant:** (Ms. Lander's duties include enforcement and management of parking in the downtown area.) She reported that 27th Ave is not normally impacted by regular school use and there was no increase in on-street parking on 27th Ave during the major construction approved by CSU-07-05. The lot at St. Stephen's Serbian Church is often not used at all so there may not currently be enough demand for parking to expect that the lot at the Lake Rd fields will be used much at all. As a long-time nearby resident on 27th Ave, Ms. Lander reported that she has never felt any impact to livability from parking at either Milwaukie High School or Milwaukie Elementary School.
- **Ray Bryan, member of the Land Use Committee for the Historic Milwaukie NDA and property owner and resident on 27th Ave:** On-street parking in the neighborhood was more severely impacted by the school before it opened the on-site lot off Washington St. Since then, daytime parking has not been a problem in the neighborhood. Students may choose to park on neighborhood streets closer to the campus than the lot at the Lake Rd fields, but it appears that there is not currently a large enough demand to fill the shared lots at St. Stephen's and St. John's churches. Mr. Bryan does not anticipate any changes to neighborhood parking as a result of this variance. He expressed a safety concern about the pedestrian route from the school campus to the Lake Rd fields via Milwaukie Elementary School, noting that the driveway into the elementary school from 27th Ave is narrow for two lanes of traffic and has no sidewalk.

Staff Response: As confirmed by the above comment from Sarah Lander, on-street parking by high school students does not appear to be a problem in the adjacent neighborhood during regular school hours. Special event parking is more likely to create some on-street parking conflicts, and special event parking is not the focus of this variance request.

The driveway into the elementary school from 27th Ave is approximately 24 feet wide, with no sidewalks. Although a sidewalk would undoubtedly improve pedestrian safety at this location, the driveway meets the minimum 24-foot width for two-way drive aisles as established in MMC 19.503.10. The shared parking requirements of 19.503.2 do not require that shared parking facilities be fully conforming with the municipal code in order to

count as shared parking, and staff believes that a requirement to improve the driveway is not proportional to the need for 39 additional parking spaces. Furthermore, the pedestrian route via Milwaukie Elementary School is one of two alternative routes to the parking lot at the Lake Rd fields that are similar in distance. The other pedestrian route, via Lake Rd, includes public sidewalks the entire distance and can be considered the primary pedestrian route.

- **Ann Hupp, property owner and resident at 2626 Washington St:** Ms. Hupp received the 20-day notice of hearing (see Attachment 6 – 20-day Notice of Hearing) and contacted staff by phone to learn more about the application. She noted that it is sometimes hard to find an on-street parking space on Washington St (for her guests) but did not see any problem with granting the variance request. She thinks St. John's Church may create more traffic problems on Washington St when children are dropped off in the morning and picked up in the afternoon. She also observed that special functions at either the high school or St. John's Church sometimes create traffic problems and/or make it difficult to find parking on Washington St. Ms. Hupp shared the opinion that traffic and parking problems would likely get worse with more people driving in the future. She wondered whether the asphalt area behind the St. John's pre-school facility at the northeast corner of 25th Ave and Washington St might be available for special-event parking for the church or high school.

Staff Response: Parking and loading problems generated by activities at St. John's Church are not relevant to this variance request unless they impact the school's ability to use the shared parking spaces that the two entities have agreed upon. The problems described by Ms. Hupp appear to be more related to loading and unloading at the church and/or to special events that do not necessarily occur during school hours. The asphalt area behind the St. John's pre-school facility is not available for shared parking during school hours.

- **Ed Zumwalt, chair of the Land Use Committee for the Historic Milwaukie NDA:** This request might become more significant when light rail comes to Milwaukie, but it does not seem to be a big concern at the moment. Of greater concern is use of the site for special event parking. There is some question as to whether anyone will use the Lake Rd fields for parking on a regular basis, due to the distance from the school campus. The remote nature of the site produces some inherent security concerns.

Generally, the parking situation at the school has improved greatly since the school began to limit who could drive to school. Given that the shared spaces at St. John's Church and St. Stephen's Church currently seem to be underutilized, granting the variance request will probably not result in any noticeable difference in on-street parking in the surrounding area.

Staff Response: The development of light rail in Milwaukie will undoubtedly present new challenges for parking in the downtown area, and those issues will be addressed as part of the light rail project. Allowing the school to officially share parking at the existing parking lot at the Lake Rd fields might diminish some of the potential parking conflicts generated by light rail.

As has already been noted, the school is required to provide a minimal number of off-street parking spaces for use during regular school hours, not for special events. For this same reason, security is not a key concern during regular school hours, so staff does not believe that a requirement to install parking lot lighting or other security measures is appropriate as part of this variance request.

- **Armond and Viola Schweitzer, property owners and residents at 2806 Lake Rd:** Staff talked with the Schweitzers while on a site visit to the Lake Rd fields on June 30. They wondered why the school did not widen the accessway to the Lake Rd fields when they paved it last summer, in order to accommodate more parking. They reported that parking and traffic are often a problem for after-school games and practices, including vehicles parking on both sides of the accessway, leaving only a narrow drive aisle for ingress and egress and sometimes backing up traffic on Lake Rd.
- **Staff Response:** Improvements to the parking area at the Lake Rd fields were made as a minor modification to the community service use in 2008 (see Attachment 4 – 2008 Minor Modification Approval for Lake Rd fields). At that time, the school did not propose any changes to the existing site configuration or accessway from Lake Rd, and no changes were required as part of the approval. This variance request does not concern special-event use of the Lake Rd fields or any parking or traffic problems that may result, nor whether the parking spaces to be shared have any nonconformities with respect to the current municipal code. Rather, the request concerns an allowance for the school to count the parking spaces at the Lake Rd fields toward the total number of spaces required.

However, the school is responsible for ensuring that its various parking facilities function as designed. City staff will follow up separately on these traffic and access concerns.
- **Charles Olsen, property owner and resident at 2805 Lake Rd:** Staff talked with Mr. Olsen while on a site visit to the Lake Rd fields on June 30. He suggested that perhaps the school could use the existing tennis court area at 25th Ave and Willard St for additional parking and build new tennis courts on the Lake Rd fields property.
- **Barbara Wheeler, owner and resident at Lake Rd Terrace Condominiums (3146 Lake Rd):** Ms. Wheeler contacted City staff at the Farmers Market Community booth after receiving the 20-day notice of hearing (see Attachment 6 – 20-day Notice of Hearing). Planning staff reached her by phone to explain the variance request. She indicated that she saw no problem with granting the variance, noting only that ballplayers at after-school or weekend events sometimes park in the condominium parking lot without permission.
- **Matt and Sarah Menely, property owners and residents at 2816 Lake Rd:** There are a number of long-standing problems related to use of the Lake Rd fields that should be addressed prior to granting the requested variance. The parking lot is undersized for the weekend and evening events held there, resulting in overflow parking spilling onto the grass, down both sides of the accessway, and onto 28th Ave and 32nd Ave. A traffic study should have been completed prior to the school repaving the parking lot and accessway in 2008. When the parking lot and accessway are full of parked vehicles, emergency vehicle access to the Lake Rd fields becomes very limited or impossible. Motorists often speed up and down the accessway and there is often litter in the parking lot.

Possible solutions to these problems include: (1) increase the time and physical length of the school zone on Lake Rd and/or otherwise reduce the posted speed on Lake Rd east of the accessway during the late afternoon or evening; (2) prohibit parking on one or both sides of the accessway; (3) lock the existing gate at the south edge of the parking area at night; and (4) approach the owner of the private parking lot at the northwest corner of 21st and Adams St to see if shared parking might be an option there, much closer to the main campus.

If the school plans to shuttle people from the Lake Rd fields to the main campus then the Menelys are opposed to the variance request because the additional bus traffic would

exacerbate an already bad busing situation on Lake Rd (noise, fumes, vibration, speeding, and road damage) and because the distance between the main school campus and the Lake Rd fields is not an unreasonable one for students to travel on foot.

Staff Response: The 2008 improvements to the Lake Rd fields did not trigger a traffic study and were handled as a minor modification to the community service use because they were essentially maintenance projects. The variance request concerns the requirement that shared parking be within 300 feet of a principal use, not whether the existing, legal parking situation is functioning optimally. Concerns about negative impacts due to evening and weekend parking and traffic at the Lake Rd fields are best addressed in the context of the school's community service use approval for the Lake Rd fields. Planning staff has advised the applicant of these concerns and will pursue resolution with the applicant apart from the variance request.

As noted above in the key-issue analysis, the Lake Rd fields will effectively be used as "overflow" parking, as a last option for permit-parking by faculty/students. The applicant has indicated that there will be no shuttle for students between the Lake Rd fields and the main school campus (see E-mail to staff dated July 1, 2009, in Attachment 2 – Applicant's Narrative and Supporting Documentation).

The surface parking lot at the northwestern corner of 21st Ave and Adams St is on private property. Staff is not aware of the availability of those parking spaces but believes there are not enough spaces available there for the school to meet the requirement. Staff has encouraged the applicant to investigate this possibility further prior to the public hearing.

- **Craig Westergren, owner and resident at 2711 Lake Rd):** Mr. Westergren received the 20-day notice of hearing (see Attachment 6 – 20-day Notice of Hearing) and contacted staff by phone to learn more about the application. Upon hearing staff's explanation of the variance request, Mr. Westergren said that he saw no problem with granting the variance. He noted that he sometimes allows ballplayers at after-school events to park in his driveway, which connects directly to the accessway for the Lake Rd fields.

ATTACHMENTS

Attachments are provided only to the Planning Commission unless noted as being attached. All material is available for viewing upon request.

1. Recommended Findings in Support of Approval (attached)
2. Applicant's Narrative and Supporting Documentation stamped received on June 11, 2009
 - a. Narrative and Exhibits (Exhibit 2, Pedestrian Routes map, is attached)
 - b. E-mail to staff dated June 29, 2009
 - c. E-mail to staff dated June 30, 2009
 - d. E-mail to staff dated July 1, 2009
3. Conditions of Approval from CSU-07-05 (Pages 1 and 21-24 of the Notice of Decision)
4. 2008 Minor Modification Approval for Lake Rd fields
5. Comments Received
6. 20-day Notice of Hearing sent to property owners and residents within 300 feet

Attachment 1:

Recommended Findings in Support of Approval

1. The applicant, North Clackamas School District #12 (“the District” or “the applicant”), is seeking land use approval to allow Milwaukie High School (“the school”) to count 39 off-street parking spaces at its Lake Road ball fields site (“Lake Rd fields”) as shared parking. The school is required to provide at least 341 off-street parking spaces as a condition of approval from land use file CSU-07-05, either on the school campus or through shared parking agreements.
2. The Lake Rd fields are located on the north side of Lake Rd between 28th Ave and 32nd Ave. The site is approximately 600 feet from the southeastern corner of the main school campus (measured as the crow flies) and is accessible via two existing routes starting at Willard St and 27th Ave. The shortest route is approximately 1300 lineal feet, traveling north on 27th Ave to the southern entrance of Milwaukie Elementary School, east to a pedestrian path, and then south into the parking lot. The other route is approximately 1500 lineal feet, traveling south on 27th Ave to Lake Rd, west to 28th Ave, and then north into the parking lot. The school campus is on property primarily zoned residential R-2; the Lake Rd fields site is zoned residential R-7.
3. Milwaukie High School is an approved Community Service Use, which was modified in 2007 through land use file CSU-07-05. The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance (Milwaukie Municipal Code Title 19):
 - Milwaukie Municipal Code (MMC) Subsection 19.1011.3 – Minor Quasi-Judicial Review
 - MMC 19.321 – Community Service Use
 - MMC 19.500 – Off-street Parking and Loading
 - MMC 19.700 – Variances, Exceptions, and Home Improvement Exceptions
4. The application has been reviewed in compliance with the minor quasi-judicial review process described in MMC 19.1011.3. As required, public notice has been posted in the newspaper, posted at the site, and mailed to surrounding property owners and residents within 300 feet of the site. The Planning Commission held a duly advertised public hearing considering the application on July 14, 2009.
5. The Planning Commission reviewed the application for compliance with the MMC sections listed in Finding 3. Findings for those code sections not considered by the Planning Commission are not included in these findings.
6. MMC 19.321 Community Service Use
 MMC 19.321.5.A establishes criteria for the approval of a Community Service Use (CSU), including the provision of adequate off-street parking according to the relevant standards of MMC 19.500. In 2007, the Planning Commission reviewed and approved proposed improvements to the school campus as a community service use (land use file CSU-07-05). The Planning Commission found that the school was nonconforming with regard to the minimum number of required off-street parking spaces as per the standards of MMC 19.503.9. The Planning Commission established a condition requiring the provision of a minimum of 341 spaces, including shared parking as necessary.

Currently, the school provides a total of 302 off-street spaces, with 200 spaces on the school property, 42 spaces at St. Stephen's Serbian Church on 27th Ave, and 60 spaces at St. John's Catholic Church on Washington St. In order to meet the parking condition established by the approval of CSU-07-05, the applicant has requested a variance to allow the 39 shared spaces at the Lake Rd fields to count as required parking (see Finding 8).

The Planning Commission finds that approval of the requested variance is sufficient for the subject property and its accompanying community service use to comply with the off-street parking condition of CSU-07-05 and to meet the applicable criteria of MMC 19.321.

7. MMC 19.500 Off-Street Parking and Loading

MMC 19.500 establishes standards for off-street parking and loading.

- A. MMC 19.503.9 establishes off-street parking standards for specific uses, including schools. Senior high schools require a minimum of 0.25 parking spaces per student and one space per staff. At the time of the 2007 application for major modification to a community service use (CSU-07-05), Milwaukie High School was designed to accommodate up to 1,500 students and had a full-time staff equivalent of 96.6, so 472 off-street parking spaces were required. The applicant asserted that the school was providing a total of 341 off-street spaces through a combination of on-site spaces and shared parking with nearby churches.

In approving CSU-07-05, the Planning Commission found that the parking situation was nonconforming and could continue as long as the proposed improvements did not cause the situation to go farther out of conformance. As conditions of approval of CSU-07-05 related to off-street parking, the Planning Commission required that the school do the following things: (1) provide a minimum of 341 off-street parking spaces, (2) formalize and record any shared parking agreements, and (3) establish a Transportation Demand Management (TDM) program to improve the functioning of the existing parking situation at the school and reduce demand for the limited number of off-street spaces.

The school currently provides a total of 302 off-street spaces, with 200 spaces on the school property, 42 spaces at St. Stephen's Serbian Church on 27th Ave, and 60 spaces at St. John's Catholic Church on Washington St. The applicant has proposed to count 39 additional shared spaces at the Lake Rd fields to bring the total number of off-street spaces to 341. The school has established a TDM program and the applicant has formalized and recorded shared parking agreements with St. Stephen's Church and St. John's Church.

- B. MMC 19.503.2 establishes allowances for providing shared parking to meet off-street parking requirements, including a requirement that shared parking must be located no farther than 300 feet from the principal use. The applicant has requested a variance from this standard for the 39 spaces at the Lake Rd fields, which are approximately 600 feet from the nearest portion of the school campus (measured as the crow flies) and accessible via pedestrian routes that are approximately 1300 and 1500 feet long. See Finding 8 for the Planning Commission's evaluation of the variance request.

The Planning Commission finds that, with the approved variance request, the subject property and its accompanying community service use meet the applicable standards of MMC 19.500.

8. MMC 19.700 Variance, Exceptions, and Home Improvement Exceptions

The applicant has requested a variance from the requirement of MMC 19.503.2 that shared parking must be located within 300 feet of the principal use.

MMC 19.702.1 establishes three criteria for granting variances:

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

The main campus of Milwaukie High School is located in downtown Milwaukie. The surrounding urban area is already largely built out with residential properties, professional offices, and several churches. There is very little opportunity for shared parking arrangements within 300 feet.

In addition, the school campus itself includes a significant amount of open space in the form of athletic fields and tennis courts that are considered prior legally existing structures or facilities. As such, the fields and courts themselves constitute an unusual condition as outlined in MMC 19.702.1.A.

Finally, the separated nature of the school facilities (main school campus and Lake Rd fields) constitutes another unusual condition. In an ideal situation, the athletic facilities at the Lake Rd fields would be on the same site as the main school campus instead of a quarter mile apart. The school's urban location has been constrained by surrounding uses for a long time. If the Lake Rd fields were an integrated part of the main school campus, there would be no need for the variance request since any parking associated with the fields would be considered to be part of the off-street parking for the entire school property.

The Planning Commission finds that the school property has a number of unusual conditions over which the applicant has no control.

- B. That there are no feasible alternatives to the variance and that the variance is the minimum variance necessary to allow the applicant the use of the property in a manner substantially the same as others in the surrounding area.*

The alternatives available to the District are limited by the existing development that surrounds the school and the expense of building structured parking on school property.

The District has secured shared use agreements with St. John's Church and St. Stephen's Church and has considered shared use agreements with other surrounding property owners. The lots at Milwaukie Presbyterian Church on Lake Rd are not available for shared parking during school hours. The various professional offices at the northwest corner of the school campus have regular business hours that overlap with school hours, so those lots are also unavailable for shared parking. The parking lot adjacent to Adams St and south of the buildings at 11138 Main St and 2036 21st Ave does not have enough spaces to meet the school's current need; shared parking at this location would not necessarily eliminate the applicant's need for the variance. The City cannot require other property owners to share parking with the school (in the case of the parking lot on Adams St) or to share more spaces than they already do (in the case of St. John's Church).

Providing additional parking spaces on the campus is not a viable alternative. Doing so would require either construction of a parking structure or removal of some of the various existing buildings and athletic fields. The school, however, utilizes all of the existing facilities and the Planning Commission is not aware that any are expendable. The Planning Commission finds that constructing a parking structure on the main campus in place of one or more of the existing parking lots would be disproportionate to the need for 39 additional parking spaces.

Providing additional parking off campus is not a viable alternative. As it has on at least one occasion in the past, the District could purchase nearby residential properties, remove the existing houses, and establish a surface parking lot. However, the Planning Commission is not aware of any nearby properties currently on the market and finds that this would also be disproportionate to the number of needed parking spaces. Furthermore, demolishing existing houses or office buildings to establish a paved parking area is not an activity that the Planning Commission believes is in the best interests of the community.

Reducing the parking requirement is an alternative that is not in the best interest of the community. This alternative would require the District to request that the Planning Commission modify Condition 5-H of CSU-07-05, which requires the school to provide at least 341 off-street parking spaces. The parking formula provided in MMC 19.503.9 requires a senior high school of the size and capacity of Milwaukie High School to provide at least 472 off-street spaces. The school is already nonconforming with regard to this standard. The Planning Commission does not believe it is prudent or feasible to further reduce the requirement for off-street parking for the school. In case the demand for parking were to increase in the future in spite of an active TDM program, the Planning Commission finds that it is unwise to further reduce the number of off-street parking spaces that the school is required to provide.

The variance is the minimum variance necessary to meet the school's parking requirements. The 39 parking spaces at the Lake Rd fields are on school property, with access available from the main campus via two different pedestrian routes along public streets with sidewalks or through public property at Milwaukie Elementary School, with an average one-way walking time of 4 to 5 minutes depending on the route. The residential properties adjacent to the Lake Rd fields on the west are fully developed and there is no readily apparent opportunity to acquire additional property to provide a more direct link between the Lake Rd fields and the school campus. Furthermore, the applicant has indicated that the Lake Rd fields would be a last option for school-permitted parking, after first issuing permits for all on-site spaces and then for shared spaces at St. John's and St. Stephen's churches.

The Planning Commission finds that there are no feasible alternatives to the requested variance and that the variance is the minimum variance necessary to grant the applicant use of the subject property and its accompanying community service use.

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

Based on comments received from City staff and neighborhood residents, the Planning Commission finds that there is not currently a problem with on-street parking in the surrounding neighborhood by students during the daytime. Approval of this variance request may result in an increase of foot traffic between the main school campus and the Lake Rd fields. The two primary routes between the campus

and the Lake Rd fields are along public streets and over public property. The Planning Commission finds that it is reasonable to expect pedestrian use of the public rights-of-way and other publicly accessible pathways such as the one at Milwaukie Elementary School.

The parking lot at the Lake Rd fields is located on the westernmost side of that property and is directly adjacent to only five residential properties to the west. There is a vegetated buffer along the western edge of the parking lot that screens it from neighboring properties to the west. No lighting is proposed at this time. No changes are proposed to the existing access onto Lake Rd. The proposal will not create any new parking spaces at the Lake Rd fields, so there will be no loss of landscaping or open space.

The Planning Commission finds that that any impacts as a result of this variance would be minimal and that no mitigation is necessary.

The Planning Commission finds that proposal meets the approval criteria for a variance to the shared parking standards of MMC 19.503.2.

9. The application was forwarded to the following City departments and related entities for review and comment on June 11, 2009: City of Milwaukie Community Services Department and Historic Milwaukie Neighborhood District Association (NDA).

The following is a summary of the comments received by the City.

- **Sarah Lander, City of Milwaukie Code Compliance Assistant:** (Ms. Lander's duties include enforcement and management of parking in the downtown area.) She reported that 27th Ave is not normally impacted by regular school use and there was no increase in on-street parking on 27th Ave during the major construction approved by CSU-07-05. The lot at St. Stephen's Serbian Church is often not used at all so there may not currently be enough demand for parking to expect that the lot at the Lake Rd fields will be used much at all. As a long-time nearby resident on 27th Ave, Ms. Lander reported that she has never felt any impact to livability from parking at either Milwaukie High School or Milwaukie Elementary School.
- **Ray Bryan, member of the Land Use Committee for the Historic Milwaukie NDA and property owner and resident on 27th Ave:** On-street parking in the neighborhood was more severely impacted by the school before it opened the on-site lot off Washington St. Since then, daytime parking has not been a problem in the neighborhood. Students may choose to park on neighborhood streets closer to the campus than the lot at the Lake Rd fields, but it appears that there is not currently a large enough demand to fill the shared lots at St. Stephen's and St. John's churches. Mr. Bryan does not anticipate any changes to neighborhood parking as a result of this variance. He expressed a safety concern about the pedestrian route from the school campus to the Lake Rd fields via Milwaukie Elementary School, noting that the driveway into the elementary school from 27th Ave is narrow for two lanes of traffic and has no sidewalk.
- **Ann Hupp, property owner and resident at 2626 Washington St:** Ms. Hupp received the 20-day notice of hearing and contacted staff by phone to learn more about the application. She noted that it is sometimes hard to find an on-street parking space on Washington St (for her guests) but did not see any problem with granting the variance request. She thinks St. John's Church may create more traffic problems on Washington St when children are dropped off in the

morning and picked up in the afternoon. She also observed that special functions at either the high school or St. John's Church sometimes create traffic problems and/or make it difficult to find parking on Washington St. Ms. Hupp shared the opinion that traffic and parking problems would likely get worse with more people driving in the future. She wondered whether the asphalt area behind the St. John's pre-school facility at the northeast corner of 25th Ave and Washington St might be available for special-event parking for the church or high school.

- **Ed Zumwalt, chair of the Land Use Committee for the Historic Milwaukie NDA:** This request might become more significant when light rail comes to Milwaukie, but it does not seem to be a big concern at the moment. Of greater concern is use of the site for special event parking. There is some question as to whether anyone will use the Lake Rd fields for parking on a regular basis, due to the distance from the school campus. The remote nature of the site produces some inherent security concerns.

Generally, the parking situation at the school has improved greatly since the school began to limit who could drive to school. Given that the shared spaces at St. John's Church and St. Stephen's Church currently seem to be underutilized, granting the variance request will probably not result in any noticeable difference in on-street parking in the surrounding area.
- **Armond and Viola Schweitzer, property owners and residents at 2806 Lake Rd:** Staff talked with the Schweitzers while on a site visit to the Lake Rd fields on June 30. They wondered why the school did not widen the accessway to the Lake Rd fields when they paved it last summer, in order to accommodate more parking. They reported that parking and traffic are often a problem for after-school games and practices, including vehicles parking on both sides of the accessway, leaving only a narrow drive aisle for ingress and egress and sometimes backing up traffic on Lake Rd.
- **Charles Olsen, property owner and resident at 2805 Lake Rd:** Staff talked with Mr. Olsen while on a site visit to the Lake Rd fields on June 30. He suggested that perhaps the school could use the existing tennis court area at 25th Ave and Willard St for additional parking and build new tennis courts on the Lake Rd fields property.
- **Barbara Wheeler, owner and resident at Lake Rd Terrace Condominiums (3146 Lake Rd):** Ms. Wheeler contacted City staff at the Farmers Market Community booth after receiving the 20-day notice of hearing. Planning staff reached her by phone to explain the variance request. She saw no problem with granting the variance, noting only that ballplayers at after-school or weekend events sometimes park in the condominium parking lot without permission.
- **Matt and Sarah Menely, property owners and residents at 2816 Lake Rd:** There are a number of long-standing problems related to use of the Lake Rd fields that should be addressed prior to granting the requested variance. The parking lot is undersized for the weekend and evening events held there, resulting in overflow parking spilling onto the grass, down both sides of the accessway, and onto 28th Ave and 32nd Ave. A traffic study should have been completed prior to the school repaving the parking lot and accessway in 2008. When the parking lot and accessway are full of parked vehicles, emergency vehicle access to the Lake Rd fields becomes very limited or impossible.

Motorists often speed up and down the accessway and there is often litter in the parking lot.

Possible solutions to these problems include: (1) increase the time and physical length of the school zone on Lake Rd and/or otherwise reduce the posted speed on Lake Rd east of the accessway during the late afternoon or evening; (2) prohibit parking on one or both sides of the accessway; (3) lock the existing gate at the south edge of the parking area at night; and (4) approach the owner of the private parking lot at the northwest corner of 21st and Adams St to see if shared parking might be an option there, much closer to the main campus.

If the school plans to shuttle people from the Lake Rd fields to the main campus then the Menelys are opposed to the variance request because the additional bus traffic would exacerbate an already bad busing situation on Lake Rd (noise, fumes, vibration, speeding, and road damage) and because the distance between the main school campus and the Lake Rd fields is not an unreasonable one for students to travel on foot.

- **Craig Westergren, owner and resident at 2711 Lake Rd):** Mr. Westergren received the 20-day notice of hearing and contacted staff by phone to learn more about the application. Upon hearing staff's explanation of the variance request, Mr. Westergren said that he saw no problem with granting the variance. He noted that he sometimes allows ballplayers at after-school events to park in his driveway, which connects directly to the accessway for the Lake Rd fields.



MILWAUKIE

Dogwood City of the West

To: Planning Commission

Through: Katie Mangle, Planning Director

From: Brett Kelter, Associate Planner

Date: July 14, 2009, for July 14, 2009, Public Hearing

Subject: Addendum—Amended Findings and Proposed Conditions for VR-09-01

It has come to the attention of staff that 28th Ave, which provides access from Lake Rd to the parking lot at the Lake Rd fields, is not public right-of-way but rather a private drive on tax lot 1S1E36CA01200. The School District provides a private easement to the properties at 2711 and 2725 SE Lake Rd for access to their driveways from Lake Rd. The primary mischaracterization of 28th Ave in the staff report occurs on page 2 under point A “Site and Vicinity”—third paragraph, last sentence.

Several of the public comments received prior to the hearing concern the safety and functionality of the accessway on 28th Ave. Staff is recommending conditions of approval that would improve the safety of the 28th Ave accessway and would thus make the variance request truly the minimum variance necessary to meet the school’s parking needs.

In addition, staff is recommending a condition related to the performance of the school’s Transportation Demand Management (TDM) program that should help manage future student parking on neighborhood streets. Staff believes the recommended condition would mitigate potential impacts that might result from the granting of the variance request.

RECOMMENDED CONDITIONS OF APPROVAL

1. Paint a 4-ft-wide cross-hatched pedestrian walkway along the west side of the 28th Ave accessway between Lake Rd and the gates at the south end of the parking lot.
2. Paint the extruded curbs yellow along both sides of the 28th Ave accessway between Lake Rd and the gates at the south end of the parking lot, to prohibit parking in the accessway. Install at least one “No Parking” sign on each side of the accessway.
3. In the annual TDM program report to the Planning Director, the TDM Committee shall describe its efforts to limit student parking on neighborhood streets and to encourage use of the designated shared parking spaces as needed.

AMENDED FINDINGS IN SUPPORT OF APPROVAL

To support these recommended conditions, the Recommended Findings in Support of Approval included as Attachment 1 of the staff report would need to be amended. In particular, Findings 8-B and 8-C would need to be amended as follows (additions are underlined and deletions are ~~struck through~~):

Finding 8-B. *(That there are no feasible alternatives to the variance and that the variance is the minimum variance necessary to allow the applicant the use of the property in a manner substantially the same as others in the surrounding area.)*

[Fourth paragraph on 5.1 Page 16, also numbered as Page 4 of 7 in Attachment 1] – The applicant has asserted that the requested variance is the minimum variance necessary to meet the school's parking requirements. The 39 parking spaces at the Lake Rd fields are on school property, with access available from the main campus via two different pedestrian routes along public streets with sidewalks or through public property at Milwaukie Elementary School, with an average one-way walking time of 4 to 5 minutes depending on the route. The residential properties adjacent to the Lake Rd fields on the west are fully developed and there is no readily apparent opportunity to acquire additional property to provide a more direct link between the Lake Rd fields and the school campus. Furthermore, the applicant has indicated that the Lake Rd fields would be a last option for school-permitted parking, after first issuing permits for all on-site spaces and then for shared spaces at St. John's and St. Stephen's Stephens churches.

The Planning Commission finds that pedestrian safety within the 28th Ave accessway into the parking lot from Lake Rd must be improved to make the requested variance the minimum variance necessary. A condition has been established to require that a 4-ft-wide cross-hatched pedestrian walkway be painted along the west side of the 28th Ave accessway between Lake Rd and the gates at the south end of the parking lot. Another condition has been established to prohibit parking on either side of the 28th Ave accessway.

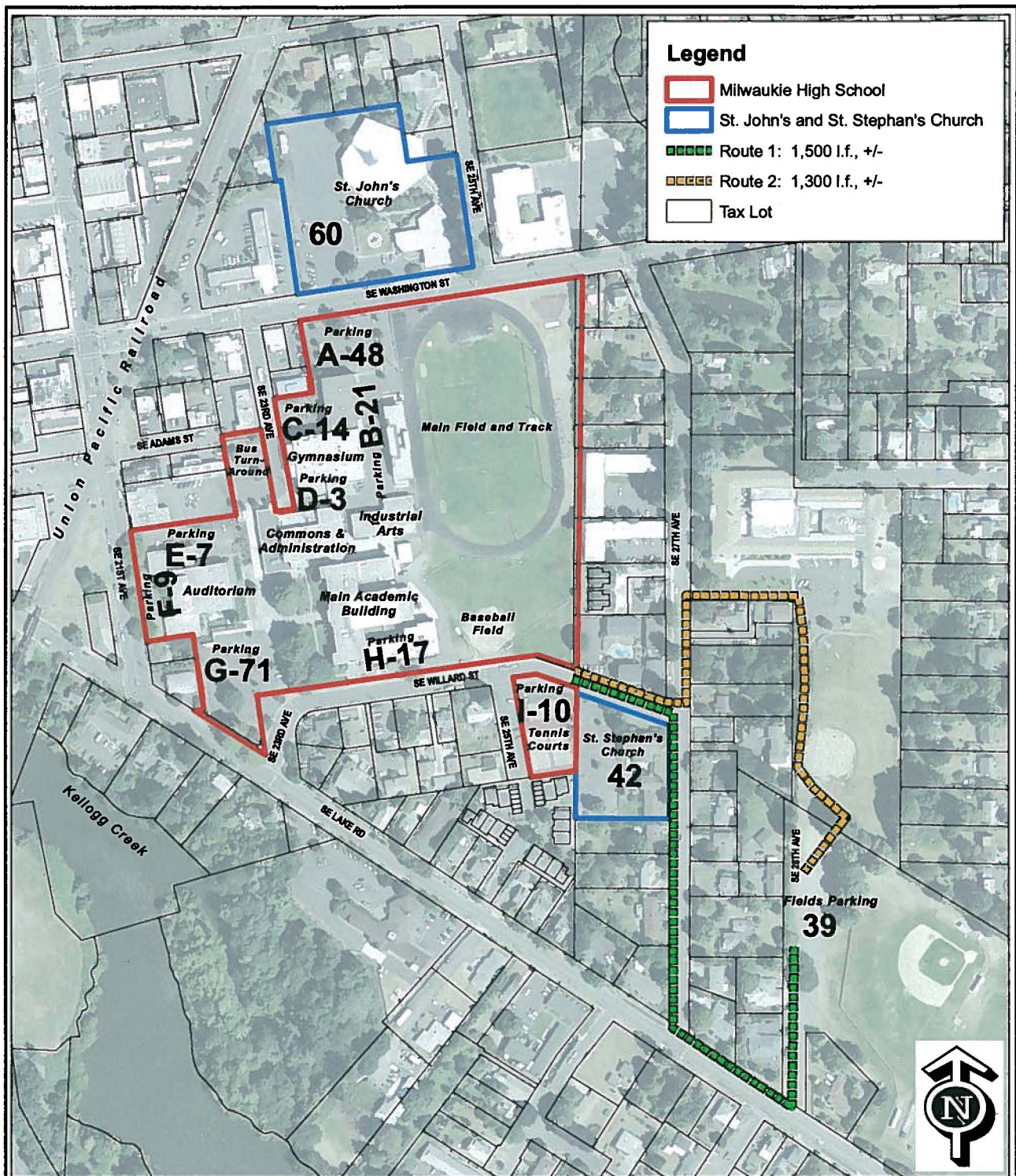
The Planning Commission finds that there are no feasible alternatives to the requested variance and that, as conditioned, the variance is the minimum variance necessary to grant the applicant use of the subject property and its accompanying community service use.

Finding 8-C. *(That adverse effects upon other properties that may be the result of this variance shall be mitigated to the extent feasible.)*

[Insert after second paragraph on 5.1 Page 17, also numbered as Page 5 of 7 in Attachment 1] – The Planning Commission finds that the school's Transportation Demand Management (TDM) program provides an appropriate mechanism to actively limit student parking on neighborhood streets adjacent to the main school campus when designated shared spaces are available. As part of the annual report it will provide to the Planning Director, the TDM Committee shall describe its efforts to encourage use of the shared parking spaces at the Lake Rd fields as needed and to limit student parking on neighborhood streets. A condition specifying this aspect of the annual TDM report has been established to further mitigate potential impacts resulting from the variance.

The Planning Commission finds that, as conditioned, ~~that any impacts as a result of this variance would~~ will be sufficiently mitigated. ~~minimal and that no mitigation is necessary.~~

The Planning Commission finds that, as conditioned, the proposal meets the approval criteria for a variance to the shared parking standards of MMC 19.503.2.



PREPARED BY:

ED MURPHY & ASSOCIATES
9875 SW MURDOCK STREET
TIGARD, OREGON 97224
PHONE: 503.624.4625
FAX: 503.968.1674

Pedestrian Routes Milwaukie High School City of Milwaukie, Clackamas County, Oregon

Source:
Metro Data Resource Center RLIS Lite Data Disc, May 2009 and
Google Earth Professional.

Date:

06/03/2009

Scale:

1 in. = 300 ft.

Project #:

N0006

Drawn By: CEB

From: kryszak@nclack.k12.or.us
Sent: Monday, June 29, 2009 2:14 PM
To: Kelter, Brett
Cc: murphyed@verizon.net
Subject: RE: Milwaukie High Variance

Brett

First our 2008/09 Parking Policy

1. District Board has an adopted policy of requiring students who drive to school to get a permit. Cost of the permit is set by the Board at \$30 per year.
2. At MHS staff gets first call on parking spaces. With all the construction, etc last year no on campus permits were issued to students.
3. A maximum of 50 student parking permits were issued in 08-09. These gave students access to 30 spaces at MHS. The number of permits exceed the number of spots as some permits were relinquished during the year.

Policy for 09/10

1. Permits will again be required and issued at a cost of \$30 per year.
2. We anticipate that there will be 30 spaces available for student parking on campus next year. Student permits will be issued for those spaces to students participating in car pooling. This is in accordance with the TDM plan.
3. Permits will be issued to students for the 42 spaces at St Stephen's and 61 spaces at St. Johns. If past results are correct we will not fill those spaces. If we do we will issue permits for the lot at Lake Road. We do not issue more permits than we have spaces.

The District did not pursue spaces other than St. Stephen's and St Johns for the following reasons

1. In the past we paid \$1 per space per month for 9 months. When we signed the new agreement with St Stephen's and St Johns our parking rate jumped to \$2 per space per day. This changed it from \$270 per year (we only were paying for 30 spaces at St Johns) to \$36,256.
2. We did not approach local businesses as our times of operation directly conflict with their hours of operation.
3. We did not approach the other church as we feel that we have the added spaces well within the reach of students and would not encumber an additional cost to the District in these tough economic times.

Thanks for your following up on the issues.

Garry M Kryszak
Capital Projects Manager
North Clackamas School District
503 353-6058

From: kryszak@nclack.k12.or.us
Sent: Tuesday, June 30, 2009 6:48 AM
To: Kelter, Brett
Subject: Re: quick background questions

Brett

While I cannot discount economic reasons the major factor in limiting parking is (1) space and (2) the TDM plan which is in effect and being used. The TDM plan calls for incentives for both staff and students to walk, car pool, take the bus. Not to be forgotten is the fact that in the case of MHS it can prove easier to take the school bus than to drive because of the tight parking and the fairly close proximity of students to the school.

The Lake Road field is used for Baseball (varsity and JV) practice and games. Soccer practice and a few games, and football practice. With the new all weather turf field very few soccer or freshman football games are played at Lake Road. But if scheduling becomes tight the option for jv and freshman soccer to be played at Lake Road remains. We have not yet developed a good history of the number of those games.

Garry M Kryszak
Capital Projects Manager
North Clackamas School District
503 353-6058

"Kelter, Brett" <KelterB@ci.milwaukie.or.us>

To <kryszak@nclack.k12.or.us>

cc <murphyed@verizon.net>

06/29/2009 04:45 PM

Subject quick background questions

Garry,

To follow up on your answer below: Several commenters have mentioned that the school has started to "limit the number of students who drive to school"---would you agree, and if so would that perception probably be due to the school issuing parking permits? Or has the school issued parking permits for a long time and it's really due more to larger economic factors that fewer students are driving? People seem to have the impression that the school has somewhat recently curtailed the amount of driving by students.

Also---can you tell me whether the Lake Rd field is used just for practices (baseball, soccer, freshman football) or also for games? I just want to be able to describe the situation accurately.

Thanks!

-Brett Kelter
Associate Planner
City of Milwaukie

From: kryszak@nclack.k12.or.us
Sent: Wednesday, July 01, 2009 11:08 AM
To: Kelter, Brett
Cc: murphyed@verizon.net
Subject: RE: Ball Field Parking Variance?

Brett

Couple of things:

1. We have no intention of providing shuttle buses.
2. I will not respond to Mr. Menely's question about stopping bussing. It is not the point to this question. I will say it would only make the parking situation worse. As an aside Portland does bus students provided the closest school beyond the walking distance. The unique situation with Portland is that most of their students live within the State stipulated walking distance. I do not believe, Franklin, Grant, Jefferson, Cleveland have any buses but know that Lincoln and Wilson do.

I have to say that Mr. Menely's argument about leasing spaces at the Post Office is directly in opposition to what he says about walking and use of public funds. We would have to pay going rate to lease more space and we already own the spaces at Lake Road.

Thanks

Garry M Kryszak
Capital Projects Manager
North Clackamas School District
503 353-6058



March 12, 2008

Files: CSU-07-05, TPR-07-13, VR-07-07

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on March 11, 2008.

- Applicant:** Garry Kryszak for North Clackamas School District #12
- Location:** 11300 SE 23rd Ave. (Milwaukie High School)
- Tax Lots:** 1S1E36BC, tax lots 5600 and 5800
- Application Types:** Community Service Use, Transportation Plan Review, Variance
- Decision:** Approved with Conditions
- Review Criteria:** Milwaukie Zoning Ordinance:
- MMC Subsection 19.1011.3 – Minor quasi-judicial review
 - MMC Section 19.321 – Community service use
 - MMC Section 19.306 – Residential R-2 zone
 - MMC Section 19.312 – Downtown zones (specifically Downtown Office zone)
 - MMC Chapter 19.500 – Off-street parking and loading
 - MMC Chapter 19.700 – Variances, exceptions, and home improvement exceptions
 - MMC Chapter 19.1400 – Transportation planning
- Milwaukie Land Division Ordinance:
- MMC Subsection 17.28.030 – Easements

Neighborhood: Historic Milwaukie

The Planning Commission's decision on this matter may be appealed to the Milwaukie City Council. An appeal of this action must be filed within 15 days of the date of this notice, as shown below.

Appeal period closes: 5:00 p.m., March 27, 2008

All other driveway approaches accessing the subject property are in conformance with the standards of MMC Section 19.1413.

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

As conditioned, the Planning Commission finds that the proposed development is consistent with the standards and requirements of MMC Chapter 19.1400.

10. MMC Subsection 17.28.030 requires that easements for sewers, water mains, electric lines, or other public utilities shall be dedicated wherever necessary. Easements shall be at least 10 feet wide and centered on rear or side lot lines.

There is an existing wastewater main on the east side of the subject property that serves other properties in addition to the school. However, there is no recorded easement for the main. The applicant has agreed to provide a public utility easement for the wastewater main. A condition has been established to ensure that the easement is provided.

As conditioned, the Planning Commission finds that this standard is met.


Conditions of Approval

1. At the time of submission of any building permit application, the following shall be resolved:
 - 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. Submit revised site plans with the following changes:
 - i. Bicycle parking shall be brought into conformance with the standards of MMC Section 19.505, to a minimum total of 48 spaces. New spaces shall be located within 50 feet of the entrances to the various campus buildings as dimensions and existing features allow. At least 24 bicycle parking spaces shall be covered and/or enclosed in the form of lockers.
 - ii. A continuous, sight-obscuring, non-deciduous, non-invasive vegetative screen as approved by the Engineering Department and in consultation with the adjacent property owner(s) shall be provided along the eastern property line where the applicant's lighting plan has projected a vertical illumination reading of 2.0 foot-candles or greater as measured at 3 feet above grade. The vegetation shall be of a minimum 5-gallon size and minimum of 3-foot height at planting and shall reach a minimum height of 6 feet at time of maturation. The applicant shall develop a plan to remove invasive vegetation in consultation with staff.
 - iii. Any loss of existing on-site parking spaces due to expansion of the fine arts building and/or relocation of the retaining wall near SE Lake Road shall be replaced by establishing new spaces on the site and/or arranging for shared parking spaces off site within 300 feet of the school boundary. If new spaces are established on the site, they shall meet the dimensional standards of MMC Subsection 19.503.10 and shall be shown on the revised site plan.

- iv. Demonstrate that the minimum setback requirement of 20 feet is met by showing the distances between the eastern property boundary and the following: (1) bleachers and (2) new light poles.
 - v. Provide several street trees in the planting strip adjacent to SE Washington Street as approved by the Planning Director.
2. Prior to issuance of any building permit, the following shall be resolved:
- A. Final plans submitted for building permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on January 11, 2008, except as otherwise modified by these conditions. Specifically, the poles used for lighting the track and playing field shall be limited to a height of 70 feet on the east side of the field and 80 feet on the west side of the field.
 - B. Provide a narrative describing all actions taken to comply with these conditions of approval.
 - C. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
 - D. Submit a storm water management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards.
 - E. Pay a fee-in-lieu of construction to the City of Milwaukie for the required public improvements on SE Lake Road fronting the subject property.
 - F. Dedicate 6.5 feet of right-of-way to the public on SE Lake Road fronting the subject property.
 - G. Dedicate right-of-way to the public at the northwest corner of SE Lake Road and SE 23rd Avenue such that the existing public improvements are located within the public right-of-way.
 - H. Provide details sufficient to verify that all required new bicycle racks meet the standards of MMC Subsection 19.505.3.
3. Prior to construction or commencement of any earth disturbing activities, the applicant shall obtain an erosion control permit.
4. Development activity on the site shall be limited to 7:00am – 7:00pm Monday through Friday and 8:00am – 5:00pm Saturday and Sunday.
5. Prior to final inspection of any building permit, the following shall be resolved:
- 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. Construct a private storm management system on the proposed development property for runoff created by the property. The private storm management system shall be constructed to the specifications of the approved storm water management plan.

- D. Relocate the existing parking lot retaining wall fronting SE Lake Road outside of the public right-of-way after the required dedication. Provide a light-obscuring barrier along the portion of the relocated wall sufficient to prevent car headlights from shining onto other properties.
 - E. Provide a 20-foot wide public utility easement for the existing wastewater main on the east side of the subject property as shown on the site plans.
 - F. Remove all signs, structures, or vegetation in excess of 3 feet in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed development.
 - G. Submit a letter from the project landscape architect attesting that all required site plantings have been completed in conformance with the approved site plans and with City standards.
 - H. A minimum total of 341 off-street parking spaces shall be secured for use by the high school during school hours. For all shared parking spaces used to meet the minimum total, a shared parking agreement(s) shall be recorded with Clackamas County and a copy provided to the City.
 - I. Develop a Transportation Demand Management (TDM) program to improve the functioning of the existing parking situation at the school and reduce demand for the limited number of off-street spaces. At a minimum, the TDM program shall include a plan for establishing a Transportation Committee composed of students, faculty, and staff. The Committee shall be responsible for studying parking demand, developing and promoting alternative transportation options (including carpooling), and establishing a Transportation Resource Center on the campus. This condition shall replace Condition #7 from the approval for CSO-99-05. The TDM plan shall be submitted to the Planning Director for review and approval.
 - J. Submit a letter from a lighting engineer attesting that the new field lights are operating within projected parameters, specifically that the vertical illumination levels along the eastern property line do not exceed a level of 4.0 foot-candles as measured at 3 feet above grade and that the light poles are no more than 70 feet tall on the east side of the field and no more than 80 feet tall on the west side of the field.
 - K. The District shall conduct a sound study and develop a sound policy for the field loudspeaker system that limits noise impacts to surrounding properties. The sound study and sound policy shall be submitted to the Planning Director for review and approval.
6. After issuance of a Certificate of Occupancy, the applicant shall:
- A. Maintain the new field lights so that that vertical illumination levels along the eastern property line do not exceed a level of 4.0 foot-candles as measured at 3 feet above grade.
 - B. Use the site in a manner substantially similar to what has been proposed and approved through this land use action.
 - C. Restrict the use of the field lights to school-related and youth activity athletic events. The lights shall be turned off no later than 10:00pm.

- D. Maintain the required vegetative screening along the eastern property line in good and healthy condition.
- E. Maintain an active TDM program in an effort to reduce the demand for limited off-street parking related to use of the school facility.


Katie Mangle
Planning Director

cc: Applicant
Planning Commission
Kenny Asher, Community Development/Public Works Director
Katie Mangle, Planning Director
Gary Parkin, Engineering Director
Zach Weigel, Civil Engineer
Tom Larsen, Building Official
Bonnie Lanz, Permit Specialist
Mace Childs, Deputy Fire Marshal
NDA: Historic Milwaukie
Interested Persons
Files: CSU-07-05, TPR-07-13, VR-07-07

ATTACHMENT 4



COPY

May 28, 2008

Dan Golden
 North Clackamas School District #12
 12451 SE Fuller Rd.
 Milwaukie, OR 97222

RE: Milwaukie High School – Minor Modification Request
 Land Use Files: **C-71-09 and CSO-91-02**
 Building Permit Number: **080112**
 Tax Lot: 1S1E36CA 001200 (Lake Road fields)

Mr. Golden:

This letter is in response to your request of May 12, 2008, for approval of a portion of building permit #080112, a proposal to make infrastructure improvements to the athletic fields on the SE Lake Road part of the Milwaukie High School campus. Specifically, the project would provide a pavement overlay for the existing parking lot and roadway as well as installation of drainage systems in the outfields of the two existing ball fields.

In 1971, the ball fields at SE Lake Road were approved through a conditional use application (File # C-71-02). That review was conducted before the community service use process had been established, although the facility is now considered a community service use. The Planning Director may approve minor modifications to an approved community service use as long as the modifications meet five specific criteria found in Milwaukie Municipal Code (MMC) Subsection 19.321.6(C):

1. Does not increase the intensity of any use.

The proposed modification will improve existing facilities and will not increase the intensity of use of the site.

2. Meets all requirements of the underlying zone relating to building size and location and off-street parking and the standards of Title 19.

The Lake Road fields are in the residential R-7 zone and the proposed modifications will not alter the site in any way that would move it out of conformance with the relevant standards. No new structures are proposed, a majority of the site is unpaved open space, and the new pavement overlay in the parking area will be striped to meet current standards for parking space dimension. All relevant standards of the underlying zone are met.

3. Does not significantly affect adjacent property uses, will not cause any deterioration or loss of any natural feature or open space, nor significantly affect any public facility.

The proposed modification presents no change to the amount of open space or landscaping on the subject property and will not result in any additional impacts to

COMMUNITY DEVELOPMENT DEPARTMENT

Engineering • Operations • Planning • Building • Fleet • Facilities
 6101 S.E. Johnson Creek Blvd., Milwaukie, Oregon 97206
 PHONE: (503) 786-7600 • FAX: (503) 774-8236

adjacent properties. If anything, the project will improve the parking and stormwater situations on the site.

4. Does not affect any conditions specifically placed on the development by the planning commission or city council.

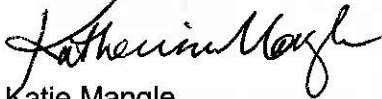
The ball fields and play area were first developed in 1971 and received conditional use approval through land use application file #C-71-09. In 1991, subsequent improvements to the ball fields (dugouts at one field and a concession stand and press box at another) were reviewed and approved through land use application file #CSO-91-02. The proposed modification does not affect any condition placed on the development by the Planning Commission through either of those land use approvals.

5. Does not cause any public facility, including transportation, water, sewer, and storm drainage.

The proposed modification would improve stormwater drainage on the site (it has been designed not to increase the time of concentration for stormwater runoff) and will not change access onto SE Lake Road. The project will not negatively impact any public facilities.

If you have any questions about this minor modification approval or the related conditions of approval, please feel free to call Brett Kelter, Assistant Planner, at (503) 786-7657.

Sincerely,



Katie Mangle
Planning Director

Copy: Address File
Tom Larsen, Building Official
Zach Weigel, Civil Engineer

From: Lander, Sarah
Sent: Monday, June 15, 2009 4:26 PM
To: Kelter, Brett
Subject: RE: Note on referral for VR-09-01

Brett,

I think this proposal should be granted. During the construction we didn't even have parking impacts on 27th. I think it does seem a little silly (bureaucratic) to even require the spaces since there really isn't a need now and often the St Stephens church isn't used regularly now by students or staff. I think they already have enough parking without the practice field being considered as formal daytime parking.

The only time there is a noticeable impact on 27th is primarily during special events at the elementary school and sometimes during sporting events (but that is mostly cars parked on-street along Washington) and during large high school events such as "Living History Day" (which is controlled through their event organization very well, I have no complaints about this event). I live next to two schools and enjoy it greatly, our household has never felt that the parking for either of the schools cause livability issues on our street. Our family has lived on 27th for over fifty years I hope our perspective is useful in this decision.

Thank you,

Sarah Lander

City of Milwaukie
Code Compliance Assistant
503-786-7564

From: Ray Bryan [bryanchambers99@earthlink.net]
Sent: Tuesday, June 23, 2009 7:22 AM
To: Kelter, Brett
Cc: Dion.Shepard; pemczum
Subject: Milwaukie High Variance

Brett,

Thank you for your work and diligence on this application. My concern is not how many off street parking spaces that Milwaukie High School has, but do they have enough to meet the demand. I would not like to see our neighborhood over run with cars like it was several years ago when the second gymnasium was being constructed, before the lot on Washington St was open. Since that time, day time parking has not been a problem. I do think that students will use the nearby neighborhood streets to park, before they walk all the way to the ball field lot, however it appears from the information given by the district that both the St John's lot and St Stephens' lot are not being used to their full capacity. Based on that information, I do not anticipate any changes to neighborhood parking by granting this variance.

I would like to point out to the applicant that the yellow route designated on Exhibit '2' directs students to walk through the narrow entrance to the parking lot serving Milwaukie Elementary. There is not a side walk through that area and it is very narrow for two lanes of traffic.

Brett, Since I have the attention of the Planning Department, the Planning Commission, and the North Clackamas School District. I would like to take this opportunity to raise awareness of two related issues even they have no direct impact on the outcome this application.

#1 The Historic Milwaukie NDA land use committee and others still believe that the crossing between Milwaukie High and St John's church is dangerous, especially during events that fill the parking on Washington St. It is difficult to see pedestrians wanting cross before they step out into the lane of traffic. Add to the mix darkness and rain, it is hard to understand how anyone would not be concerned. We understand that drivers are not expecting a cross walk in the middle of a block, so it must be "improved" and have some sort of lighting in order to be safe. We will continue to use every opportunity to advocate for an improved crosswalk between the two parking lots.

#2 In a few years it is likely that a light rail station will be located immediately West of the Milwaukie High campus between 21st Ave and the Tillamook railroad tracks. Two issues: **A**, the school district is painful absent from any input and discussion about the details of that station or any other concerns they or the parents of future students may have with location, design, access, etc.

B, There will definitely be a demand for parking around the new light rail station. Any unregulated on street parking will be in high demand for commuters looking for a place to park with a short walk to light rail. Because students, staff, and visitors, to both Milwaukie High and Milwaukie Elementary routinely use on street parking, they will be affected by this demand for parking close to the station. It is possible that the surrounding neighborhood will be saturated with park and riders and desire to implement some restrictions to on street parking. If that is the case, I would hope that all parties will partner with us to find a solution that protects our livability.

Thank you,
Ray Bryan

503-794-9354

From: pemczum@comcast.net
Sent: Sunday, June 28, 2009 9:16 PM
To: Kelter, Brett
Cc: Dion.Shepard; Mangle, Katie; bryanchambers99@earthlink.net
Subject: Re: Milwaukie High Variance

Brett:

Another knotty parking problem, although I don't believe this one will be of much importance at this time. Down the road, though, with the addition of light rail, this decision might enter into the mix.

Although NC 12 ruffled a few feathers at St. Johns for not applying for their needs in a timely manner, the church ultimately made their decision based on their on needs, so I don't think the district will ever get more spaces there. The same seems to be the case at St. Stephan's.

The practice field site request comes down to whether anyone will use it on a regular basis. A quarter mile walk is nothing for a teen, but there are always those that won't bother. Remember it's Oregon, so it rains. The site is fairly remote, so it has built-in security problems. Remember the old saying: "You can get the best deals in town in a parking lot." The most usage will probably come at a big football game, such as Homecoming, or the annual Veteran's celebration Milwaukie has made such a big thing of.

The school enrollment has probably maxed out, so that should not be a factor.

Residents along 27th Ave. state that since the school limited who could drive to school the parking situation has greatly improved, except during the construction of the new gym, as Ray mentioned.

Since it has been pointed out that allotted spaces at St. John's and St. Stephan's are not being used fully, granting this variance should not make any appreciable difference to on-street parking, so I see no reason to wit-hold it.

Regarding the other separate issues Ray brought up, I agree with him whole-heartedly. I see you have turned his thoughts over to the proper people, so let's hope something good comes of it.

Thank you for all of the help you've given us in these matters.

Ed Zumwalt

From: Matt Menely [mntsoles@hotmail.com]
Sent: Wednesday, July 01, 2009 10:31 AM
To: Kelter, Brett; Mangle, Katie; Sarah Menely
Subject: RE: Ball Field Parking Variance?
 Hi Brett,

Thanks for your response.

I realize that the improvements made last summer did not trigger any sort of review based on a previous conversations I've had with you. I think for us and other neighbors, the issue is not about whether there was a "[proposed intensification of the use of the site](#)" for the repaving last summer, but the simple fact that the facilities were/are undersized in their current state. Hopefully our comments and others will spur a further investigation of this from the city and school. I wish that I had taken a few pictures in the past to show you how overly clogged the driveway and parking lot can get, so that you have a better visual. If I get a chance in the future I'll try to remember to take a few and forward them on to you. There is a real "life safety" issue there.

In terms of the question you posed, "[why you would object to a shuttle setup](#)" here is our response- We already have many school bus trips on Lake Rd and 27th during these hours, and many times even they don't drive 20mph in the school zone. In addition to speeding, they are also loud, spew terrible diesel fumes, and are heavy. When they hit the pot holes on Lake Rd, we can feel our house shake as a result. In the morning it is not uncommon to see 5 or 6 of these buses driving up and down Lake Rd. in a long line, which only exacerbates these problems. This lot is rather close to the school in the grand scheme of things, and having a shuttle from this lot to the school would be completely ridiculous. If kids can't walk a few blocks, we've got a much bigger health and fitness problem on our hands. We'd rather see more kids stretching their legs and walking to school than driving or taking the bus. Adding more buses to the mix would be bad in many ways. One thing I've noticed is that some students park on 21st and 27th and walk to the high school. Is there a way to encourage them to park in the space north of the archery range/post office building? I'm not sure if that is public or private, but it would be much closer to the school than the Ball Field lot is.

Editorial- In Portland they stopped busing high school students years ago. I had to take 2 Tri-Met buses (45 minutes w/ transfer) to get from 32nd and Tacoma to Cleveland HS at 26th and Powell when I went there in the early 90's. The real question is when is the school district going to stop busing high school students, save some \$, and tell them to take public transit to school? (sorry, I could not resist the soap box)

Lake Rd. School Zone- From 28th all the way down to 21st is a school zone from early in the morning until dinner time. However, most of the weekday traffic at the ball field is after the school zone has already ended, we'd prefer to see the zone extended, in time and length, to slow traffic when students are using the ball field. We think the school zone run from the middle school at the east end, down to 21st on the west end.

Hope this

Matt Menely
 Owner, Mountain Soles
 Outdoor Footwear & Fabric Repair
 1623 SE 12th
 Portland, OR 97214
 503.236.0785
www.mtnsoles.com

Subject: RE: Ball Field Parking Variance?
Date: Wed, 1 Jul 2009 09:06:12 -0700
From: KelterB@ci.milwaukie.or.us
To: mtnsoles@hotmail.com
CC: MangleK@ci.milwaukie.or.us; murphyed@verizon.net; kryszak@nclack.k12.or.us;
AlbertB@ci.milwaukie.or.us

Matt,

Thanks for the comments, I will incorporate them into the staff report and will respond more fully to them there. In the meantime, here is a quick response to a few of the key concerns:

** The improvements done last summer to the Lake Rd fields (repaving and striping the parking area, new stormwater drainage system for a couple of the fields) were handled as a minor modification to the community service use because they met the relevant criteria. Namely, there was no proposed intensification of the use of the site---rather, the school was only maintaining and improving the facilities already in place. This level of review did not trigger public notification of the proposal and it did not trigger a traffic study. I think we do need to figure out how to handle these concerns, but I'm not sure that the variance request is the most appropriate context. The variance is more about whether the applicant's request meets certain criteria, not whether an existing, legal situation is functioning adequately. There is clearly some relationship of the two, but I want to be careful about taking the appropriate route in addressing them both. I will talk more with Katie about this, because I think it might be more appropriate to raise these issues separately in the context of the school's community service use approval for the Lake Rd fields. We can do that anytime we become aware of a problem with a community service use, and we are now aware of some issues as a result of the variance request. I'll dig more into this and will get a more full response together for the staff report.

** The Lake Rd fields will effectively be used as "overflow" parking, as a last option for permit-parking by faculty/students. The school would issue permits first for on-campus spaces, then for the shared lots at St. Stephen's and St. John's churches, and last for the spaces at the Lake Rd fields. I can't answer your question about shuttling, because I don't know if the school ever plans to shuttle students between the main campus and Lake Rd fields. They have not indicated any intention to do so as part of this proposal. In fact, a key point of the argument is that the Lake Rd fields are not so far away from the main campus that students cannot reasonably walk. Before suggesting a condition that would prohibit shuttling students between the Lake Rd fields and the main campus, can you explain why you would object to a shuttle setup, so that I can better understand your concern? Is it about having more vehicle trips to/from the site by a shuttle vehicle? Would it make a difference if the shuttle reduced pedestrian trips along Lake Rd?

** I'll have to check with our engineers to see whether there's an appropriate and effective way to address the speeding concern, as I don't know how the rules work for making changes in school zones. Maybe a speed sign posted in the driveway would be an effective response.

Thanks for taking the time to line out these concerns. As I said, we'll respond in the staff report and will figure out the appropriate routes for addressing the various issues. The staff report should go out in the mail next Tuesday and I will send you a copy.

-Brett Kelter
Associate Planner
City of Milwaukie

From: Matt Menely [mailto:mtnsoles@hotmail.com]
Sent: Tuesday, June 30, 2009 9:47 PM
To: Kelter, Brett; Mangle, Katie
Subject: RE: Ball Field Parking Variance?

Brett,

Here are our comments/concerns regarding the High School variance request for the ball field parking (File #VR-09-01).

While these comments and concerns do not necessarily deal directly with the specific request, they do bring up some ongoing and longstanding problems with the Ball Field parking at 28th and Lake Road which we feel should be addressed by the School District before allowing any further use/variance by the school.

Below we have outlined some of the problems currently existing or related to this site:

1. The parking lot is undersized in it's current size and is frequently overflowing onto the grass and down both sides of the driveway on the weekends and evenings down 28th (a dead end street) and at the east end of the ball fields there is no parking lot, which only leaves the option of parking on 32nd Ave (a dead end street). A traffic/parking study should have been done before the school recently repaved the driveway and parking lot. If this had been done, they would have realized how undersized that lot is, especially on weekends and evenings during sports seasons.
2. Emergency vehicle access when the parking lot and driveway are full is very difficult. There was at least one occasion last summer in which emergency vehicles were called to the ball field parking lot, the lot was full and cars were parked on both sides of the driveway down to 28th. It made access nearly impossible for the emergency vehicles, and is difficult for cars to drive up and down the driveway at the same time.
3. Speeding and garbage- Because there is a lot of traffic associated with that ball field lot, there is also a lot of speeding up and down the driveway with little regard for the people who live near the parking area. At times I've also noticed a lot of litter in the parking lot. Ball field users might be reminded that they should feel privileged to have access to such nice fields and show some respect toward the neighbors as they come and go.

Suggestions for mediation:

1. Increase the length of the school zone, or reduce traffic speed in the late day/evening to the east on Lake Rd. to help reduce speeding too/from the ball field parking lot.
2. Making the driveway (or at least 1 side of it) up to the ball field "No Parking" by painting the curb yellow and somehow enforcing the no parking area.
3. Locking the gate at night to keep people from being up there and causing problems.

One question we have regarding the variance: If they are allowed the variance, would they ever plan on using this lot as overflow parking and "shuttling" people from this lot down to the school with a bus or other form of transportation? If the answer is "yes" then we would definitely object to allowing them a variance for parking at this site.

I hope that the school can address some of these issues regardless of the variance. If you have any further questions please feel free to contact us.

Thank you,
 Matt & Sarah Menely
 2816 SE Lake Rd.
 Milwaukie, OR 97222
 503-654-1819



June 24, 2009

File #VR-09-01

NOTICE OF PUBLIC HEARING

TO: Property Owners and Residents

ON: Tuesday, July 14, 2009, beginning at 6:30 p.m.

AT: Milwaukie City Hall
10722 SE Main Street

The **Milwaukie Planning Commission** will consider approving a Variance Request application (File #VR-09-01) to allow the applicant to count 39 parking spaces at the Lake Road ball fields as shared parking to meet the off-street parking requirements for Milwaukie High School as per conditions of approval for CSU-07-05. The proposed spaces are located more than 300 feet from the principle use and thus do not meet the shared parking standards of MMC 19.503.2. The request is being made by Garry Kryszak (applicant) and North Clackamas School District #12 (property owner). The main school campus is located at 11300 SE 23rd Ave, Tax Lot 05600 of Tax Map 1S1E36BC; the Lake Road ball field property has no street address and is located at SE 28th Ave and SE Lake Road, Tax Lot 01200 of Tax Map 1S1E36CA.

The site is shown on the reverse of this letter.

The criteria which will be used by the Planning Commission in reaching a decision are found in the Milwaukie Municipal Code Sections 19.321, 19.500, 19.700, and Subsection 19.1011.3. Copies of these criteria are available upon request. Testimony and comments at this hearing must be directed towards the criteria identified.

Interested persons are invited to attend this hearing or to submit comments in writing prior to the meeting time. Written testimony may be submitted in advance to the Planning Department or in person at the hearing. Those wishing to present verbal testimony, either pro, con, or to raise questions, will be asked to speak following the applicant's testimony.

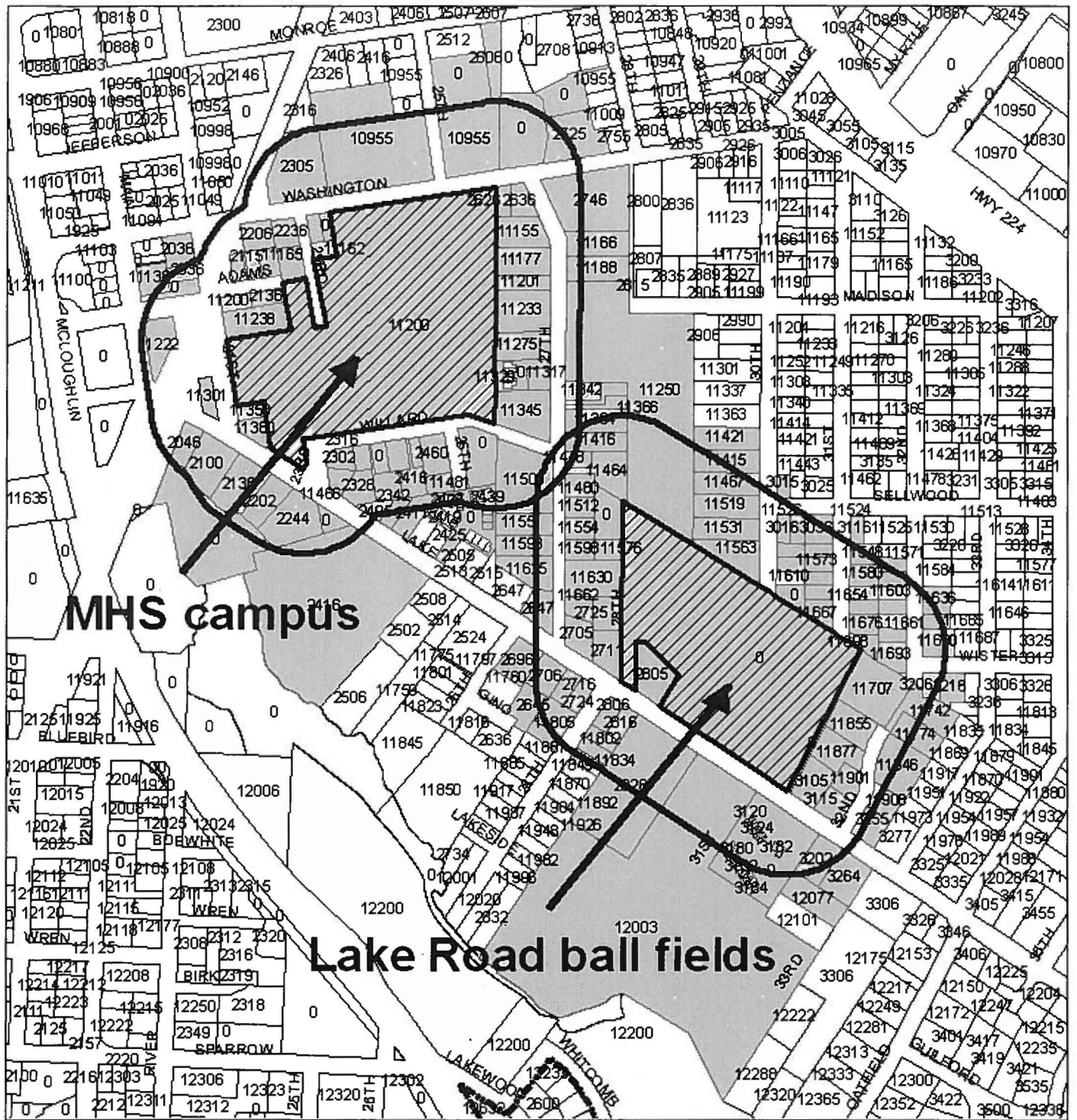
Failure to raise an issue in a hearing (in person or by letter) and/or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue.

The application and all documents and evidence submitted by or on behalf of the applicant, as well as the applicable criteria, are available for inspection at the **Planning Department, located at 6101 SE Johnson Creek Blvd. (at Linwood Ave.). A Planning Staff Report will be available for public review after 8:00 a.m. on Wednesday, July 8, 2009, at the Planning Department; at <http://www.ci.milwaukie.or.us/committees/plancomm.html#agendas>; at the Ledding Library, local information shelf; and at City Hall, 10722 SE Main.** Copies of any relevant materials, including the staff report, are available to purchase at a reasonable cost. Copies of applicable City ordinances and the Comprehensive Plan are also available for review at these locations.

If you have any questions, please contact Brett Kelter in the Planning Department at (503) 786-7657 or kelterb@ci.milwaukie.or.us.

For assistance/ service per the Americans with Disabilities Act (ADA), dial TDD (503) 786-7555.

COMMUNITY DEVELOPMENT
BUILDING * ECONOMIC DEVELOPMENT * ENGINEERING * PLANNING
 6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206
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300-foot Notice Area Map

Variance Request VR-09-01
(Milwaukie H.S. and ball fields)

0 125 250 500 750 1,000
Feet
1 inch equals 500 feet

Legend

-  MHS properties
-  300-foot notice area
-  City tax lots within 300 feet
-  City tax lots



To: Planning Commission

From: Katie Mangle, Planning Director
Susan P. Shanks, Senior Planner

Date: July 7, 2009, for July 14, 2009 Worksession

Subject: TGM Grant Code Assessment Project

ACTION REQUESTED

None. This is the second in a series of briefings on an ongoing code assessment project. As discussed in March 2009, the City received a grant from the State of Oregon to conduct an assessment of several parts of the Milwaukie Municipal Code related to zoning and development. This briefing will focus on problem identification and potential solutions as detailed in the attached memorandum from Angelo Planning Group (Attachment 1). Given the amount of information contained in the attached memorandum, staff would like to focus the July 14 discussion on Sections 1 and 3, namely Residential Design Standards and Downtown Zone Standards and Uses.

BACKGROUND INFORMATION

In 2008, the Commission supported staff's request that the Oregon Transportation Growth Management Program fund a Code Assessment project to evaluate Milwaukie's Zoning Code (Title 19). The City asked the consultant on this project, Angelo Planning Group, to conduct a preliminary assessment of the code, focusing on the following four key areas:

1. Residential Design Standards
2. Land Use Review Criteria and Procedures
3. Downtown Zone Standards and Uses
4. Manufacturing Zone Standards and Uses

CODE ASSESSMENT RESULTS

Angelo Planning Group's first deliverable, a memo reporting on the findings of their assessment, is attached to this report as Attachment 1. The assessment provides an overview of the City's existing code as it relates to the four key areas. It also identifies the problems associated with these areas and includes a range of potential solutions. Attachment 2 contains relevant code excerpts from other jurisdictions and the TGM Model Code that provide concrete examples of how other codes are handling similar issues.

The solution identification process is by no means complete. As you might imagine, some of the identified problems are relatively simple and will require very little, if any, discussion. Some, on the other hand, have broad policy implications and/or are technically complex and will require extensive staff discussion and analysis and policy direction from the Planning Commission and City Council.

The Code Assessment covers a wide variety of issues, most of which the Commission has discussed in one way or another. One area of code that is discussed that some commissioners may not be familiar with is the City's standards for Accessory Dwelling Units (ADU). ADUs are often used to accommodate aging relatives who either need or desire an affordable housing option in close proximity to their families. ADUs are also frequently used to supplement a property owner's income by charging rent to a tenant.

The City's existing code allows ADUs as long as the unit is accessory to the primary single-family residential use and one of the units is owner-occupied. All ADUs require some level of land use approval from staff or Planning Commission and cannot go straight to building permit. Though staff receives numerous inquiries about ADUs every year, very rarely do they result in land use applications. Staff believes that ADUs are a viable and necessary housing type and that the City's existing code provides unnecessary design and procedural barriers to their development. The attached memorandum discusses ADUs and issues associated with other housing types in more detail.

KEY QUESTIONS

Ms. Dorman's evaluation has been thorough and she has identified many options for the City to consider. Therefore, staff would like to focus the July 14 discussion on Sections 1 and 3, namely Residential Design Standards and Downtown Zone Standards and Uses. Staff proposes to structure the discussion around the following questions:

1. Does the memorandum accurately identify the problems associated with each key area? Is anything missing?
2. Do you have a strong opinion about any of the potential solutions provided? Are there solutions that you like or dislike more than others?
3. Are there other potential solutions you would like staff to investigate?
4. What kinds of information would you like staff to provide at future meetings to help you understand the problems and solutions identified thus far?

NEXT STEPS

The staff will present sections 2 and 4 of the memo at a work session with Planning Commission in August, and brief Council on the project in August. To complete the Code Assessment project, staff will work with the Commission to discuss and identify a future course of action for priority code changes. It appears likely that in fiscal year 2009-10 the City will receive a similar TGM grant to undertake Phase II of this project, drafting code amendments to solve the problems identified in the Code Assessment memo.

ATTACHMENTS

1. Code Evaluation Memorandum from Angelo Planning Group dated July 2, 2009
2. Code Evaluation Memorandum Attachments
3. Preliminary Assessment of Non-conforming Uses in Downtown Milwaukie



LAND USE PLANNING • TRANSPORTATION PLANNING • PROJECT MANAGEMENT

Memorandum

Date: July 2, 2009

To: Katie Mangle, City of Milwaukie
Susan Shanks, City of Milwaukie

From: Mary Dorman, AICP
Serah Overbeek, AICP

cc: Rachel Ferdaszewski, TGM Code Assistance Grant Manager

Re: Task 2 - Code Evaluation Memo

Development regulations, by their nature, are often complex and difficult to understand. Even planning staff, developers and planning commissioners, who regularly work with codes, often have problems with interpreting and implementing their local land use regulations. The TGM code assistance program is intended to help local jurisdictions modernize codes to address the principles of smart development and also help make a city's codes and procedures clearer and easier to understand and implement.

In early 2009, the state Transportation and Growth Management (TGM) program awarded Milwaukie a grant to fund a phased code review and revision project. The first phase of the project allows the City to strategically review several problematic sections of the zoning Code and identify options and priorities for potential amendments that the City could adopt in the future with anticipated Phase 2 funding from the TGM code assistance program.

The purpose of this memorandum is to provide an evaluation of specific areas of Milwaukie's Zoning and Land Division Ordinances to identify problems and options for improvements. The code review and this evaluation memo focus on the following key areas identified in the scope of work for the Phase 1 code assessment:

- Residential design standards
- Land use review criteria and procedures
- Downtown zone standards and uses
- Manufacturing zone standards and uses

For each area listed above, this memo provides an assessment of existing code language, a discussion of any problems or issues that were identified, and options for improvements. Where appropriate, examples from the Model Code and other jurisdictions are also provided in the Attachments.



I. Residential Design Standards

There are a number of areas within the city's residential standards identified as needing revisions and improvements.

- Single-family residential design standards
- Compatibility standards for residential infill and redevelopment
- Multi-family design standards
- Housing type variety and accessory dwelling units

Overview of Existing Single Family Residential Design Standards

Section 19.425 of the Milwaukie code contains design standards that apply to new single and two-family dwellings. These standards regulate main entrance orientation, street-facing windows, and require at least three building elevation features such as bay windows, recessed entry, porches, roof eaves, and certain exterior building materials.

There are also some standards located in the individual use zones in Chapter 19.300. These standards are more related to site layout than the design of the building. These standards regulate setbacks, building height, lot coverage and frontage, and vegetated areas.

Problems with Residential Design Standards

The existing residential design standards are minimal and do not always result in the type of aesthetic that is desired in single-family residential neighborhoods.

1. The location of garages is not currently regulated in Milwaukie's code and can result in "snout house" development in which the garage dominates the street-facing elevation, both in bulk and in proximity.
2. In addition, staff has indicated that developers frequently choose not to provide roof eaves (which are one of the optional design features in Milwaukie's existing design standards) because the current definition of lot coverage requires that eaves be counted towards the maximum lot coverage standard. In order to maximize lot coverage, developers chose to omit roof eaves, which results in development that is typically considered less aesthetic and not visually compatible with surrounding homes.
3. The existing lot coverage standards for the lower density residential zones (R-10, R-7, and R-5) may be overly restrictive in terms of allowable building footprint. In order to maximize building square footage within a small building footprint, builders may be compelled to construct taller buildings that may be out of character with surrounding development.
4. Currently, the residential design standards only apply to new single-family development and not to exterior remodels or expansions of existing homes. Staff is concerned that un-regulated expansions may result in the same types of problems described above. Staff is considering whether or not residential design standards should apply to expansions as well as new development.



Discussion of Potential Solutions

Staff would like to consider options to supplement the existing design standards. This section provides examples of design standards and approaches used in other jurisdictions. A number of residential design alternatives are also discussed in the following section about infill compatibility and won't be repeated here.

Garages. As mentioned previously, the design and location of a garage can significantly affect the appearance of a house and its compatibility with surrounding houses. The city can control this affect by regulating the location and size of street-facing garages. Several example code approaches are provided below.

- The Model Code recommends establishing front, side and rear setbacks of 20 feet for attached and detached garages.
- The City of Portland Community Design Standards (Chapter 33.218) require that attached garages facing a street be no more than 40 percent of the length of the street-facing façade, or 12 feet, whichever is greater. The front of the garage can be no closer to the front property line than the front of the house. In addition, garage doors must be less than 75 square feet in area.
- The City of Beaverton requires all attached garages to be recessed at least four feet from the front of the building, not including porches, when facing a public street.
- The City of Canby code provides a number of options for garages that are intended to prevent garages from obscuring or dominating the main entrance of the house. If the garage standards are not met, then the developer must comply with additional design standards. The design “menu” offered is similar to Milwaukie’s except that it incorporates garage design and requires more design elements. Section 16.21.030 from Canby’s code is provided in Attachment C.

Roof eaves. The city could consider revising its current definition of lot coverage. The existing definition is:

“Lot coverage” means the footprint of a building or buildings on a lot, measured from the outermost projection of the structure expressed as a percentage of the total lot area.

The Model Code recommends lot coverage be defined as the total percentage of a lot “covered by building(s) or impervious surfaces, as allowed by the applicable land use district development standards.”

The City of Beaverton defines building coverage as “That percentage of the total lot area covered by buildings, including covered parking areas.” Furthermore, if the city wants developers to provide eaves, the code could be revised to require eaves rather than making them an optional design element.

Lot coverage. Additionally, the city may also want to reconsider the existing lot coverage standards, particularly in the lower density residential zones. Currently, the lot coverage maximums for the R-10, R-7 and R-5 zones are 30 and 35 percent. For a 7,000 square foot lot, the lot coverage standard of 30 percent would mean a building footprint no greater than 2,100 square feet, including any garage and accessory structures. This limitation may be compelling developers to build taller houses with more bulk in order to get the desired square footage within the allowable building footprint. The Model Code recommends a lot coverage maximum of 40 percent for single-family detached dwellings in the low density zones. Some jurisdictions allow as much as 50 to 60 percent lot coverage for single-family homes. The Model Code also allows greater lot coverage for duplexes (60 to 70 percent in low and medium density zones).



Increasing the lot coverage standard may also encourage a greater variety of housing types. More discussion about housing types is provided in the next section.

There are a number of other design standards that the city could consider to supplement the existing code language. Generally, the city will need to decide what level of regulation for single-family housing is appropriate for Milwaukie. Because the city does not require any land use review for single-family development, design standards should be clear and objective so that no discretionary review is necessary to determine compliance.

Single-family remodels. The city will also need to decide if design standards should be applied to single-family remodels. Currently, the code only requires design standards for “new one and two family dwellings” and does not address the issue of remodels that add square footage to a home. The Model Code recommends that residential development standards apply to major remodels, which are defined as projects that increase the floor area by 50 percent or more. In the City of Canby, remodels that add less than 50 percent of the existing floor area, or are not visible from a public street, are exempt from the design standards. If the city opts to require design standards for some remodels, it should specify whether or not the standards apply to the entire structure, or just that portion being remodeled.

Overview of Existing Residential Infill Standards

Section 19.416 of the Milwaukie code is intended to provide a transition area between multi-family, commercial, or industrial developments that are located within 100 feet of a lower density area. For example, these standards would apply when a new commercial development was proposed adjacent to a residential zone. The standards would require some kind of physical separation between the two zones, such as a roadway or open space. They may also limit the allowable density of the new development, based on the density of the lower-density zone. The code also contains a section of design standards for new one and two family dwellings, but the provisions have not been considered effective in terms of promoting compatibility.

Problems with Residential Infill

The transition area provisions mentioned above do not address compatibility between exiting residential development and new infill or remodel development within the same zone. Under the current code, developers tend to maximize the allowable building envelope which can result in new infill structures that do not “fit in” with surrounding development in terms of both bulk and design. This is especially true in neighborhoods that contain primarily older homes that were developed around the same time, and therefore have similar qualities (for example: front porches, setbacks, heights, and architectural features). Infill development often does not include these same qualities and can look incongruous with the rest of the neighborhood. The discussion below includes several examples of approaches that have been taken in other jurisdictions to address this issue.

Discussion of Potential Solutions

Model Code. The Model Code contains a section of residential infill standards that are intended to “ensure compatibility of new development and redevelopment in existing subdivisions.” These provisions focus on setbacks and building heights, but also include a statement about comparable architecture. The full text from this section of the Model Code is provided in Attachment A and summarized below.



- ❑ New single-family homes must have a building height and front yard setback similar to adjacent, existing single-family homes on the same side of the street.
- ❑ The building design of the new home must follow, or borrow from, a recognized architectural style of the community (Craftsman, Bungalow, Tudor, Colonial, etc.). This includes elements such as color, materials, roof shapes, windows and doors, and other architectural details.

If the city were to implement a similar approach, it should consider how such standards would be implemented and reviewed, in particular the height limitations. It may be problematic to require a developer to assess existing building heights, and the measurements would need to be confirmed by city staff in order to ensure compliance. If building plans for the existing houses are not readily available, this could require a site visit and extra staff time and resources. Furthermore, the current height limit in Milwaukie's residential zones is typically 35 feet, which generally allows for two stories. If a developer were limited to only one story because the adjacent existing houses were only one story, this may be perceived as unfair.

City of Canby. Canby's development code contains provisions for infill homes that are intended to "promote compatibility between new development and existing homes, and to provide for the efficient use of residential land." The standards apply to new infill homes and remodels of existing homes where the remodel increases the floor area by more than 50 percent, not including garage area. The following is a summary of the standards.

- ❑ For infill residences exceeding one story, the maximum allowable lot coverage is 35 percent, not including garages. This is a lower percentage than typically allowed in Canby's residential zones (no lot coverage limit exists for the low density R-1 zone, and the lot coverage standards for medium and high density zones are 60-70 percent).
- ❑ Garages may be up to 50 percent of the length of the street-facing façade and may not be closer to the street than the primary residence.
- ❑ Front yard setbacks must be within five feet of the setback for the closest existing home on the same side of the street.
- ❑ Infill homes cannot exceed 28 feet in height.
- ❑ A height step-up standard applies so that building height at the interior and rear setback lines does not exceed one story.

City of Salem. The City of Salem's Development Design Handbook includes design guidelines and standards for compact residential development that is intended to be used in established single-family districts with properties no larger than five acres. The purpose of the Compact Development overlay zone is to allow for a variety of housing types while assuring through design guidelines and standards that new development adapts to the established character of existing neighborhoods. The standards include provisions for landscaping, street trees, building orientation and articulation, private open space, and parking and circulation. To encourage compatibility between new and existing structures, the height of new buildings is limited to 28 feet at the required minimum setback. An additional one foot of building height is allowed per one foot of additional setback beyond the minimum (up to the maximum building height of the underlying zone). The full text from the design handbook is included in Attachment D.

It's important to note that these standards only apply in areas the city has identified as having significant character that should be maintained and protected. The Compact Development overlay zone applies



primarily to single-family neighborhoods within the urban growth boundary. New construction in those areas must go through development design review and are subject to the design guidelines and standards. Applicants may choose to either meet the design standards (which require no public notice or hearing) or meet the design guidelines (which requires notice and discretionary review).

City of Portland. Portland's Zoning Code contains a chapter (Chapter 33.218) of community design standards that can be applied in certain situations as an alternative to going through the design review process. The chapter includes objective standards that do not require a discretionary review by the city. Eligible applicants can choose to either meet the clear and objective standards in this chapter or go through the discretionary design review process. To be eligible for this option, the project must be located in a designated design overlay zone (Alternative Design Density Overlay, Design Overlay, Historic Resources Protection Overlay, and some plan districts). The stated purpose of the community design standards is to "ensure that new development enhances the character and livability of Portland's neighborhoods." Some highlights from the community design standards chapter are provided below.

- Neighborhood contact is required for proposals that create three or more new dwelling units.
- A vicinity plan is required and must show the footprint and lot lines of the proposed development, and footprints and lot lines of all abutting development on the same side of the street.
- Setbacks for the new development are based on setbacks of existing abutting development.
- Building elevations larger than 500 square feet must be divided into distinct planes by a porch, dormer, bay window, or recessed entrance.
- Buffers are required between new developments in higher density residential zones abutting existing development in lower residential zones.

Portland also uses varying lot coverage standards in conjunction with height and setback standards to control the overall bulk of structures in the single-family zones (Chapter 33.110). The standards are intended to ensure that "taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses." Allowable lot coverage depends on the size of the lot. An example table from the Portland code is provided below.

Table 110-4 Maximum Building Coverage Allowed in the RF through R2.5 Zones [1]	
Lot Size	Maximum Building Coverage
Less than 3,000 sq. ft.	50% of lot area
3,000 sq. ft. or more but less than 5,000 sq. ft.	1,500 sq. ft. + 37.5% of lot area over 3,000 sq. ft.
5,000 sq. ft. or more but less than 20,000 sq. ft.	2,250 sq. ft. + 15% of lot area over 5,000 sq. ft.
20,000 sq. ft. or more	4,500 sq. ft. + 7.5% of lot area over 20,000 sq. ft.

Notes:

[1] Group Living uses are subject to the maximum building coverage for institutional development stated in Table 110-5.

Generally, smaller lots are allowed a higher percentage of lot coverage than larger lots. An alternative to this approach would be to regulate floor area ratio (FAR), which is discussed in more detail in the next section.

[Note: The City of Lake Oswego uses both lot coverage and FAR in the single-family residential zones.]



City of Redondo Beach, California. In a 2003 staff report by the Redondo Beach Planning Department, the issue of incompatible infill development was addressed through adoption of new residential design guidelines. The staff report contains a thorough evaluation of tools that can be used to address compatibility of new single-family homes in established neighborhoods. A summary of the staff report is provided below. Text from the Redondo Beach development code is provided in Attachment E.

- Floor-area ratio (FAR) is an effective tool for limiting the floor area of a building in proportion to the lot size. The city determined that a FAR of 0.60 to 0.70 resulted in homes that were visually compatible with the surrounding neighborhood. Some FAR bonuses are allowed for developments that include certain design elements such as an increased second-floor setback.
- The staff report notes that FAR helps to ensure that the buildable area of homes is proportionate to the lots size, but does not necessarily reduce the appearance of bulk from the public view. To address the issue of bulk, a second story setback can be used and can “soften the impact on adjacent existing single-story homes.”
- The report does not recommend the use of lot coverage standards because they may limit options for homeowners wanting to make a small addition to an existing one-story home. If the lot coverage maximum is already achieved, the only option for an addition would be to add a second story, which may be financially or physically unfeasible. Furthermore, it may limit the ability of homeowners to develop accessory structures on their lot.
- The location of a garage can significantly affect the compatibility of a new home with existing homes. Garages that are built close to the front property line and dominate the street-facing façade are often out of character with older homes, which tend to have detached garages located in the rear of the lot.

Overview of Existing Multi-family Design Standards

The existing Milwaukie code does not include any design standards for multi-family development outside of downtown zones. The code does contain some general development standards that would apply to multi-family housing such as yard requirements and height restrictions. Section 19.416 also contains some provisions that would apply to a new multi-family project being located adjacent to (within 100 feet) a lower density zone. Those transition provisions are intended to provide a buffer between developments in zones of differing densities. However, there are no standards to address design elements that are particular to multi-family developments, such as building mass, open space, and site layout requirements.

Problems with Multi-family Development

Multi-family development is permitted as a conditional use in the R-3 zone and as an outright permitted use in the R-2 zone. Multi-family developments tend to have larger building sizes, different architectural styles, taller building heights, different site layouts, and more parking when compared to single- or two-family developments. As such, new multi-family development located in an established single-family neighborhood can be inconsistent with its surroundings in terms of bulk and aesthetics. The transition area provisions mentioned above only apply when the multi-family development is in a different, adjacent zone; therefore, they are not effective at regulating compatibility between developments in the same zone, specifically the R-2 zone, the majority of which is developed at single-family residential densities.



Staff would like to consider code options for clear and objective design standards to apply to new multi-family developments in order to regulate aesthetics and compatibility with surrounding uses.

Discussion of Potential Solutions

Model Code. The Model Code provides a section of design standards for multi-family housing that may be suitable for adoption into Milwaukie's code. The design standards limit the allowable length or width of the building, require open space, and regulate building orientation and the location of parking areas. The full language from the Model Code is provided in Attachment A.

The Model Code also contains some standards intended to regulate attached townhomes when there are three or more attached dwellings. These standards require alley access for subdivisions consisting primarily of townhomes or duplexes. It also requires common areas to be maintained by a homeowners association. Milwaukie's existing code does not include specific design standards for attached housing, except two-family dwellings (duplexes). The city may want to consider including some of the Model Code standards for attached housing with the multi-family standards.

The Model Code also contains a section on building height step-downs that is applied to new multi-family development abutting an existing single-family residence. The intent of the step-down is to "provide compatible scale and relationships between new multi-story buildings and existing single-story dwellings". The language from the Model Code is provided in Attachment A.

City of Beaverton. The City of Beaverton Community Development Code contains some fairly prescriptive standards for building articulation and variety that apply to any attached residential development in any zone. These standards limit the length of any residential building to 200 feet, which is slightly higher than the Model Code recommendation. It also requires that any multi-family building visible from a public street have a "minimum portion of the elevation devoted to permanent architectural features designed to provide articulation and variety." Architectural features include windows, recessed doors, and changes in material types. The code regulates spacing between architectural features, as well as roof form, building entrances, building materials, and building orientation. The full text from Section 60.05.15 of the Beaverton code is provided in Attachment B.

City of Canby. The City of Canby provides a more flexible approach to regulating compatibility of multi-family developments. The code contains a matrix of design criteria that are intended to promote compatibility and aesthetics. Points are assigned to each design criterion and in order for a development to be considered compatible; it must "score" a certain percentage (65 percent) of available points. Some elements are required, and the rest are optional so long as the total score meets the minimum percentage. There are also bonus points available; however, bonus points cannot be counted towards the minimum 65 percent, so it is unclear if there is any incentive for developers to achieve points beyond the required minimum.

The benefit to this approach is that it provides a balance between prescriptive and flexible standards. Canby has identified elements that it considers critical to multi-family development and those elements are required. Other elements are optional and this allows the developer some flexibility and creativity in meeting the overall point requirement. The full text from Section 16.21.070 of Canby's code is provided in Attachment C.



Overview of Existing Housing Type and Accessory Dwelling Unit Standards

Accessory dwelling units. The city currently has two types of ADUs: Type 1 and Type 2. Type 1 ADUs are defined as being between 225 and 600 square feet in size, not exceeding 40% of the floor area of the primary structure, and meeting the requirements of Section 19.404. This section contains some site and design standards and requires that Type 1 ADUs be approved through a Type II Administrative Review process. Type 2 ADUs are defined as any unit other than a Type 1 ADU and permitted by Section 19.602.10 (conditional uses). Type 2 ADUs generally cannot exceed 50% of the floor area of the primary structure or be larger than 800 square feet in size.

Housing type. A review of the city's use zones in Chapter 19.300 indicates that the city identifies four dwelling types in the code:

- Single-family detached dwelling;
- Single-family attached dwelling, which is two dwelling units sharing a common wall on the same lot (duplex);
- Multifamily, which is either a condominium or apartment structure with three or more units on the same lot; and
- Type 1 and 2 ADUs, which are considered incidental and subordinate to a detached single-family dwelling.

The Milwaukie code currently has nine residential zones, including two mixed-use commercial/residential zones. The lower density zones allow single-family attached and detached dwellings; the medium and higher density zones (R-3 and up) allow multi-family development as well.

Type 2 ADUs are permitted as a conditional use in all the residential zones except the R-1, R-2.5, and mixed-use zones. Type 1 ADUs are not mentioned in any of the residential zones. However, the language in Section 19.404 states that Type 1 ADUs are permitted in all residential zones that allow single-family detached structures (which is true for all Milwaukie's residential zones).

Problems with Housing Type and ADU Standards

Staff would like to explore options for encouraging a greater variety of housing types. However, there are a number of areas in the existing code that could be acting as a barrier to housing type variety.

1. In the lower density zones (R-10, R-7, and R-5), the required lot sizes for duplex dwellings are excessive and may make duplex development infeasible. For example, in the R-7 zone, the minimum required lot size for a single-family detached home is 7,000 square feet. For a duplex, the lot size must be an average of at least 7,000 square feet per unit. This requires a fairly large lot for duplex development. Also, even if lot size is met, duplexes require conditional use approval in the R-7 and R-10 zones.
2. Outside of the downtown zones, there are no provisions for attached, zero lot line houses (townhomes or row houses). This type of housing is not defined in the definitions section of the code, and is not addressed in any of the residential use lists in Chapter 19.300. There is some language in some of the use zones that refers to "interior single-family attached units" that appears to be left-over from a previous version of the code. It is unclear what this language applies to.



3. Type 1 ADUs are not listed as permitted uses in the residential use zones. The language in Section 19.404 states that they are permitted in all residential zones, subject to the standards contained in that section. It would be clearer for the user if Type 1 ADUs were listed as permitted uses in each residential zone.
4. Type 1 ADUs are permitted through a Type II Administrative Review, which requires public notice with the option of a public hearing if requested. This may be an excessive amount of review and act as a deterrent for home owners who may otherwise like to construct an ADU on their property.
5. Type 2 ADUs are permitted as a conditional use in all residential zones except the R-2.5, R-1, and the mixed-use zones (R-1-B and R-O-C). It is unclear if Type 2 ADUs were intentionally left out of these zones, or if it was done in error.
6. Requiring conditional use approval for construction of an ADU may be acting as a disincentive for property owners due to cost, time needed for review, and the ability of the planning commission to impose additional conditions on the ADU.
7. The language in Section 19.602.10, which contains standards for Type 2 ADUs, states that they are “allowed in conjunction with a detached single-family dwelling by conversion of existing space, or by means of an addition”. This implies that Type 2 ADUs must be attached to a single-family dwelling, rather than be a stand-alone structure. Again, this may serve as a disincentive to property owners who would like to build an ADU that is not attached to the primary residence (like above a detached garage).

Discussion of Potential Solutions

Lot size for duplexes. The Model Code recommends a minimum lot size of 6,000-9,000 square feet for duplexes in low density residential zones. The city may want to consider allowing smaller per unit lot sizes for duplexes to encourage more of this type of housing development. Furthermore, duplexes could be permitted outright on corner lots in lower density zones (R-7 and R-10) or along higher classification streets in order to encourage more duplex development. For corner lot duplex development, each unit could be oriented to a different street to maintain the overall character of a single family dwelling.

Zero lot line housing. The city could consider revising the definitions section to include a definition for this type of housing. The Model Code defines a townhome as “a dwelling unit located on its own lot which shares one or more common or abutting walls with one or more dwelling unit. The common wall must be shared for at least 50 percent of the length of the side of the dwelling.” In addition, the city would need to revise the allowable use lists in the residential zones in order to permit townhome development where desired. As mentioned previously, the Model Code contains a section of development standards for townhome developments that could be used to regulate design and site layout.

ADUs. There are a number of revisions that the city could consider in order to clarify the ADU standards and encourage ADU development.

- For consistency, Type 1 ADUs should be listed as permitted uses within the zone use lists. The city may also want to clarify whether or not Type 2 ADUs are allowed as conditional uses in the R-2.5, R-1, and the mixed-use zones (R-1-B and R-O-C) zones.
- The Model Code recommends permitting ADUs through a Type I procedure, which is an administrative decision that does not include public notice, public hearing, or opportunity for



appeal. The Model Code contains a set of clear and objective standards that must be met for ADU development. The Milwaukie code has some standards in place for Type 1 ADUs; however, the city may want to amend the standards to make them more objective and reduce the level of required review to Type I Administrative Review.

- There does not appear to be a significant difference between Type 1 and Type 2 ADUs, and the current approach may be resulting in unnecessary confusion for property owners. The city may want to consider re-evaluating the existing ADU standards and explore the option of combining the two types into one, amending the standards, and reducing the level of review required. The City of Portland has a chapter for ADU development standards that may provide a useful example. That chapter has been included in Attachment F.

II. Procedures

Overview of Existing Procedures

Section 19.1011 contains a list of procedure types for the city and describes the process associated with each procedure, including public notices, hearings, decisions, and appeals. Currently, the city has five procedure types: Type I Administrative, Type II Administrative, Minor and Major Quasi-Judicial, and Legislative. The procedure types apply to different types of application proposal based on the level of review that is necessary to ensure compliance with standards and regulations. The city currently has approximately 32 different types of applications, most of which have an associated approval procedure type.

Problems with Existing Procedures

A review of the city's land use and subdivision review procedures and criteria revealed a number of areas that are problematic and may benefit from some amendments and reorganization.

1. Approval procedure types are located in several different chapters of the code. Conditional use procedures are found in Chapter 19.600, public transportation improvement review procedures are in Chapter 19.1400, plan and map amendment procedures are located in Chapter 19.900, and general administrative procedures are in Chapter 19.1000. Additionally, the city reviews some projects under a Conditional Use application and some under a Community Service Use application. The distinction between the two applications is not clear and it may be possible to combine them for the sake of clarity and simplification. According to staff, these ordinances were implemented at different times in a "piecemeal" fashion, which has led to the lack of cohesive organization.
2. Milwaukie's existing code does not have a traditional development review chapter that allows the city to review new development beyond the building permit process. Many projects are captured under the Conditional Use or Community Service Use applications, or under the Transportation Plan Review application. However, under the current code, it would be possible for a new multi-family or commercial development outside of the downtown to skip land use review entirely and go straight to building permit. There may be certain circumstances under which this may not be desirable and the city would prefer to review the project through a land use process.
3. The existing code provides five different types of review: Type I Administrative, Type II Administrative, Minor and Major Quasi-Judicial, and Legislative. The Major Quasi-Judicial review



appears to be used solely for the purpose of reviewing zoning map or comprehensive plan map amendment requests. Having a separate procedure type for amendments may be unnecessary and overly complex. Additionally, the naming of review types is somewhat inconsistent and could lead to confusion.

4. It can be difficult to determine what review type is required for the various different kinds of approvals (conditional use, variance, partition, etc). There is no table or section in the code that contains a comprehensive listing of all development types and their associated review type.
5. Some applications are currently processed using a level of review and/or review criteria that may be excessive relative to the proposed project. Specifically, the review processes for ADUs, Transition Area Review, and Home Improvement Exceptions have all been identified by staff as being a higher lever of review than is typically necessary for those types of proposals.
6. Staff has indicated that the variance criteria in Section 19.702.1 are difficult to meet and that writing findings can be challenging. The criteria currently contain vague language using terms that are not well defined. Applicants have trouble interpreting the criteria and staff have trouble writing defensible findings for the criteria.
7. The table for determining review type within the city's land division ordinance is confusing. This issue is compounded by the language in Section 17.12.020.B, which lists a number of ways the review type can be changed by the planning director. The city could explore ways to streamline and clarify the land division review language.
8. The existing code does not appear to provide a process for modification of approved plans. It is unclear how an applicant could apply for, and receive approval to modify a plan that was previously submitted and approved by the city through a land-use process. The city may want to consider incorporating provisions for a modification process into the review standards.
9. The process for a Director's Interpretation is located in Section 19.1001.4 with other basic administration provisions and does not have a specific review type associated with it. For clarity, and to ensure a consistent procedure, this language might be more appropriately located with the other procedure types and have a specific review type associated with it (Type I or II).
10. Section 19.809.1 of Milwaukie's code contains provisions for a Director's Determination, which is used to establish the legal status of a non-conforming use, structure, or other zoning requirement. However, staff has indicated that they often "stretch" this definition to apply it in other situations. Furthermore, the current Type I Administrative review process for a Director's Determination is not always realistic due to the complexity of the determination to be made. The city may want to consider ways to revise the language in this section to apply to additional situations, and adjust the review process as necessary.

Discussion of Potential Solutions

Generally, it appears the city would benefit from consolidation and reorganization of its existing review procedures and criteria, along with some new code sections to address the gaps identified above. The Model Code's Article 4 - Administration of Land Use and Development provides a solid framework for a consolidated procedures and land use review chapter that would address many of the issues listed above. There are a number of other jurisdictions that also provide code examples of efficient approaches to land use review procedures. Because many of the procedures are established by Oregon state law, they tend to be similar from city to city. For the purposes of this memo, the Model Code is a good place to start and



will give Milwaukie staff a general sense of organization and content. As the city moves into the second phase of this project and considers code amendments, it may benefit from a more detailed evaluation of additional code chapters on procedures and applications from other jurisdictions.

The following is an outline of chapters contained within Article 4 of the Model Code. Due to its length, the full text of Article 4 is not included with this memo, but is available online from the TGM website¹.

Article 4 - Administration of Land Use and Development

4.1 - Types of Review Procedures

4.2 - Land Use Review and Site Design Review

4.3 - Land Divisions and Property Line Adjustments

4.4 - Conditional Use Permits

4.5 - Master Planned Developments

4.6 - Modifications to Approved Plans and Conditions of Approval

4.7 - Land Use District Map and Text Amendments

4.8 - Code Interpretations

4.9 - Miscellaneous Permits - Temporary Uses, Home Occupations

The Model Code also contains a chapter dealing with variances (Chapter 5.1) that may provide a useful example of variance criteria. The Model Code identifies three classes of variance. Class A variances are simple deviations from a numerical standard such as setbacks or landscape area. They are processed as Type I applications and the criteria are clear and objective. Class B variances apply to specific elements, such as a variance to housing density standard or a street tree requirement. Each type is listed separately and has its own set of criteria that are reviewed through a Type II process. Class C includes any variance that is not considered a Class A or B variance. Class C variances are processed through a Type III procedure and have more discretionary criteria. The full text from the Model Code is provided in Attachment A.

III. Downtown Zones

Overview of Existing Downtown Zones – Chapter 19.312

The City Council adopted the Milwaukie Downtown and Riverfront Plan (Plan) in 2000. The plan provides a framework for new development and redevelopment that recognizes and builds upon the character and history of the downtown and reconnects Milwaukie to the Willamette River. To implement the Plan, the City Council adopted five downtown zones to reflect the distinctions between different areas of the plan, and to focus pedestrian-oriented retail uses to the traditional downtown core along Main Street. Specific use and development standards, public area requirements, and design standards were adopted for the downtown zones to assure an active, attractive, and accessible environment for shoppers, employees and residents.

The City recently adopted Transportation Code Amendments which changed how the public area requirements are implemented in the downtown zones. Specifically, downtown and non-downtown projects are now treated the same with regard to impact-based triggers for transportation improvements.

¹ <http://www.oregon.gov/LCD/TGM/modelCode05.shtml>



Additionally, the fee in lieu of construction (FILOC) option is now available for projects in the downtown area as it is elsewhere in the city. The City is also evaluating the feasibility of an urban renewal district to provide a tool to support and leverage public improvements that can help attract and shape development in the downtown area.

Key provisions of the code relating to the Downtown Storefront (DS), the Downtown Office (DO) and the Downtown Residential (DR) zones are highlighted below. Attachment G includes the code figures that illustrate the applicability of the standards.

Downtown Storefront. The Downtown Storefront (DS) zone was established to preserve and enhance the commercial “Main Street” character of downtown Milwaukie. Along a five-block stretch of lots fronting on Main Street as shown on Figure 312-2:

- Ground-floor retail/restaurant uses are *required*
- Office and residential uses are *not allowed* on the ground floor but are permitted up upper floors
- Personal/business service uses are *limited* to a maximum of 25 percent of the ground floor area of individual buildings

The development standards for the DS zone require:

- A *minimum* building height of 35 feet for lots fronting on Main Street
- A *maximum* street setback of 10 feet
- Ground-floor windows and doors

Downtown Office. The Downtown Office (DO) zone was established to accommodate office, entertainment, and hotel uses along high-visibility arterial streets. Retail uses are limited to support the primary uses and encourage retail development along Main Street. Within the DO zones shown on Figure 312-1:

- Offices, entertainment and hotel uses are *permitted*
- Residential uses are *limited* to the second floor or above
- Eating and drinking establishments and retail trade uses are *limited* to 5000 square feet in floor area per use and may only be developed as part of a mixed use building

The development standards for the DO zone require:

- A *minimum* building height of 25 feet
- A *maximum* street setback of 10 feet
- Ground floor windows and doors along specific streets

Downtown Residential. The Downtown Residential zone was established to increase housing opportunities in close proximity to downtown shopping, transit, and open space amenities. The major types of new housing will be apartments and condominiums. Within the DR zones shown on Figure 312-2:

- A variety of housing types are *permitted*



- Office, personal/business services and retail trade uses may only be permitted as part of a mixed use building that includes housing. These uses are limited to the ground floor and may not exceed 5000 square feet in floor area

The development standards for the DR zone require:

- A minimum density of 30 units/acre for stand-alone multifamily apartment/condominium dwellings and senior/retirement housing
- Minimum densities of 10 units per acre for the downtown residential transition area
- 15% landscaping
- Off-street parking

Design Review. When the Downtown Zones were adopted, the City also implemented a design review process for major exterior alterations and new development that only applies in the downtown area. The design review process is outlined in Section 19.312.7 of the code. Key elements of the process are highlighted below:

- The code provides three different design review tracks based on the proposed use and the scale of the development (e.g., Type I for stand-alone residential and exterior maintenance; Type II for minor exterior alteration visible from public spaces; and Minor Quasi-judicial review for major exterior alteration and new development)
- Design standards are provided for walls, windows, roofs
- Specific types of windows and roofs are *prohibited* as are specific building materials
- The design guidelines used in design review are not included in the Zoning Ordinance but are instead adopted by resolution of the City Council
- The code does not include any illustrations of the design standards or guidelines

Problems with the Downtown Zones

The City is committed to the vision outlined in the Downtown and Riverfront Plan. However, after implementing the Downtown Zones for nine years, staff has found that the specific and prescriptive standards do not provide enough flexibility to accommodate a gradual transition between existing uses and buildings and the future vision.

Primary problems with the existing Downtown Zones are summarized below:

1. Many of the existing uses (such as offices) and one-story buildings in the Downtown Storefront (DS) zone are “non-conforming” with zoning regulations that require ground-floor retail uses and 3-story buildings.
2. The downtown zones are very prescriptive regarding use and are unclear as to what would constitute an allowed use in some instances, specifically:
 - a. The Downtown Residential (DR) zone is very restrictive of non-residential uses unless they are part of a mixed use building. Since *all* of the buildings in the DR zones have non-conforming uses and buildings, the code should provide better guidance about how to handle incremental changes in buildings and uses before an entire site is redeveloped.



- b. The ground-floor retail requirement in the DS zone and the limitations on personal and business services and office uses in the DO and DR zone have had the effect of preferring vacant storefronts over active uses.
- c. The definition of “personal/business services” in Section 19.103 (Definitions) lists example uses, but doesn’t really define the broader characteristics of the use. This makes it difficult to determine if some proposed uses that aren’t listed as examples are permitted in the Downtown Zones.
3. The minimum height (35 feet/3 stories) for buildings fronting on Main Street in the DS zone is quite aggressive when compared with regulations adopted for other designated town centers within the region.
4. The Design Standards section (Section 19.312.6) is difficult to follow and understand. The addition of tables and illustrations would be helpful. Also, the list of prohibited materials is highly restrictive.
5. Major exterior alterations and construction of new buildings in the Downtown Zones must go through a discretionary design review process. The design guidelines do not provide sufficient direction to developers or review bodies to determine compliance with the guidelines.
6. The public area requirements that apply only in the Downtown Zones may be acting as a disincentive to new private investment in the downtown area.

Discussion of Potential Solutions

Reactivating Main Street is a major focus on the Downtown and Riverfront Plan and the Downtown Zones. However, it can be difficult to attract the desired higher density development and mix of uses that support more urban streetscapes if the market is not ready. Even with a long-term vision that is codified through zoning as in Milwaukie, requirements for ground-floor retail may not be supported economically in the short to medium-term because an increase in land values and demand is needed to drive higher-density, mixed-use redevelopment projects. This challenge is heightened if cities lack the funds to invest in the public infrastructure of sidewalks and other downtown amenities.

Consider Type II review for change of use. Many of the existing buildings and uses in the downtown zones do not conform to the use restrictions and limitations or development standards of the existing ordinance. Section 19.312.3 states:

Existing structures and uses that do not meet the standards for a particular downtown zone may continue in existence. Alteration of a nonconforming use or structure that is not in compliance with applicable standards shall be subject to the provisions of Chapter 19.800, Nonconforming Uses.

Categorizing buildings and uses as “nonconforming” complicates financing for improvements and also provides a barrier to incremental and organic changes to existing buildings in the interim period before redevelopment is supported by the market. The City may want to consider providing a Type II review option distinct from the Nonconforming Use Chapter to provide more flexibility for a transition of uses in existing buildings that could help to activate the downtown area.

Consider more flexible approach to ground-floor uses. Many jurisdictions in the Portland region have backed away from rigid requirements for ground-floor retail uses, and have instead required new building spaces to be designed so that they can be adapted to active uses such as retail once the market is ready.



These more flexible standards seek to establish good “bones” for active uses such as high ceilings, large floor plates, specific construction types and transparent faces of the buildings fronting on public spaces.

Some code examples from other jurisdictions are summarized below, with example code language provided in Attachment H.

Portland. The City of Portland has adopted zoning ordinance standards for “active building uses” in several town centers, including Hollywood, St. Johns and Kenton. The standards typically apply to *new development* on sites with frontage on designated enhanced pedestrian streets (such as Sandy Boulevard in the Hollywood District). *Alterations or exterior improvements to existing development are exempt from the regulations.*

Portland’s zoning standards for town center districts focus more on the location and design of the building and are more flexible in allowing a range of ground floor office and personal service uses in addition to restaurants and retail that can help to activate pedestrian streets. Additionally, *Portland’s regulations do not limit ground-floor office or service uses to a specified square footage or percentage of the total floor area.*

Hillsboro. The City of Hillsboro has adopted standards for “street level uses” in Mixed Use Districts. The intent of these standards is to establish mixed use developments, with commercial storefronts, and create a vibrant pedestrian environment.

The range of uses permitted in Hillsboro’s Mixed Use Districts is considerably broader than the uses listed in the Milwaukie and Portland ordinances. For example, Hillsboro permits street level uses such as personal, business and consumer services, daycare, product repair or services for consumer and business goods, medical clinics, and community service uses in addition to retail and eating and drinking establishments. The “storefront” space dimensions are similar to Portland’s, with minor differences (12 foot height in Portland vs. 13 feet in Hillsboro; 25 foot depth in Portland vs. 30 foot depth in Hillsboro).

Gresham. The City of Gresham has adopted a Downtown Plan District that includes six specific sub-districts. The historic downtown core along Main Street is included in the Central Urban Core (CUC) sub-district. The range of uses permitted in the CUC sub-district is quite broad, and includes offices, clinics, retail trade, retail service, business service and mixed-use development. There is no specific requirement for ground-floor retail uses along Main Street in Gresham.

Lake Oswego. The majority of the downtown core area of Lake Oswego is included in the East End Commercial (EC) zone. A very broad range of uses are permitted in the EC zone, with some limitations on the size of individual uses. Permitted uses include but are not limited to retail sales and service, food markets, restaurants, personal services, business services, offices and medical clinics. Beyond the flexible approach to permitted uses, Lake Oswego has adopted very specific requirements for building design in the downtown area.

To complement basic zoning requirements, the City of Lake Oswego has successfully established active ground floor retail uses in its downtown district by making targeted public investments and leveraging their negotiating power through the use of urban renewal. In 1986, the Lake Oswego Redevelopment Agency (LORA) adopted an urban renewal plan for the downtown district, making tax increment financing available for new downtown projects. LORA then negotiated with developers to provide ground floor retail uses with various incentives. While the code does not explicitly prohibit non-retail uses from the ground floor, the standards help to foster a



building environment that is conducive to ground floor retail over other types of uses such as banks, hair salons and copy shops.

As development and redevelopment has occurred over the last decade with substantial investments in the downtown area and market demand, rents in the district have increased to the extent that ground floor space is not as affordable for non-retail uses such as personal service uses and offices. Through this process, market forces encourage non-retail uses to locate on the upper floors, while the ground floor use is reserved for retail businesses that are typically able to pay higher rents.

Reconsider minimum building heights. As noted earlier, the existing code requires a minimum building height of 35 feet for new buildings that front on specific blocks of Main Street in the Downtown Storefront zone. The purpose of the height standards is to promote a compatible building scale and establish a consistent streetscape. Buildings fronting on other streets in the DS zone shall be a minimum height of 25 feet.

Many jurisdictions in the Portland region have backed away from rigid requirements for *minimum* building heights in town centers and corridors, and instead have focused on providing targeted incentives for taller buildings in appropriate areas. Also, some jurisdictions have written code standards to require that new 1-story buildings be designed to accommodate later addition of a 2nd or 3rd story.

Code examples from other jurisdictions are summarized below, with excerpts of code text provided in Attachment I.

Portland. The Portland Zoning Code does not require a minimum building height in any of the designated town center or corridor plan districts. As noted above, Portland has instead taken the approach of providing incentives for taller buildings in specific locations. The Commercial Storefront (CS) zone is applied along many of the traditional corridor streets in Portland, including streets such as Division, Fremont, Belmont, Clinton, etc. A maximum Floor Area Ratio (FAR) for this zone is set at 3 to 1, with a maximum building height of 45 feet. Additionally, a minimum of 50% of the site area must be covered by a building.

Portland's zone standards focus on maximum building setbacks, ground floor window standards, and no requirements for off-street parking to reinforce an active pedestrian environment. However, there is no requirement that new buildings be constructed to a minimum height or include a minimum of 2 stories.

Gresham. The table of Development Standards in Gresham's Downtown Plan identifies a minimum building height of 2 stories for the Central Urban Core (CUC). However, the code also includes flexibility for expansion of existing buildings and also provides an option to build a 1-story building that can accommodate later installation of a second floor.

Lake Oswego. The Building Siting and Massing Standards for the EC zone require that new buildings be at least two stories tall. However, the code also provides some flexibility for one-story buildings for entry areas, outdoor restaurants, or as a step down to an adjacent one story viable structure or when a minimum height of 20 feet is maintained at the right-of-way or street side building edge.

Reconsider prohibited materials. Milwaukie's existing design standards for the Downtown Zones prohibit EFIS or other synthetic stucco panels and split-face or other masonry block at the street level of all buildings in the downtown zones. Additional materials are prohibited at all levels of buildings in the



downtown zones, including plywood paneling; vinyl or metal cladding; composite wood fiberboard or composite cement-based siding; metal panels, except at penthouse level.

Building materials are constantly evolving. Is it appropriate or necessary to prohibit specific building materials if a discretionary review process is required for new non-residential construction? The city may want to consider limiting the list of prohibited materials to stand-alone residential buildings and letting the developer make the case regarding durability, compatibility, etc. for specific materials that are subject to discretionary design review.

Consider changes to the Design Review Process. As described earlier in this memo, the Design Landmarks Committee (DLC) reviews major exterior alterations and new development in the Downtown Zones, and provides a recommendation to the Planning Commission for a final minor-quasi judicial land use decision. Because discretionary design review is only required in the Downtown Zones, the uncertainty and extra expense associated with the design review process may be a disincentive to private investment and new construction in the downtown area.

Design review decisions are subject to the 120-day clock for final local land use decision after an application has been accepted as complete. Scheduling a design review application for review by both the DLC and the Planning Commission can be cumbersome for an applicant and staff. Additionally, the role and responsibility of the DLC relative to the Planning Commission should be clarified.

The City might want to consider if it would be more useful for the DLC to provide design input to the applicant earlier in the process, perhaps shortly after a pre-application conference with staff. A more informal “design guidance” approach could be used to provide input and insights on key design objectives that should be addressed as more detailed plans are prepared for review by the Planning Commission. This could be a separate application, with a modest review fee.

The city could also consider if the minor quasi-judicial design review process should be limited to construction of new buildings only, with exterior alterations handled through a staff review. Additionally, photographs and/or simple illustrations could be included in the code or in a separate handbook to provide examples of the types of buildings that are considered consistent with the design standards and guidelines.

IV. Manufacturing Zone

Overview of Existing Industrial Zones

The Milwaukie Comprehensive Plan includes several goals, objectives and policies that support business retention and redevelopment to maintain local employment opportunities and the industrial tax base. The Milwaukie Zoning Ordinance includes two zones that implement the Industrial plan designation and policies for industrial land.

- ❑ Manufacturing zone (M) – Section 19.314
- ❑ Business Industrial zone (BI) – Section 19.324

The M zone is applied to the North Industrial and Johnson Creek Boulevard Industrial Areas. The BI zone is applied to the International Way Industrial Area located to the north of the Milwaukie Expressway. There are several key distinctions between the two industrial zones as summarized below:



- The purpose statements for the two zones are similar with a few subtle differences. The stated purpose for the M zone focuses on employee-intensive industrial uses, with commercial and office uses limited to accessory uses which serve the industrial area. The stated purpose for the BI zone describes a mix of employee-intensive industrial and office uses with associated services.
- Manufacturing, processing, packaging, assembly, warehousing and distribution of products are permitted uses in both the M and BI zones. However, the M zone requires that at least 25% of the total project involve an industrial use, while the BI zone allows business and professional offices including corporate headquarters with no minimum percentage requirement for industrial use.
- The M zone also includes a requirement that the combined uses shall provide at least ten (10) employees per acre. The BI zone does not include a specific requirement for employees per acre.
- The M zone is more restrictive than the BI zone in terms of prohibited uses. New residential uses, churches and public schools are prohibited in the M zone. The BI zone does not prohibit these uses.
- Small portions of the North Milwaukie M zone and the BI zone are mapped as Title 4 “Employment” areas. Retail uses greater than 60,000 square feet gross floor area per building or businesses are prohibited on all lots in mapped “Employment” areas in both the M and BI zones.
- The BI zone includes a broader list of limited retail and service uses and conditional uses relative to the M zone. Additional uses that are listed in the BI zone include retail outlets associated with manufacturing uses, banks, public and private community buildings and public storage facilities.
- “High-impact commercial businesses” are listed as a conditional use in the M zone but are not listed in the BI zone. As defined in Section 19.103 of the Zoning Ordinance, examples of these businesses include drinking establishments, commercial recreation, adult entertainment businesses, theaters, hotels, and motels.
- Site development requirements are the same for the M and BI zones for front yard setbacks (20 feet), height (45 feet), landscaping (15%) and site access (one curb cut of 45 feet maximum per 150 feet of street frontage). However, outside storage is prohibited in portions of the BI zone but is allowed with screening in the M zone. The BI zone also includes “principles” for site and building design that are not provided in the M zone.
- The M zone includes a requirement for a discretionary “Transition Area Review” for industrial projects proposed within 120 feet of areas zoned for residential development. The M zone is contiguous to residential zones to the east of the railroad and west of 17th Avenue. The BI zone does not include this “Transition Area Review” requirement.

Problems with Manufacturing (M) Zone

1. The existing ordinance does not include clear definitions or descriptions of permitted industrial uses or use categories.
2. Similar to many jurisdictions, the Milwaukie Zoning Ordinance is based on a traditional approach of listing uses that are permitted, limited, conditional or prohibited. If a use is not specifically listed, it is presumed prohibited unless the community development director determines that a use is “similar” to those listed. The director’s decision regarding similar uses may be appealed to the Planning Commission.



3. Section 19.103 (Definitions) includes definitions for some, but not all, uses listed in the Milwaukie Zoning Ordinance. However, *no* definitions are provided for industrial uses such as manufacturing, processing, fabrication, packaging, assembly, etc.
4. Given the lack of specific definitions for industrial uses, property owners, industrial users and the community development director often have to struggle with the challenge of trying to decide if a specific proposed use fits the very broad and general list of uses in the M zone. For example, would a HVAC business that involves a minor amount of on-site fabrication fit the category of “fabrication” and be considered a permitted use?
5. The M zone lacks clear and objective use and development standards to achieve the policy objective to retain the zone primarily for industrial employment. The existing zone only requires that at least 25% of the total project involve an industrial use.
6. The zone is not clear in defining what is considered the “total project” – is it gross site area, building square footage, number of employees? The zone does not provide guidance for defining the total project area when a site contains multiple tenants.
7. The zone does not provide guidance on what uses are considered in measuring 10 employees per acre. Is it just the industrial employees, or does it also include any combination of office and/or commercial employees which might be included in the total project? Is the 10 employee per acre measured relative to gross site acreage or building square footage? Additionally, it is not clear whether or how this employee density standard is monitored or enforced, particularly when a site contains multiple tenants.
8. The size limitations on retail uses that are included in the M zone to comply with regional Title 4 requirements only apply to a very small portion of the zone. The prohibition of retail uses larger than 60,000 square feet is not applicable to the portion of the M zone that is not within the Title 4 “Employment Area” boundary.

Discussion of Potential Solutions

Include definitions for general industrial uses in Chapter 19.103 (Definitions) or consider a “use category” approach. As noted above, the Milwaukie Zoning Ordinance does not include definitions or examples of general industrial uses that are permitted in the M zone. The City could standardize the terms for industrial uses listed in the M and BI zones and also include specific definitions for the industrial uses in Section 19.103 to provide better descriptions of the characteristics and examples of what is included in a general category such as manufacturing and production, industrial service, wholesale sales, etc.

As another option, the City could consider shifting to a standardized “use category” approach rather than relying on long lists of uses that may quickly become outdated. The *TGM Model Development Code* recommends the use category approach and provides a model chapter that cities can tailor to their needs. Each category (such as Industrial) includes descriptions of the characteristics of the uses, typical accessory uses, examples and exceptions. The City of Portland has adopted a use category approach that includes the following six categories for Industrial Uses:

- Manufacturing and Production
- Warehouse and Freight Movement
- Wholesale Sales



-
- ❑ Industrial Service
 - ❑ Railroad Yards
 - ❑ Waste Related

Excerpts from the Portland Zoning Code that describe the industrial use categories and the Use Table for the Employment and Industrial Zones are included in Attachment F to provide an illustration of how this approach is implemented in Portland. Based on our experience, we have found the use category approach to be clear, comprehensive and easy to understand. It is also helpful to have consistent use tables included in all of the zones rather than have widely different use lists.

However, transitioning from a detailed use list approach to a more generalized use category approach for all zones is not a quick or easy task. The city could consider “testing” the use category approach by first including it only in the BI and M zones.

Attachment J includes a Table of Permitted Use Categories for the two industrial districts in Gresham. Milwaukie may want to consider a similar approach to providing a more comprehensive description of use categories and example uses for the BI and M zones. Also, by presenting the use information for both zones in a single table, it would be easier to see the distinctions between the two industrial zones.

Clarify use and development standards for the M zone. There are options to improve the clarity of the M zone by organizing the sections in a more logical format and revising the text to describe the uses and development standards in clear and objective terms.

Rather than requiring the community development director to determine if a particular use is “accessory” to an industrial use, the City could consider adopting specific size limitations on retail trade uses similar to those that were recently adopted for Title 4 mapped “Industrial” areas. Under those amendments, individual retail trade uses are limited to a maximum of 5,000 square feet of gross floor area and multiple retail trade uses limited to a maximum of 20,000 square feet of gross floor area (whether in a single building or multiple buildings).

In Portland’s Heavy Industrial (IH) zone, Retail Sales and Service or Office uses are limited to a maximum of four per site, with up to 3,000 square feet per use. Conditional use approval is required to exceed this standard, and there is a prohibition of more than 12,000 square feet of Retail Sales and Service or Office uses on a site.

With a shift to more clearly defined standards for “accessory” uses in the M zone, and consideration of additional site development standards in proximity to residential zones (such as setbacks and screening/buffering), the City could consider deleting the requirement for a discretionary Transition Area Review.

Finally, the City might want to consider whether it might be appropriate to designate a larger portion of the Northern Industrial Area as a Title 4 Employment or Industrial Area. This would provide stronger recognition and protection of the industrial land base and could also open opportunities for targeted regional transportation investments to support freight movement into and out of the area.

ATTACHMENT A - MODEL CODE SECTIONS

- ▣ **Multi-Family Housing Standards**
- ▣ **Residential Infill Standards**
- ▣ **Variances**

Section 2.2.200 Special Use Standards

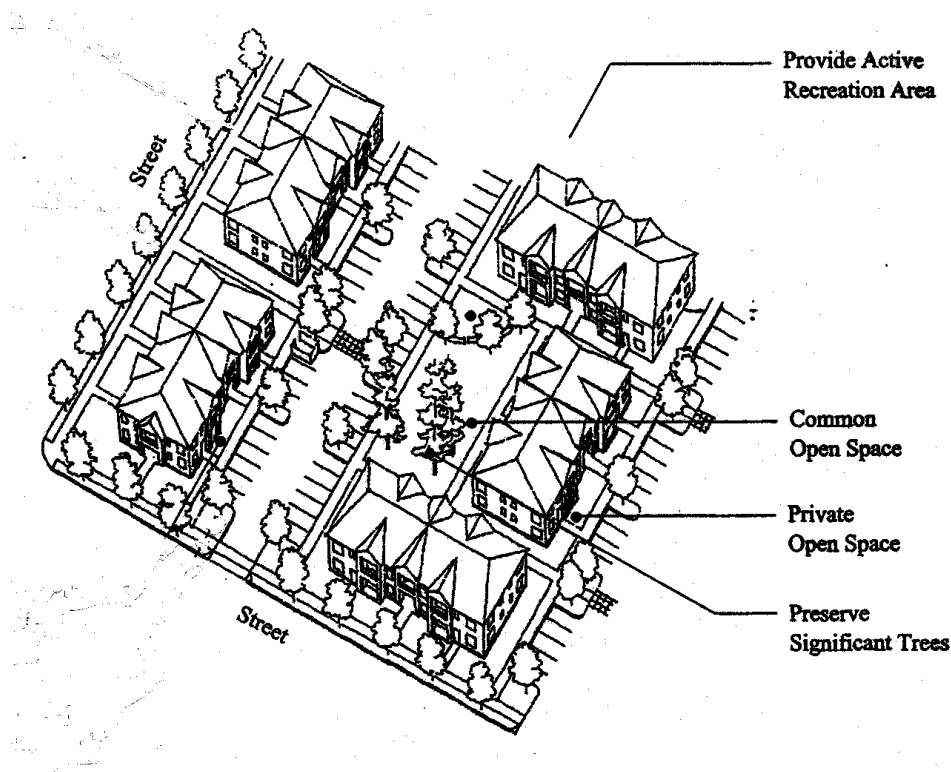
H. Multiple Family Housing. Where multi-family housing is allowed, it shall conform to all of the following standards, which are intended to promote livability for residents and compatibility with nearby uses. Figure 2.2.200.H provides a conceptual illustration of the requirements listed below.

1. Building mass. The maximum width or length of a multiple family building shall not exceed *[80-160]* feet from end-wall to end-wall, not including outdoor living areas (*e.g.*, porches, balconies, patios, and similar unenclosed spaces).
2. Common open space. A minimum of *[10]* percent of the site area shall be designated and permanently reserved as common open space in *[all multiple family developments / multiple family developments with more than [20] dwellings]*, in accordance with all of the following criteria:
 - a. The site area is defined as the lot or parcel on which the development to be located, after subtracting any required dedication of street right-of-way and other land for public purposes (*e.g.*, public park or school grounds, etc.);
 - b. In meeting the common open space standard, the multiple family development shall contain one or more of the following: outdoor recreation area, protection of sensitive lands (*e.g.*, trees preserved), play fields, outdoor playgrounds, outdoor sports courts, swim pools, walking fitness courses, pedestrian amenities, or similar open space amenities for residents.
 - c. Historic buildings or landmarks that are open to the public may count toward meeting the common open space requirements when approved by the *[planning commission/historic resource commission]*;
 - d. To receive credit under Section 2.2.200.H, a common open space area shall have an average width that is not less than 20 feet and an average length that is not less than 20 feet;
 - e. Projects in the Residential-Commercial District that provide pedestrian amenities between primary building entrance(s) and adjoining street(s) are required to provide a minimum of *[5]* percent of the site in common open space;
 - f. The approval body may waive the common open space requirement for the first *[20-50]* dwelling units in a multiple family project that is located within one-quarter mile (measured walking distance) of a public park, and there is a direct, accessible (*i.e.*, Americans With Disabilities Act-compliant), lighted pedestrian walkway or multi-use pathway connecting the site to the park. If the park is not developed, or only partially developed, the approval body may require the multiple family housing developer to improve park land in an amount comparable to that which he or she would otherwise be required to provide in his or her development.
3. Private open space. Private open space areas shall be required for ground-floor

and upper-floor housing units based on all of the following criteria:

- a. *[A minimum of [40-60] percent of all]* ground-floor housing units shall have front or rear patios or decks measuring at least *[48]* square feet. Ground-floor housing means the housing unit entrance (front or rear) is within 5 feet of the finished ground elevation (*i.e.*, after grading and landscaping);
- b. *[A minimum of [40-60] percent of all]* upper-floor housing units shall have balconies or porches measuring at least *[48]* square feet. Upper-floor housing means housing units that are more than 5 feet above the finished grade; and
- c. In the Residential-Commercial District, multiple family dwellings are exempt from the private open space standard where the development contains pedestrian amenities located between primary building entrance(s) and adjoining streets.

Figure 2.2.200H – Examples of Multiple Family Open Space



4. Trash receptacles. Trash receptacles shall be oriented away from building entrances, setback at least ten (10) feet from any public right-of-way and adjacent residences and shall be screened with an evergreen hedge or solid fence or wall of not less than 6 feet in height. Receptacles must be accessible to trash pick-up trucks.

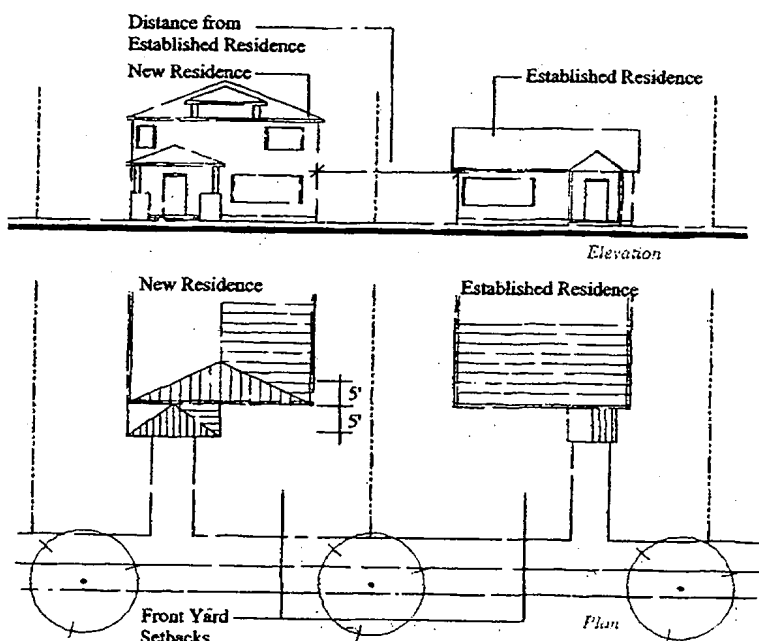
2.2.140 Residential Districts – Infill Standards

Background: The following standards, with the exception of subsection “C” can be administered through a Type I Land Use Review. Subsection “C” (optional) is discretionary (Type II) and requires architectural expertise.

The purpose of Section 2.2.140 is to ensure compatibility of new development and redevelopment existing subdivisions. The setback and building height standards in Section 2.2.140 supersede those in Table 2.2.120 when a building or partition is proposed on a subdivision lot in a Residential District that was platted prior to the effective date of this Development Code. The approval body shall use the criteria and standards in subsections A-D, below, in determining applicable setbacks and building heights.

- A. Compatibility with Yards of Adjacent Residence(s).** Except as provided in Section 2.2.140.D, when an existing single family residence is located within [20-40] feet of the subject site on the same side of the street, and said residence has a front yard setback that is greater than the minimum setback in Section 2.2.120, a front yard setback similar to that of the nearest single family residence(s) shall be used. “Similar” means the setback is equal to or within [10] percent of the setback provided by the nearest single family residence on the same side of the street. (Figure 2.2.140.A) For example, if the existing single family residence has a front yard setback of 30 feet, then the new building shall have a front yard setback between [27] feet and [33] feet. If the new building is to be located between two existing residences, then the setback for the new building shall be the average setback of both adjacent residences, plus or minus [10] percent.

Figure 2.2.140.A – Residential Infill Front Yards



- B. Compatibility with Building Height of Adjacent Residence(s).** Except as

provided in Section 2.2.140.D, when an existing single family residence is located within [20-40] feet of the subject site on the same side of the street, and said residence has a building height that is less than the maximum building height allowed in Table 2.2.120, a building height similar to that of the nearest single family residence(s) shall be used. “Similar” means the building height is not more than [110] percent of the height of the nearest single family residence on the same side of the street. (Figure 2.2.140.B) For example, if the existing single family residence has a height of 26 feet, then the new building shall have a height that does not exceed [28.6] feet. If the new building is to be located between two existing residences, then the height of the new building shall not exceed [110] percent of the average height of both adjacent buildings.

C. *[Compatible Architecture.* *The building design follows, borrows from, or appropriately adapts a recognized architectural style of the community (e.g., Craftsman Bungalow, Prairie, Colonial Revival, Tudor, Queen Anne, Vernacular, as exemplified in its ground plan, elevations (rhythm, color, and materials), and structure (e.g., roof shapes and details such as windows and doors)).*

D. Exception to Standard for Redevelopment Potential on Adjacent Lot(s). The provisions of Section 2.2.140.A do not apply when the approval body finds that the subject single family residential lots located within [20-40] of the subject site are redevelopable. “Redevelopable,” for the purposes of this Section, means a lot either has an assessed market value that exceeds the assessed market value of all improvements on the lot, based on the most recent data from [name of County] Assessor’s Office; or the front yard of the subject lot is large enough that it could be subdivided based on the Residential District standards.

Chapter 5.1 — Variances

Sections:

- 5.1.100 Variances - Purpose**
- 5.1.200 Variances - Applicability**
- 5.1.300 Class A Variances**
- 5.1.400 Class B Variances**
- 5.1.500 Class C Variances**
- 5.1.600 Variance Application and Appeals**

Background: The model code is designed to be more flexible than conventional zoning; the model code frequently allows outright, or subject to discretionary review, design options that would require a variance under conventional codes. For example, the model code provides flexibility in lot sizes and setbacks, as well as minimum parking ratios that are below the minimums of some codes. It also allows reductions to required off-street parking if an applicant can demonstrate through a parking study that less parking would be sufficient.

Typical variance procedures require the property owner to demonstrate that a hardship exists which is not self-imposed; there are unusual or extraordinary circumstances related to the site; and rights that others in the vicinity enjoy would be denied without a variance. In contrast, the three variance options in Chapter 5.1 provide a range of standards and approval criteria based on the specific type of variance requested. For example, it should be fairly easy to modify a yard setback in order to protect significant trees or to provide other amenities if all applicable building and fire codes are met.

5.1.100 Variances - Purpose

This Chapter provides standards and procedures for variances, which are modifications to land use or development standards that are not otherwise permitted elsewhere in this Code as exceptions to code standards. This Code cannot provide standards to fit every potential development situation. The City's varied geography, and complexities of land development, require flexibility. Chapter 5.1 provides that flexibility, while maintaining the purposes and intent of the Code. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes. The variance procedures are intended to provide flexibility while ensuring that the purpose of each development standard is met.

5.1.200 Variances - Applicability

A. Exceptions and Modifications versus Variances. A code standard or approval criterion ("code section") may be modified without approval of a variance if the applicable code section expressly allows exceptions or modifications. If the code section does not expressly provide for exceptions or modifications, then a variance is required to modify that code section and the provisions of Chapter 5.1 apply.

B. Combining Variances With Other Approvals; Permit Approvals by Other Agencies. Variance requests may be combined with and reviewed concurrently by the City approval body with other land use and development applications (e.g., development review, site design review, subdivision, conditional use, etc.), however, some variances

may be subject to approval by other permitting agencies, such as ODOT in the case of State Highway access.

C. Types of Variances. As provided in Section 5.1.3, there are three types of variances (Class A, B, or C); the type of variance required depends on the extent of the variance request and the discretion involved in the decision making process. *[Because some variances are granted using “clear and objective standards,” they can be granted by means of a Type I procedure. Other variances, as identified below, require a Type II or III procedure because they involve discretionary decision-making.]*

5.1.300 Class A Variances.

A. Applicability. The following variances are reviewed using a *[Type I or Type II]* procedure, as governed by Chapter 4.1, using the approval criteria in Subsection B, below:

1. Front yard setbacks. Up to a *[10]* percent change to the front yard setback standard in the land use district.
2. Interior setbacks. Up to a *[10]* percent reduction of the dimensional standards for the side and rear yard setbacks required in the base land use district.
3. Lot coverage. Up to *[10]* percent increase of the maximum lot coverage required in the base zone.
4. Landscape area. Up to *[10]* percent reduction in landscape area (overall area or interior parking lot landscape area).

B. Approval criteria. A Class A Variance shall be granted if the applicant demonstrates compliance with all of the following criteria:

1. The variance requested is required due to the lot configuration, or other conditions of the site;
2. The variance does not result in the removal of trees, or it is proposed in order to preserve trees, if trees are present in the development area;
3. The variance will not result in violation(s) of any other adopted ordinance or code standard; each code standard to be modified shall require a separate variance request.
4. An application for a Class A variances is limited to one lot per application.
5. No more than three Class A variances may be approved for one lot or parcel in 12 months.

5.1.400 Class B Variances.

A. Applicability. Class B variance requests apply to the types of requests meeting the approval criteria in Sections 5.1.400B through 5.1.400G, and that conform to subsections 1-3, below, Class B variances shall be reviewed using a *[Type II or Type III]* procedure, in accordance with Chapter 4.1:

1. The Class B variance standards apply to individual platted and recorded lots only.
2. The Class B variance procedure shall not be used to modify a standard for lots yet to be created through a partition or subdivision process; such requests shall utilize the Class C variance procedure.
3. A variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use district (Article 2).

B. Variance to minimum housing density standard (Chapter 2.2). The City may approve a variance to a minimum housing density standard in Chapter 2.2 after finding that the minimum housing density cannot be achieved due to physical constraints that limit the division of land or site development. “Physical constraint” means steep topography, *[sensitive lands (Chapter 3.7)]*, unusual parcel configuration, or a similar constraint. The variance approved shall be the minimum variance necessary to address the specific physical constraint on the development.

C. Variance to Vehicular Access and Circulation Standards (Chapter 3.1). Where vehicular access and circulation cannot be reasonably designed to conform to Code standards within a particular parcel, shared access with an adjoining property shall be considered. If shared access in conjunction with another parcel is not feasible, the City may grant a variance to the access requirements after finding all of the following:

1. There is not adequate physical space for shared access, or the owners of abutting properties do not agree to execute a joint access easement;
2. There are no other alternative access points on the street in question or from another street;
3. The access separation requirements cannot be met;
4. The request is the minimum variance required to provide adequate access;
5. The approved access or access approved with conditions will result in a safe access;
6. The visual clearance requirements of Chapter 3.1 will be met; and
7. Variances for street access deviations shall be subject to review and approval

by the roadway authority.

8. Variances for access deviations on a *[name]* County road right-of-way shall be subject to review and approval by *[name]* County.

D. Variance to Street Tree Requirements (Chapter 3.2). The City may approve, approve with conditions, or deny a request for a variance to the street tree requirements in Chapter 3.2, after finding the following:

1. Installation of the tree would interfere with existing utility lines, and no substitute tree with a lower canopy is appropriate for the site;
2. The tree would cause visual clearance problems; or
3. There is not adequate space in which to plant a street tree; and
4. The City may require the installation of additional or replacement landscaping elsewhere on the site (e.g., parking lot area trees) to compensate for the street tree variance.
5. Street tree approval or modification of standards within an ODOT or *[name]* County right-of-way may require approval, respectively, by ODOT or *[name]* County.

E. Variance to Parking and Loading Standards (Chapter 3.3).

1. The City may approve variances to the minimum or maximum standards for off-street parking (quantities and dimensions of parking spaces) in Chapter 3.3.1 upon finding all of the following:
 - a. The individual characteristics of the use at that location require more or less parking than is generally required for a use of this type and intensity, or modified parking dimensions, as demonstrated by a parking analysis or other facts provided by the applicant;
 - b. The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses; and
 - c. All other code standards are met, in conformance with Article 2 (Land Use Districts) and Article 3 (Design Standards).
2. The City may reduce the number of required bicycle parking spaces per Chapter 3.3.200, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.

3. The City may allow a reduction in the amount of vehicle stacking area required in for drive-through facilities if such a reduction is deemed appropriate after analysis of the size and location of the development, limited services available and other pertinent factors.
4. The City may modify the loading area standards if such a reduction is deemed appropriate after analysis of the use, anticipated shipping or delivery traffic generated by the use and alternatives for loading/unloading, such as use of on- or off-street parking areas during non-business hours provided that traffic is not impeded.

F. Variance to Maximum or Minimum Yard Setbacks to Avoid or Reduce Impacts to Floodplains, Significant Trees, Wetlands, or Other Natural Features (Chapters 2.2-2.6 – Land Use Districts). The City may grant a variance to the applicable setback requirements of this Code for the purpose of avoiding or reducing impact to floodplains, significant trees, wetlands, or other natural features. Modification of the standard shall not be more than is necessary for the preservation of the nature feature to be protected.

G. Variances to Transportation Improvement Requirements (Chapter 3.4.100). The City may approve, approve with conditions, or deny a variance to a transportation improvement standard in Table 3.4.100F when the variance does not exceed [10] percent of the standard. When a variance request to the standards in Table 3.4.100F exceeds [10] percent, then the request shall be reviewed as a Class C variance.

5.1.5 Class C Variances.

A. Applicability. Class C variance requests are those that do not conform to the provisions of Sections 5.1.200-5.1.300 (Class A and Class B), and that meet the criteria in 1-4, below, Class C variances shall be reviewed using a [Type III] procedure, in accordance with Chapter 4.1:

1. The Class B variance standards apply to individual platted and recorded lots only.
2. The Class C variance procedure may be used to modify a standard for 3 or fewer lots, including lots yet to be created through a partition process.
3. An applicant who proposes to vary a standard for lots yet to be created through a subdivision process may not utilize the Class C variance procedure. Approval of a Master Planned Development shall be required to vary a standard for lots yet to be created through a subdivision process, where a specific code section does not otherwise permit exceptions.
4. A variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use district (Article 2).

B. Approval Process. Class C variances shall be processed using a Type III procedure, as governed by Chapter 4.1.500, using the approval criteria in subsection D, below. In addition to the application requirements contained in Chapter 4.1.500, the applicant shall provide a written narrative or letter describing his/her reasoning for the variance, why it is required, alternatives considered, and compliance with the criteria in subsection D.

C. Approval Criteria. The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

- a. The proposed variance will not be materially detrimental to the purposes of this Code, to any other applicable policies and standards, and to other properties in the same land use district or vicinity;
- b. A hardship to development exists which is peculiar to the lot size or shape, topography, [*sensitive lands (Chapter 3.7)*], or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district);
- c. The use proposed will be the same as permitted under this title and City standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;
- d. Existing physical and natural systems, such as but not limited to traffic, drainage, natural resources, and parks will not be adversely affected any more than would occur if the development occurred as specified by the subject Code standard;
- e. The hardship is not self-imposed; and
- f. The variance requested is the minimum variance that would alleviate the hardship.

5.1.5 Variance Application and Appeals.

A. Application. The variance application shall conform to the requirements for Type I, II, or III applications (Chapter 4.1.300, 4.1.400, 4.1.500), as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for his/her request, alternatives considered, how the stated variance criteria are satisfied, and why the subject standard cannot be met without the variance.

B. Appeals to variance decisions shall be processed in accordance with the provisions of Chapter 4.1.

ATTACHMENT B - BEAVERTON CODE

- **Residential Design Standards**

60.05.15. Building Design and Orientation Standards. Unless otherwise noted, all standards apply in all zoning districts.

1. Building articulation and variety.

A. Residential buildings in residential zones shall be limited in length to two hundred (200) feet.

B. Buildings visible from and within 200 feet of an adjacent public street except for manufacturing, assembly, fabricating, processing, packing, storage and wholesale and distribution activities which are the principle use of a building in industrial districts where elevations visible from and within 100 feet of an adjacent public street, and elevations that include a primary building entrance or multiple tenant entrances, excluding roofs, shall have a minimum portion of the elevation devoted to permanent architectural features designed to provide articulation and variety. These permanent features include, but are not limited to windows, bays and offsetting walls that extend at least eighteen inches (18”), recessed entrances, loading doors and bays, and changes in material types. Changes in material types shall have a minimum dimension of two feet and minimum area of 25 square feet. The percentage of the total square footage of elevation area is:

1. Thirty (30) percent in residential zones, and all uses in multiple-use and commercial zones.
2. Fifty (50) percent in commercial zones where glazing is less than thirty five (35) percent pursuant to Section 60.05.15.8.A.3.
3. Fifteen (15) percent in industrial uses.

C. The maximum spacing between permanent architectural features shall be no more than:

1. Forty (40) feet in residential zones, and all uses in multiple-use, and commercial zones.
2. Sixty (60) feet in industrial zones.

2. Roof forms.

A. All sloped roofs exposed to view from adjacent public or private streets and properties shall have a minimum 4/12 pitch.

B. Sloped roofs on residential uses in residential zones, and all uses in multiple-use and commercial zones, shall have eaves, exclusive of rain gutters, that must project from the building wall at least twelve (12) inches.

C. All flat roofs with a slope of less than 4/12 pitch shall be architecturally treated or articulated with a parapet wall that must project vertically above the roof line at least twelve (12) inches.

D. When an addition to an existing structure or a new structure is proposed in an existing development, the roof forms for the new structures shall have similar slope and be constructed of the same materials as existing roofs.

E. Smaller feature roofs are not subject to the standards of this Section.

3. Primary building entrances. Primary entrances, which are the main point(s) of entry where the majority of building users will enter and leave, shall be covered, recessed, or treated with a permanent architectural feature in such a way that weather protection is provided. The covered area providing weather protection shall be at least six (6) feet wide and four (4) feet deep.

4. Exterior building materials

A. For residential uses in residential districts, a minimum of seventy-five (75) percent of each elevation that is visible from and within 200 feet of a public street or a public park, public plaza or other public open space, and on elevations that include a primary building entrance or multiple tenant entrances shall be double wall construction.

B. For conditional uses in residential zones and all uses in multiple-use, commercial and industrial zones, except for manufacturing, fabricating, processing, packing, storage and wholesale and distribution facilities which is a principle use of the site in industrial zones, a maximum of thirty (30) percent of each elevation that is visible from and within 200 feet of a public street or a public park, public plaza or other public open space, and on elevations that include a primary building entrance or multiple tenant entrances may be plain, smooth, unfinished concrete, concrete block, plywood and sheet pressboard. In the case of manufacturing, fabricating, processing, packing, storage and wholesale and distribution facilities which is a principle use of the site in industrial zones, this standard shall apply to the primary elevation that is visible from and within 200 feet of a public street or a public park, public plaza or other public open space. The remaining elevation area for all applicable uses in all applicable zones shall be architecturally treated. Appropriate methods of architectural treatment shall include, but are not limited to, scoring, changes in material texture, and the application of other finish materials such as wood, rock, brick or tile wall treatment.

C. For conditional uses in residential zones and all uses in multiple use and commercial districts, plain, smooth, exposed concrete and concrete block used as foundation material shall not be more than three (3) feet above the finished grade level adjacent to the foundation wall, unless pigmented, textured, or both. In industrial districts, foundations may extend up to four (4) feet above the finished grade level.

5. Roof-mounted equipment.

A. All roof-mounted equipment shall be screened from view from adjacent streets or adjacent properties in one of the following ways:

1. A parapet wall; or
2. A screen around the equipment that is made of a primary exterior finish material used on other portions of the building; or
3. Setback from the street-facing elevation such that it is not visible from the public street(s).

B. The vertical measuring distance for required screening shall be measured at five (5) feet above the finished or existing grade of the abutting property or public right-of-way adjacent to the development site's front yard setback for a distance of one hundred (100) lineal feet measured outward from the development site's front property line. Once the vertical measuring distance is established for the site's front yard, this same vertical measuring distance shall be applied to all sides of the development site's perimeter property lines.

C. Solar panels, dishes/antennas, pipes, vents, and chimneys are exempt from this standard.

ATTACHMENT C - CANBY CODE

- **Multi-family design standards**
- **Garage standards**

16.21.070 Multi-family design standards.

A. For design review applications for multi-family dwellings (three or more units) or for development that contain 3 or more units on a single lot located in any zone, the following matrix shall apply. This matrix replaces the general matrix contained in Chapter 16.49 for such applications.

B. A design review application for multi-family dwellings shall be considered to be compatible if (1) the Design Menu standard is met (it is a pass/fail standard, meaning it must be met regardless of compliance with other standards); (2) a minimum of 65 percent of the total possible points (not including bonuses) are accumulated for the whole development; and, (3) if the applicant has received a minimum of one point in each applicable category.

TABLE 16.21.070

CRITERIA	POSSIBLE SCORES	
	Yes	No
<u>Design Menu for Street Facing Facades</u>		
Dormers		
Gables, hip, or gambrel roof form		
Recessed entries (minimum 2-foot recess)		
Covered porch entries (minimum 48 square feet; minimum 4 feet deep)		
Bay windows		
Eaves of 20 inches or greater		
Off-set of 16 inches or greater on building face or roof		
Minimum 15% is the area of the windows and main entrance doors as a percentage of the façade, not including the roof		
Window trim (minimum 4 inch) or shutters (minimum 8 inches)		
Balconies or porch rail		
Shakes, shingles, brick, porch detailing or other decorative materials on at least 100 square feet of the street façade.		
Pass – at least five of the above elements (or similar elements) provided along all street facing facades.		

<u>Parking</u>			
Screening of loading facilities from public ROW: Not screened = 0; partially screened = 1; full screening = 2	0	1	2
Landscaping (breaking up of expanse of asphalt); No = 0; Yes = 1	0	1	
Parking lot lighting: No = 0; Yes = 1	0	1	
Location (behind the building is best): Front = 0; side = 1; behind = 2	0	1	2

<u>Tree Retention</u>			
For trees outside of the building foot-print and parking/access areas (3 or more trees): No arborist report/follows <50% of arborist recommendation = 0; follows <50% of arborist recommendation = 1; follows 50%-75% of arborist recommendation = 2; >75% of arborist recommendation = 3	0	1	2 3
Replacement of trees removed that were recommended for retention: x<50% = 0; x>50% = 1	0	1	

Orient Multi-Family Buildings to Public or Private Streets			
Primary entrances face the street: No entries face the street = 0; entrance breezeway faces the street = 1; entries face the street = 2	0	1	2
The site's frontage has buildings within 25 feet of the front lot line. Full points may be given when courtyards are adjacent to the frontage. 0-25% of site street frontage complies with standard = 0; 25%-50% of the site street frontage complies with standard = 1; 51+% of the site street frontage complies with standard = 2	0	1	2

CRITERIA

Screening of Storage Areas and Utility Boxes			
Trash receptacles are screened from view by a solid wood fence, masonry wall, or by slight-obscuring landscape: No = 0; Yes = 1	0	1	
Trash receptacles are located away from adjacent property lines: 0' – 10' = 0; 10' – 25' = 1; >25' = 2	0	1	2
Exterior transformers, utility pads, cable and telephone boxes are located to minimize visual impact and/or screened: not screened = 0; partially screened = 1; completely screened = 2	0	1	2

Prevention of Monotonous and Incompatible Design			
Horizontal length of all buildings is a maximum of 120 feet: 101 – 120 feet = 0; 81 – 100 feet = 1; 0 – 80 feet = 2	0	1	2
Roofs have a gable, hip or gambrel form, minimum pitch of 3 to 12 with at least a 6 inch overhang: No = 0; Yes = 1	0	1	
A minimum of 15% of the street façade area contains windows or doors. All windows provide trim, recess, or other method of providing shadowing: No = 0 and Yes = 1	0	1	
Garages are located to minimize their visual impact: Front = 0; side = 1; back = 2	0	1	2
Exterior design features incorporate offsets, balconies, projections, window reveals, or similar elements to break up large expanses or uninterrupted building expanse: no design features within every 30 feet of longest façade = 0; 1 design features within every 30 feet of longest façade = 1; 2 or more design features within every 30 feet of longest façade = 2	0	1	2

Private Open Space and Landscaping			
Private open space in addition to the base percentage requirement of common open space for the zone: no additional open space = 0; patios or balconies (minimum 48 sq ft provided for at least 50% of units = 1; patios or balconies (minimum 48 sq ft provided for more than 50% of units, or, a sport court, tot lot, pool, or community room is provided, or, common open space is increased at least 48 sq ft = 2	0	1	2
Automatic irrigation provided for all landscaping: No = 0; Yes = 3	0		3
# of non-required trees: x<1 per 500 sq ft of landscaping = 0; 1 or more per 500 sq ft of landscaping = 1	0	1	

Street and Block Framework			
Multi-family developments 8 acres or larger are developed as a series of complete blocks bounded by a network of public or private streets with sidewalks and street trees: no block or network of streets proposed = 0; up to 50% of units are along public or private streets that have sidewalks, street trees and parallel or angled parking on-street parking = 1; 50+% of the units are along public or private streets that have sidewalks, street trees and parallel or angled parking on-street parking = 2	0	1	2
Bonus Points			
2 or more trees at least 3" in caliper: No = 0; yes = 1	0	1	
Park/open space retention for public use: No = 0; yes = 3	0		3

16.21.030 Single family and two-family dwelling design menu.

A. Purpose: These standards are intended to ensure design of housing that will reinforce and enhance Canby's overall livability and provide options to promote design variety and ease of administration of the standards.

B. All new single family dwellings, manufactured homes, and two-family dwellings (duplexes) shall comply with the design features in this section along street facing facades. Additions and alterations that add less than 50% to the existing floor area of the house (not including garage floor area) are exempt from this subsection, unless a new garage is being added. Additions or alterations that are not visible from the street side of the home are exempt. There are two options for complying with these standards. Option 1 is to meet the Garage standards in 16.21.030(C) and four of the design standards in 16.21.030 (D). For homes that do not comply with the Garage standards in 16.21.030(C), Option 2 is to meet six of the design standards in 16.21.030 (D). Homes on corner lots and through lots shall comply with either option 1 or 2 above for the front of the lot (as defined by 16.04.320). The non-front side of the lot shall comply with 3 of the design menu standards in 16.21.030 (D).

C. Garage Standards: These standards are intended to: provide a visual connection between the living area of the residence and the street; prevent garages from obscuring or dominating the main entrance of the house; and, provide for a pleasant pedestrian environment in residential areas. The standards are:

- 1.** The garage may be up to 50% of the length of the street-facing facade (see figure 16.21-1), or,
- 2.** The garage may be up to 60% of the length of the facade, if the garage is recessed a minimum of 2 feet from the longest street facing facade, and,
- 3.** On corner lots, only one street-facing wall must meet the standards in (1) or (2) above (see figure 16.21-2), and,
- 4.** A garage wall that faces the street may be no closer to the street than the longest street-facing wall of the house, except as provided in subsections (5) and (6) below.
- 5.** A garage may extend up to 6 feet in front of the longest front facade if:
 - a.** There is a covered front porch and the garage does not extend beyond the front line of the porch (see figure 16.21-3); or,
 - b.** The garage is part of a two level facade that has a window (minimum 6 square feet, with 4" trim or shutters) on the second level that faces the street (see figure 16.21-4).

6. Garages may be side-oriented to the front lot line if windows occupy a minimum of 15% of the street-facing wall of the garage (see figure 16.21-5).

D. Design Menu Standards

1. Dormers

2. Gables, hip roof, or gambrel roof form.

3. Recessed entries (minimum 2 foot recess)

4. Covered porch entries (minimum 48 square feet, minimum 4 feet deep)

5. Bay windows

6. Any eaves of 12 inches or greater

7. Off-set of 16 inches or greater on building face or roof

8. Windows and main entrance doors occupy a minimum of 15% of the facade, not including the roof.

9. Window trim (minimum 4-inch) or shutters (minimum 8-inch)

10. Balconies or porch rail

11. Shakes, shingles, brick or other similar decorative materials occupy at least 60 square feet of the street facade. (Ord. 1107, 2002; Ord 1237, 2007)

ATTACHMENT D - SALEM DESIGN HANDBOOK

- **Compact Development Overlay**

SECTION 3 – COMPACT DEVELOPMENT – CONCEPTS

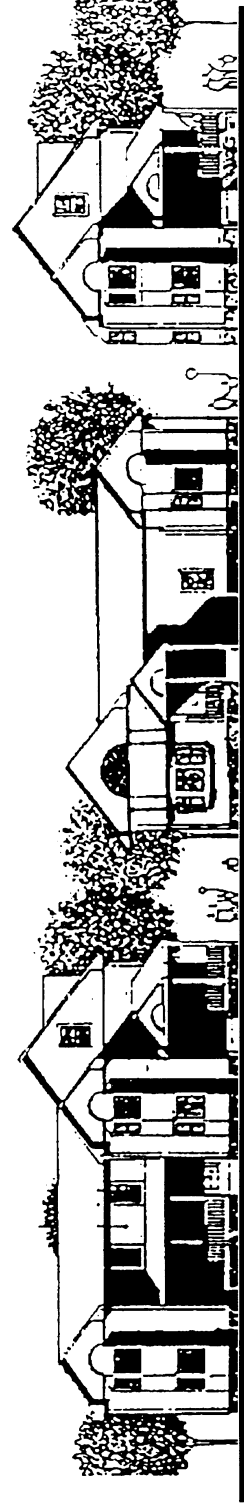
A. Compact Development Concepts

The compact development (CD) design guidelines and standards apply to single family areas zoned for compact development. The CD zone applies to properties no larger than five acres in area in established residential districts.

The Compact development overlay zone applies to properties with frontage along arterial or collector streets or local streets identified in city plans. Compact development zones may also apply to areas deemed appropriate for such development as identified in neighborhood evaluation studies, specific development or neighborhood plans.

The compact development overlay zone is intended to provide for intensive residential development within the urban growth boundary. The zone encourages the development of vacant infill and underutilized properties, which increases the efficient use of land, provides for home ownership opportunities, and promotes the cost-effective use of public facilities. The compact development zone allows for a variety of housing types while assuring through design guidelines and standards that new development adapts to the established character of existing neighborhoods. Housing types allowed in the compact development overlay zone are limited to detached and attached dwellings including duplexes, triplexes, rowhouses, townhouses and accessory dwelling units.

The compact development overlay zone allows, by right, development up to a maximum density of fourteen (14) units per acre. See SRC 139.060. This is in contrast to density being limited to ten (10) units per acre for single family residential (RS) development outside the overlay zone. All compact development is subject to the design guidelines or standards contained in this handbook as well as other applicable city code requirements.



SECTION 3 - COMPACT DEVELOPMENT - GENERAL REQUIREMENTS

B. General Development Requirement

1. General Development Requirements

a. Guidelines:

- 1) Provide an appropriate transition that encourages neighborhood compatibility between new structures on-site with structures on abutting sites.
- 2) Comply with the Compact Development design guidelines contained in this handbook as well as the provisions of Salem Revised Code Chapter 146, Single Family Residential, Salem Revised Code Chapter 139, Compact Development, and other Salem Revised Code sections as appropriate for specific project proposals.

b. Standards:

- 1) Comply with Compact Development regulations that apply to single family areas zoned for compact development.
- 2) Comply with the Compact Development design standards contained in this handbook as well as the provisions of Salem Revised Code Chapter 146, Single Family Residential, Salem Revised Code Chapter 139, Compact Development and other Salem Revised Code sections as appropriate for specific project proposals.
- 3) Design and construct buildings, or portions of buildings, up to twenty-eight (28) feet in height that are set back from any property line in accordance with the building setback requirements of the underlying zone. The building setback shall not be less than the minimum setback established by the underlying zone.
- 4) In addition to the minimum setback required by the underlying zone, design and construct buildings, or portions of buildings, that exceed twenty eight (28) feet in height with setbacks from any property line an additional one (1) foot for each additional one (1) foot of building height.

Walker School Area
See Development Design Handbook, Walker School area for additional Standards and Guidelines. The area is defined according to the Edgewater Street/Wallace Road area.

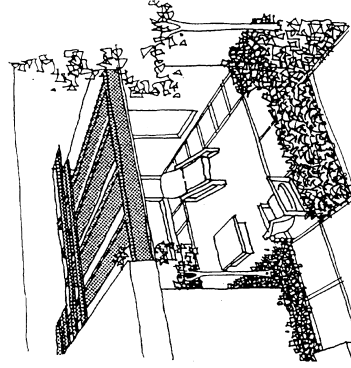
Remember
Ensure that the building design meets all other city code provisions including building code requirements.

C. Open Space Requirements

1. Private Open Space Requirements

a. Guidelines:

- 1) Provide individual private open areas for each dwelling unit.
- 2) Provide private open space contiguous to the dwelling unit with direct access from the unit.
- 3) If private open space is adjacent common open space, provide a buffer between the two areas.



b. Standards:

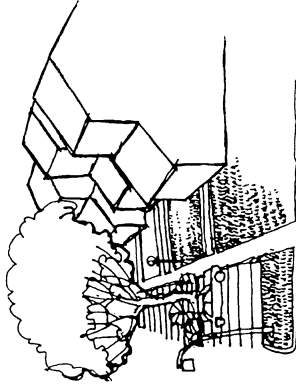
- 1) For dwelling units located at finished grade, or within five (5) feet of finished grade, provide a minimum of ninety-six (96) square feet of private open space per dwelling unit, with no dimension less than six (6) feet.
- 2) For dwelling units located more than five (5) feet above finished grade, provide a minimum of forty-eight (48) square feet of private open space per dwelling unit, with no dimension less than six (6) feet.
- 3) For each unit, provide a direct and accessible route on the same level to all private open space through the use of a doorway.
- 4) Separate visually the private open space from the common open space through the use of perimeter landscaping or fencing.

SECTION 3 – COMPACT DEVELOPMENT – PARKING, ACCESS & CIRCULATION

F. Parking, Access & Circulation
1. Location Requirements

a. Guidelines:

- 1) Design parking areas and driveways to minimize the impact to abutting properties and promote the human scale within the development.
- 2) Provide separate and screened areas, if an area is allowed, for storage of motor vehicles, utility trailers, recreational vehicles, boats, aircraft, or similar vehicles.



b. Standards:

- 1) Limit ingress and egress to individual lots to no more than one (1) street access.
- 2) Access parking areas from alley when properties abut an alley.
- 3) Design and construct garages that do not comprise more than 50 percent of street frontage.
- 4) Provide a garage set back from the street right-of-way at least four (4) feet farther than any enclosed living area.
- 5) Do not design or construct any open or partially enclosed parking, or storage of motor vehicles, utility trailers, recreational vehicles, boats, aircraft or similar vehicles within front yards or side yards abutting a street right of way. (Parking is allowed in driveways.)
- 6) Design and construct carports, garages or parking areas that are not located within twenty (20) feet of the public right of way.

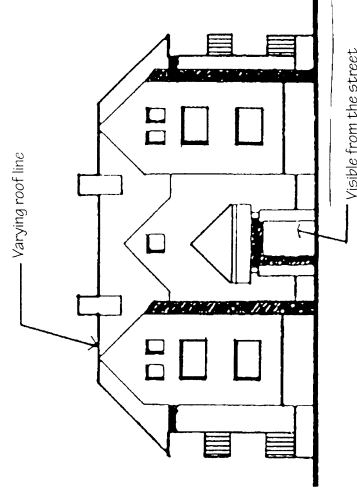
Remember
Additional parking requirements are found in Salem Revised Code Chapter 133, Off-Street Parking, Loading and Driveways. Salem Revised Code Chapter 130, Section 140, "No Parking in Yards Adjacent to Streets" provides guidance on the placement of on-site parking. It may also be helpful to review the publication: "Public Works Department Design Standards" available from the Public Works Department. That document provides design standards for sidewalks, driveways, curbing and parking lots.

G. Building Orientation & Articulation

1. Building Location, Size, and Articulation

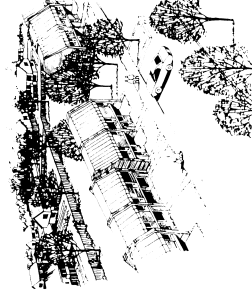
a. Guidelines:

- 1) Design and construct a majority of the units within a close proximity to the street right-of-way and in relationship to adjacent residential development.
- 2) Design and locate buildings to reinforce the residential character of the neighborhood.
- 3) Where possible, provide entry ways to dwellings that are visible from the street, have incorporated weather protection into the design, and have a limited number of units using the same entryway.
- 4) To minimize the appearance of building bulk, establish a building offset interval along structure faces and incorporate the dispersement of windows within building walls.



b. Standards:

- 1) For dwellings within twenty-eight (28) feet of a street right-of-way, provide entrances that face the street.
- 2) Design and construct buildings that have no dimension greater than one-hundred (100) feet.
- 3) On sites with 75 feet or more of buildable width, occupy at least 50 percent of the buildable width by a building placed on the setback line. Buildable width is as defined in the definition section of the Handbook.
- 4) Offset every two (2) attached dwelling units from the next dwelling unit by at least four (4) feet. (See graphics on the next page with the numbers identifying examples of what are considered offsets.)
- 5) If included within the development, design and construct garages/carports that are compatible with the structural design and materials of the dwelling units.



G. Building Orientation & Articulation (cont.)

1. Building Location, Size, and Articulation (cont.)

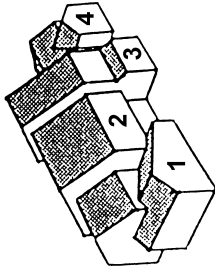
- 6)

For ground floor units, design and construct a common entrance that does not provide access to more than (4) dwelling units.
- 7)

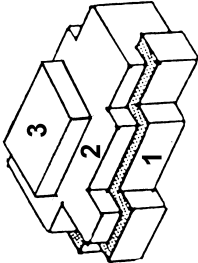
Articulate individual and common entry ways with a differentiated roof, awning or portico.
- 8)

Provide a difference in elevation of at least four (4) feet for every one-hundred (100) feet of horizontal length for a flat roof or roof ridge on sloping roofs.
- 9)

For any yard adjacent a street, incorporate windows into the design of all habitable rooms, except bathrooms.



Multi-paned roofs and awnings add desirable articulation



Vertical articulation added

ATTACHMENT E - REDONDO BEACH

- **Residential Development Standards**

10-2.503 Development standards: R-1 single-family residential zone.

(a) **Lot area per dwelling unit.** There shall be no more than one dwelling unit for each lot as defined in Section 10-2.402.

(b) **Building height.** No building or structure shall exceed a height of thirty (30) feet (see definition of building height in Section 10-2.402).

(c) **Stories.** No building shall exceed two (2) stories. (See definition of story in Section 10-2.402).

(d) **Floor area ratio.** The floor area ratio of all buildings on a lot developed for residential use shall not exceed 0.65, except that floor area ratio bonuses may be permitted pursuant to paragraph (1) of this subsection (see definition of “floor area ratio” and “floor area, gross” in Section 10-2.402).

(1) **Floor area ratio bonuses.** Floor area ratio bonuses may be permitted where the design elements listed in the following table are incorporated into the design of the building or site. Notwithstanding the maximum bonus that may be permitted for an individual design element, the cumulative floor area ratio bonus shall not exceed 0.15 and the maximum floor area ratio of all buildings on a lot including all floor area ratio bonuses shall not exceed 0.8.

Floor Area Ratio Bonuses	
Desired Elements	Maximum F.A.R. Bonus
Front porch with a minimum width of ten (10) feet and a minimum depth of seven (7) feet. The porch shall be fully covered by a roof.	.04
Garage located in the rear half of the lot. Where there is an alley, the garage must face the alley.	.04
Side loaded garage (garage opening faces side property line).	.02
Minimum eight (8) foot second floor side setback for a cumulative length of fifteen (15) feet or more of the second story along the side property line.	.04 if provided on one side of property; .08 if provided along both sides of property
Second floor rear setback averaging at least five (5) feet more than the required average rear setback.	.04
Bermuda or Hollywood Driveway with a minimum three (3) foot wide center grass strip along the center of driveway.	.02
Front setback area with less than thirty (30%) percent coverage by impervious surfaces.	.02

(e) **Setbacks.** The minimum setback requirements shall be as follows:

(1) **Front setback.** The front setback shall average no less than twenty-five (25%) percent of the depth of the lot or twenty-five (25) feet, whichever is less, except that at no point shall the setback be less than twenty (20) feet (see setback averaging pursuant to Section 10-2.1520).

a. **Second story setback.** The second story front setback shall average ten (10) feet more than the required average front setback (see setback averaging pursuant to Section 10-2.1520).

1. Where the top of plate of the wall of the front facing facade exceeds a height of sixteen (16) feet, that portion of the front facing elevation shall be treated as a second story for purposes of calculating the required second-story setback average.

(2) **Side setback.** There shall be a minimum side setback of five (5) feet the full length of the lot, except as follows:

a. **Lots less than fifty feet in width.** Additions to existing single-family dwellings constructed on lots less than fifty (50) feet in width, with existing side setbacks of less than five (5) feet, shall be permitted to match the existing side setback, provided that the side setback shall not be less than ten (10%) percent of the width of the lot.

(3) **Rear yards.** The rear yard shall average no less than twenty (20%) percent of the depth of the lot, except that at no point shall the yard be less than fifteen (15) feet.

(f) **Outdoor living space.** There shall be a minimum of 800 square feet of outdoor living space provided for each dwelling unit (see standards for outdoor living space in Section 10-2.1510).

(g) **General regulations.** (including, but not limited to, accessory structures, projections into setbacks, and fences and walls) See Article 3 of this chapter.

(h) **Parking regulations.** See Article 5 of this chapter.

(i) **Sign regulations.** See Article 6 of this chapter.

(j) **Landscaping regulations.** See Article 7 of this chapter.

(k) **Procedures.** See Article 12 of this chapter

ATTACHMENT F - PORTLAND CODE

- **Accessory Dwelling Unit Standards**
- **Industrial Use Categories and Use List**

CHAPTER 33.205
ACCESSORY DWELLING UNITS

(Amended by: Ord. No. 171879, effective 2/2/98; Ord. No. 174263, effective 4/15/00; Ord. No. 175837, effective 9/7/01; Ord. Nos. 175965 and 176333, effective 7/1/02; Ord. No. 178172, effective 3/5/04; Ord. No. 178509, effective 7/16/04; Ord. No. 178927, effective 12/31/04; Ord. No. 179845, effective 1/20/06.)

Sections:

- 33.205.010 Purpose
- 33.205.020 Where These Regulations Apply
- 33.205.030 Design Standards
- 33.205.040 Density

33.205.010 Purpose

Accessory dwelling units are allowed in certain situations to:

- Create new housing units while respecting the look and scale of single-dwelling development;
- Increase the housing stock of existing neighborhoods in a manner that is less intense than alternatives;
- Allow more efficient use of existing housing stock and infrastructure;
- Provide a mix of housing that responds to changing family needs and smaller households;
- Provide a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods, and obtain extra income, security, companionship and services; and
- Provide a broader range of accessible and more affordable housing.

33.205.020 Where These Regulations Apply

An accessory dwelling unit may be added to a house, attached house, or manufactured home in an R zone, except for attached houses in the R20 through R5 zones that were built using the regulations of 33.110.240.E, Duplexes and Attached Houses on Corners.

33.205.030 Design Standards

- A. Purpose.** Standards for creating accessory dwelling units address the following purposes:
 - Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;
 - Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;
 - Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and
 - Provide adequate flexibility to site buildings so that they fit the topography of sites.
- B. Generally.** The design standards for accessory dwelling units are stated in this section. If not addressed in this section, the base zone development standards apply.

C. Requirements for all accessory dwelling units. All accessory dwelling units must meet the following:

1. Creation. An accessory dwelling unit may only be created through the following methods:
 - a. Converting existing living area, attic, basement or garage;
 - b. Adding floor area;
 - c. Constructing a detached accessory dwelling unit on a site with an existing house, attached house, or manufactured home; or
 - d. Constructing a new house, attached house, or manufactured home with an internal or detached accessory dwelling unit.
2. Number of residents. The total number of individuals that reside in both units may not exceed the number that is allowed for a household.
3. Other uses.
 - a. An accessory dwelling unit is prohibited on a site with a Type B home occupation.
 - b. An accessory dwelling unit is allowed on a site with an approved Bed and Breakfast facility if the accessory dwelling unit meets the standards of Paragraph 33.815.040.B.1.
4. Location of entrances. Only one entrance may be located on the facade of the house, attached house, or manufactured home facing the street, unless the house, attached house, or manufactured home contained additional entrances before the accessory dwelling unit was created. An exception to this regulation is entrances that do not have access from the ground such as entrances from balconies or decks.
5. Parking. No additional parking is required for the accessory dwelling unit. Existing required parking for the house, attached house, or manufactured home must be maintained or replaced on-site.
6. Maximum size. The size of the accessory dwelling unit may be no more than 33% of the living area of the house, attached house, or manufactured home or 800 square feet, whichever is less.
7. Exterior finish materials. The exterior finish material must be the same or visually match in type, size and placement, the exterior finish material of the house, attached house, or manufactured home.
8. Roof pitch. The roof pitch must be the same as the predominant roof pitch of the house, attached house, or manufactured home.
9. Trim. Trim must be the same in type, size, and location as the trim used on the house, attached house, or manufactured home.
10. Windows. Windows must match those in the house, attached house, or manufactured home in proportion (relationship of width to height) and orientation (horizontal or vertical). This standard does not apply when it conflicts with building code regulations.

11. Eaves. Eaves must meet one of the following:

- a. The eaves must project from the building walls the same distance as the eaves on the house, attached house, or manufactured home;
- b. The eaves must project from the building walls at least 1 foot on all elevations; or
- c. If the house, attached house, or manufactured home has no eaves, no eaves are required on the accessory dwelling unit.

D. Additional requirements for detached accessory dwelling units. Detached accessory dwelling units must meet the following.

1. Setbacks. The accessory dwelling unit must be at least:
 - a. 60 feet from the front lot line; or
 - b. 6 feet behind the house, attached house, or manufactured home.
2. Height. The maximum height allowed for a detached accessory dwelling unit is 18 feet.
3. Bulk limitation. The building coverage for the detached accessory dwelling unit may not be larger than the building coverage of the house, attached house, or manufactured home. The combined building coverage of all detached accessory structures may not exceed 15 percent of the total area of the site.
4. Conversion of existing detached accessory structures.
 - a. In RF through R2.5 zones, conversion of an existing detached accessory structure that is in a front building setback required by Table 110-3 is not allowed. Conversion of an existing detached accessory structure that is in a rear or side building setback is allowed as provided by Subsection 33.110.250.C, Setbacks.
 - b. In R3 through IR zones, conversion of an existing detached accessory structure that is in a front building setback required by Table 120-3 is not allowed. Conversion of an existing detached accessory structure that is in a rear or side building setback is allowed as provided by Subsection 33.120.280.C, Setbacks
 - c. If the accessory dwelling unit is proposed for an existing detached accessory structure that meets any of the standards of Paragraphs C.7 through C.11 and Paragraphs D.2 and D.3, alterations that will move the structure out of conformance with the standards that are met are not allowed;
 - d. If the accessory dwelling unit is proposed for an existing detached accessory structure that does not meet one or more of the standards of Paragraphs C.7 through C.11, the structure is exempt from the standard it does not meet. If any floor area is added to the detached accessory structure, the entire structure must meet the standards of Paragraphs C.7 through C.11.

33.205.040 Density

In the single-dwelling zones, accessory dwelling units are not included in the minimum or maximum density calculations for a site. In all other zones, accessory dwelling units are included in the minimum density calculations, but are not included in the maximum density calculations.

Table 140-1 Employment and Industrial Zone Primary Uses						
Use Categories	EG1	EG2	EX	IG1	IG2	IH
Residential Categories						
Household Living	CU	CU	Y	CU [1]	CU [1]	CU [1]
Group Living	CU	CU	L/CU [2]	N	N	N
Commercial Categories						
Retail Sales And Service	L/CU [3]	L/CU [3]	Y	L/CU [4]	L/CU [5]	L/CU [6]
Office	L [3]	L [3]	Y	L/CU [4]	L/CU [5]	L/CU [6]
Quick Vehicle Servicing	Y	Y	N	Y	Y	Y
Vehicle Repair	Y	Y	Y	Y	Y	Y
Commercial Parking	CU [15]	CU [15]	CU [15]	CU [15]	CU [15]	CU [15]
Self-Service Storage	Y	Y	L [7]	Y	Y	Y
Commercial Outdoor Recreation	Y	Y	Y	CU	CU	CU
Major Event Entertainment	CU	CU	CU	CU	CU	CU
Industrial Categories						
Manufacturing And Production	Y	Y	Y	Y	Y	Y
Warehouse And Freight Movement	Y	Y	Y	Y	Y	Y
Wholesale Sales	Y	Y	Y	Y	Y	Y
Industrial Service	Y	Y	Y	Y	Y	Y
Railroad Yards	N	N	N	Y	Y	Y
Waste-Related	N	N	N	L/CU [8]	L/CU [8]	L/CU [8]
Institutional Categories						
Basic Utilities	Y/CU [12]	Y/CU [12]	Y/CU [12]	Y/CU [13]	Y/CU [13]	Y/CU [13]
Community Service	L [9]	L [9]	L [10]	L/CU [11]	L/CU [11]	L/CU [11]
Parks And Open Areas	Y	Y	Y	Y	Y	Y
Schools	Y	Y	Y	N	N	N
Colleges	Y	Y	Y	N	N	N
Medical Centers	Y	Y	Y	N	N	N
Religious Institutions	Y	Y	Y	N	N	N
Daycare	Y	Y	Y	L/CU [11]	L/CU [11]	L/CU [11]
Other Categories						
Agriculture	Y	Y	Y	Y	Y	Y
Aviation And Surface Passenger Terminals	CU	CU	CU	CU	CU	CU
Detention Facilities	CU	CU	CU	CU	CU	CU
Mining	N	N	N	CU	CU	CU
Radio Frequency Transmission Facilities	L/CU [14]	L/CU [14]	L/CU [14]	L/CU [14]	L/CU [14]	L/CU [14]
Rail Lines And Utility Corridors	Y	Y	Y	Y	Y	Y

Y = Yes, Allowed

CU = Conditional Use Review Required

Notes:

L = Allowed, But Special Limitations

N = No, Prohibited

- The use categories are described in Chapter 33.920.
- Regulations that correspond to the bracketed numbers [] are stated in 33.140.100.B.
- Specific uses and developments may also be subject to regulations in the 200s series of chapters.

- B. Accessory Uses.** ~~Accessory uses may include offices, sales of parts, and vehicle storage.~~
- C. Examples.** ~~Examples include vehicle repair, transmission or muffler shop, auto body shop, alignment shop, auto upholstery shop, auto detailing, and tire sales and mounting.~~
- D. Exceptions.** ~~Repair and service of industrial vehicles and equipment, and of heavy trucks; towing and vehicle storage; and vehicle wrecking and salvage are classified as Industrial Service.~~

Industrial Use Categories

33.920.300 Industrial Service

- A. Characteristics.** Industrial Service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.
- B. Accessory uses.** Accessory uses may include offices, parking, storage, rail spur or lead lines, and docks.
- C. Examples.** Examples include welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage or wrecking of heavy machinery, metal, and building materials; towing and vehicle storage; auto and truck salvage and wrecking; heavy truck servicing and repair; tire retreading or recapping; truck stops; building, heating, plumbing or electrical contractors; trade schools where industrial vehicles and equipment, including heavy trucks, are operated; printing, publishing and lithography; exterminators; recycling operations; janitorial and building maintenance services; fuel oil distributors; solid fuel yards; research and development laboratories; drydocks and the repair or dismantling of ships and barges; laundry, dry-cleaning, and carpet cleaning plants; and photofinishing laboratories.
- D. Exceptions.**
1. Contractors and others who perform services off-site are included in the Office category, if equipment and materials are not stored at the site, and fabrication, or similar work is not carried on at the site.
 2. Hotels, restaurants, and other services which are part of a truck stop are considered accessory to the truck stop.

33.920.310 Manufacturing And Production

- A. Characteristics.** Manufacturing And Production firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are

generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site.

- B. Accessory uses.** Accessory uses may include offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, rail spur or lead lines, docks, repair facilities, or truck fleets. Living quarters for one caretaker per site in the E and I zones are allowed. Other living quarters are subject to the regulations for Residential Uses in the base zones.
- C. Examples.** Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; slaughter houses, and meat packing; feed lots and animal dipping; weaving or production of textiles or apparel; lumber mills, pulp and paper mills, and other wood products manufacturing; woodworking, including cabinet makers; production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials or products; movie production facilities; recording studios; ship and barge building; concrete batching and asphalt mixing; production or fabrication of metals or metal products including enameling and galvanizing; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items, and other electrical items; production of artwork and toys; sign making; production of prefabricated structures, including manufactured dwellings; and the production of energy.
- D. Exceptions.**
 - 1. Manufacturing of goods to be sold primarily on-site and to the general public are classified as Retail Sales And Service.
 - 2. Manufacture and production of goods from composting organic material is classified as Waste-Related uses.

33.920.320 Railroad Yards

- A. Characteristics.** Railroad yards are areas that contain multiple railroad tracks used for rail car switching, assembling of trains, and transshipment of goods from other transportation modes to or from trains.
- B. Accessory Uses.** Accessory uses include offices, employee facilities, storage areas, and rail car maintenance and repair facilities.

33.920.330 Warehouse And Freight Movement

- A. Characteristics.** Warehouse And Freight Movement firms are involved in the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present.
- B. Accessory uses.** Accessory uses may include offices, truck fleet parking and maintenance areas, rail spur or lead lines, docks, and repackaging of goods.
- C. Examples.** Examples include separate warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; cold storage plants, including frozen food lockers; storage of weapons and ammunition; major wholesale distribution centers; truck, marine, or air freight terminals; bus

barns and light rail barns; parcel services; major post offices; grain terminals; and the stockpiling of sand, gravel, or other aggregate materials.

D. Exceptions.

1. Uses that involve the transfer or storage of solid or liquid wastes are classified as Waste-Related uses.
2. Miniwarehouses are classified as Self-Service Storage uses.

33.920.340 Waste-Related

A. Characteristics. Waste-Related uses are characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the biological decomposition of organic material. Waste-Related uses also include uses that receive hazardous wastes from others and are subject to the regulations of OAR 340.100-110, Hazardous Waste Management.

B. Accessory Uses. Accessory uses may include recycling of materials, offices, and repackaging and transshipment of by-products.

C. Examples. Examples include sanitary landfills, limited use landfills, waste composting, energy recovery plants, sewer treatment plants, portable sanitary collection equipment storage and pumping, and hazardous-waste-collection sites.

D. Exceptions.

1. Disposal of clean fill, as defined in OAR 340-093-0030, is considered a fill, not a Waste-Related use.
2. Sewer pipes that serve a development are considered a Basic Utility.

33.920.350 Wholesale Sales

A. Characteristics. Wholesale Sales firms are involved in the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or order taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited as a result of the way in which the firm operates. Products may be picked up on site or delivered to the customer.

B. Accessory uses. Accessory uses may include offices, product repair, warehouses, parking, minor fabrication services, and repackaging of goods.

C. Examples. Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware, and office supplies.

D. Exceptions.

1. Firms that engage primarily in sales to the general public are classified as Retail Sales And Service.

2. Firms that engage in sales on a membership basis are classified as either Retail Sales And Service or Wholesale Sales, based on a consideration of the characteristics of the use.
3. Firms that are primarily storing goods with little on-site business activity are classified as Warehouse And Freight Movement.

~~Institutional Use Categories~~

~~33.920.400 Basic Utilities~~

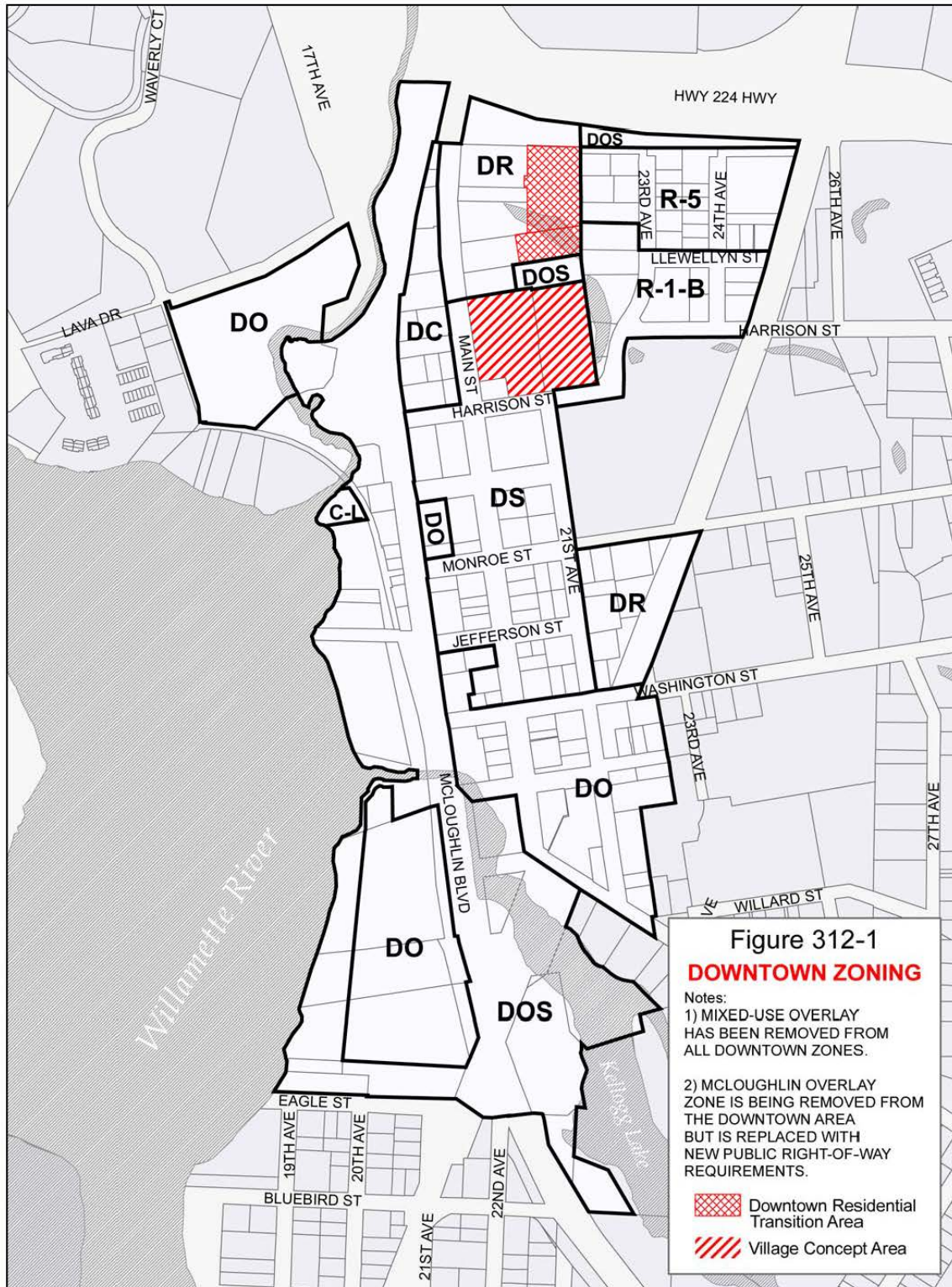
- ~~A. Characteristics.~~** ~~Basic Utilities are infrastructure services which need to be located in or near the area where the service is provided. Basic Utility uses generally do not have regular employees at the site. Services may be public or privately provided. All public safety facilities are Basic Utilities.~~
- ~~B. Accessory uses.~~** ~~Accessory uses may include parking; control, monitoring, data or transmission equipment; and holding cells within a police station.~~
- ~~C. Examples.~~** ~~Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; water towers and reservoirs; water quality and flow control facilities; water conveyance systems; stormwater facilities and conveyance systems; telephone exchanges; mass transit stops or turn arounds; light rail stations, suspended cable transportation systems, transit centers; and public safety facilities, including fire and police stations, and emergency communication broadcast facilities.~~
- ~~D. Exceptions.~~**
- ~~1. Services where people are generally present, other than mass transit stops or turn arounds, light rail stations, transit centers, and public safety facilities, are classified as Community Services or Offices.~~
 - ~~2. Utility offices where employees or customers are generally present are classified as Offices.~~
 - ~~3. Bus and light rail barns are classified as Warehouse And Freight Movement.~~
 - ~~4. Public or private passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or other similar services on a regional level are classified as Rail Lines And Utility Corridors.~~

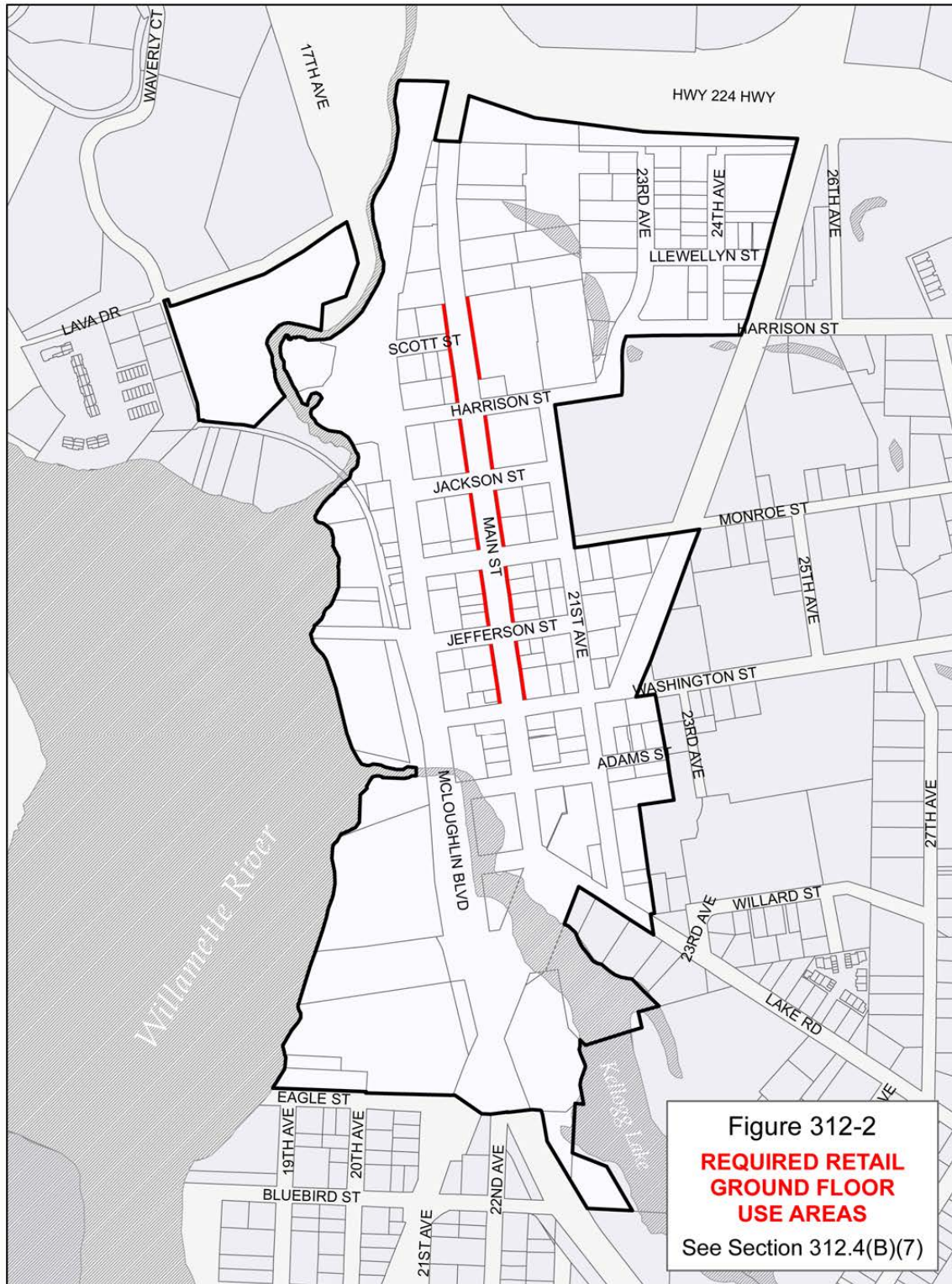
~~33.920.410 Colleges~~

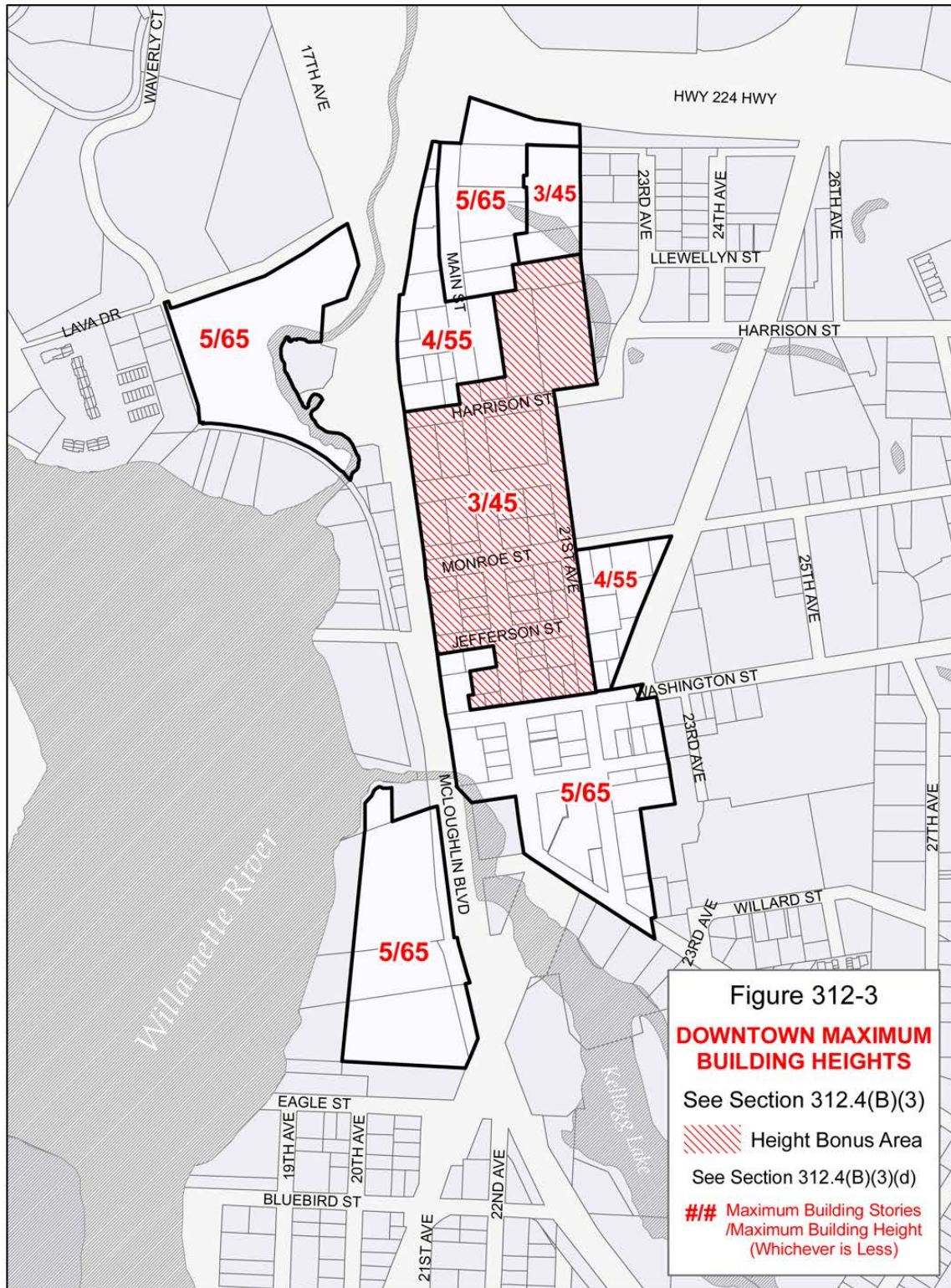
- ~~A. Characteristics.~~** ~~This category includes colleges and other institutions of higher learning which offer courses of general or specialized study leading to a degree. They are certified by the State Board of Higher Education or by a recognized accrediting agency. Colleges tend to be in campus-like settings or on multiple blocks.~~

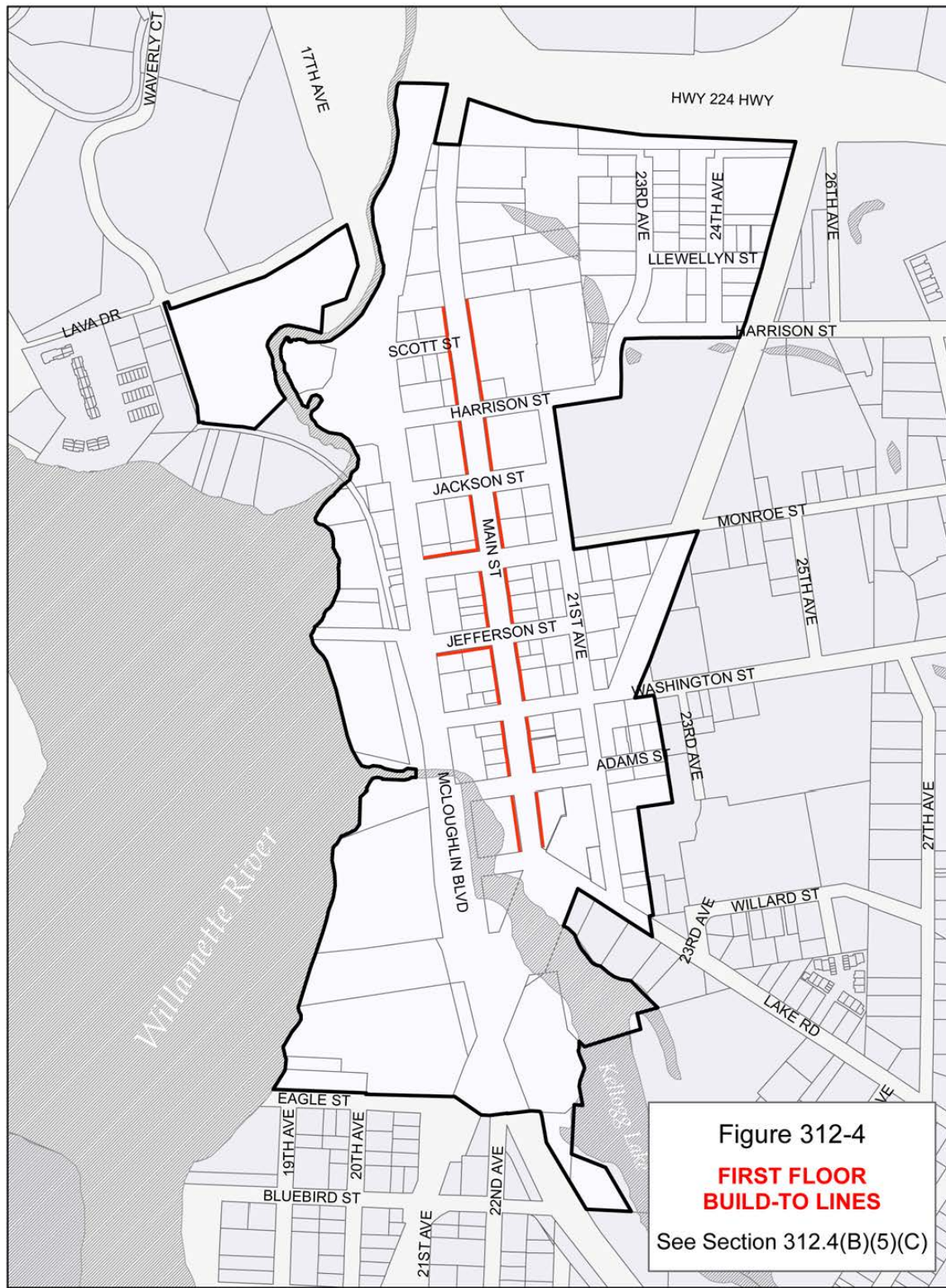
ATTACHMENT G - MILWAUKIE CODE

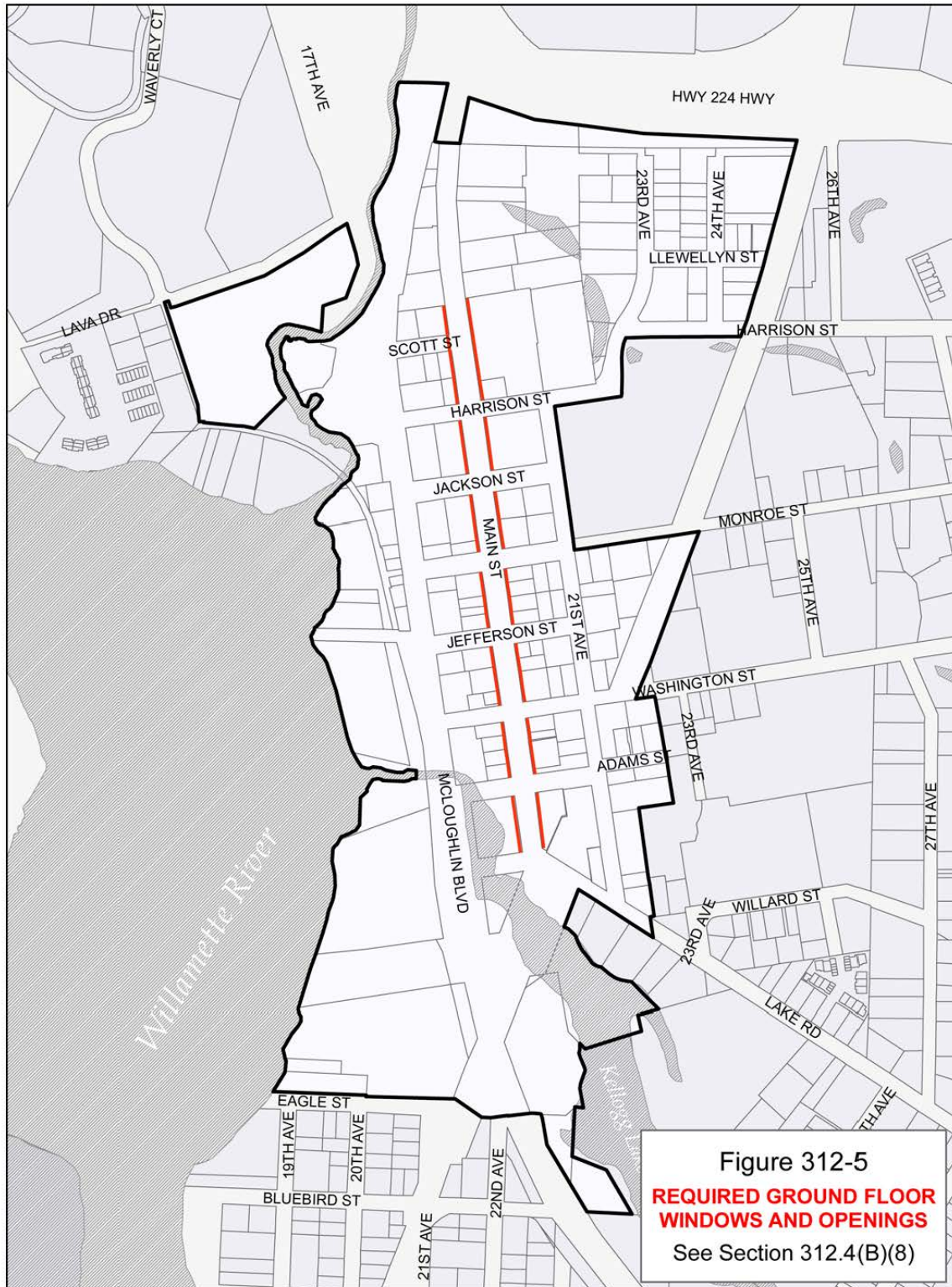
- **Downtown Zone Figures**











ATTACHMENT H - GROUND FLOOR USES

[Excerpts from three codes]

Portland. Excerpts from the Hollywood District standards (Chapter 33.536 of the Portland Zoning Code) are provided below:

1. *Active building uses. Buildings must be designed and constructed to accommodate active uses, such as lobbies, residential, retail, commercial, or office. This standard must be met along at least 50 percent of the ground floor of walls that front onto the Enhanced Pedestrian Streets.*

Areas designed to accommodate active building uses must meet all of the following standards:

- a. *The distance from the finished floor to the bottom of the structure above must be at least 12 feet. The bottom of the structure above includes supporting beams;*
 - b. *The area must be at least 25 feet deep, measured from the street-facing façade;*
 - c. *The area must be designed to accommodate a single tenant or multiple tenants;*
 - d. *The street-facing façade facing the enhanced pedestrian street must include windows and doors; and*
 - e. *Parking is not allowed in the active building use areas.*
2. *Ground floor windows. The standards for the CX zone in Section 33.130.230 must be met.*

Motor vehicle access. Motor vehicle access to a vehicle area or structure is not allowed from an Enhanced Pedestrian Street unless the site has no other street frontage.

Hillsboro. Excerpts from Hillsboro's Mixed Use District standards are provided below:

C. Street Level Uses

1. *The following uses qualify as required street level uses:*
 - a. *Commercial uses, such as personal, business and consumer services, daycare for children and elderly, entertainment, art galleries, product repair or services for consumer and business goods, small scale physical fitness studios/gyms, and medical clinics;*
 - b. *Eating and drinking establishments;*
 - c. *Community service uses, such as libraries, senior center, community centers, museums and indoor public recreation facilities;*
 - d. *Public open space areas*
2. *The space occupied by the required street level uses must have a minimum floor to floor height of 13 feet and extend at least 30 feet in depth at the street level from the street front façade.*
3. *Required street level uses must be located within 10 feet of the street property line or abut a public open space, unless an increase in the maximum front setback is granted by the Planning Director subject to the requirements in Section 48A.III.F.*

Pedestrian access to the required street level uses shall be provided directly from the street or permitted public open space. Pedestrian entrances must be located no more than 3 feet above or below sidewalk grade or at the same elevation as the abutting permitted public open space.

Lake Oswego. The development code standards for storefront appearance in Lake Oswego are highlighted below:

Storefront Appearance Required. *New or substantially remodeled buildings fronting on streets or alleys designed for pedestrian use shall create a storefront appearance on the ground floor. This may be accomplished by changing building planes, materials or window patterns, or by creating a break in awning or canopy construction at intervals of about 25 feet. In addition, such design shall maximize the opportunity for window shopping through compliance with the following requirements:*

- a. A minimum of 80% (linear measurement) of the exterior ground floor abutting pedestrian ways shall be designed as storefront with display windows and entry features.*
- b. The bottom edge of windows along pedestrian ways shall be constructed no more than 30 inches above the adjacent walkway surface and shall be no closer than 12 inches above the walkway surface.*
- c. Sufficient interior or soffit lighting to allow night-time window shopping shall be provided.*

ATTACHMENT I - BUILDING HEIGHTS

[Excerpts from two codes]

Gresham

B. Gresham Height Standards for CUC

Minimum and maximum building heights are specified in Table 4.1130. Any required building story must contain a habitable floor.

(1) The minimum building height standard applies to new commercial, residential, and mixed-use buildings. It does not apply to community service buildings, accessory structures, one-time additions or expansions of non-conforming buildings of no more than 25% and less than 1,000 square feet, or to buildings with less than 1,000 square feet of floor area.

(2) Where a minimum building height of two stories is required, a building containing only one habitable floor will be considered to be in compliance with this requirement when the Manager finds, under the Type I Procedure, that the building is designed and built, in accordance with applicable codes, to provide for later installation of a second floor within the building shell as originally constructed. An applicant for a development permit may be required to provide drawings demonstrating the feasibility of later installation of the second floor, although detailed construction plans for the second floor need not be submitted until the time it is proposed to be installed. When construction of the second floor is deferred under this subsection, only the actual floor area available at the time of initial occupancy shall be used in calculations to determine conformance with a minimum floor area ratio requirement.

(3) When constructing or installing a required second story, the floor area of the second story shall comprise not less than 50% of the total ground floor area. When such a partial second story is constructed or installed, the second story floor space shall be located over that portion of the ground floor which is nearest the abutting street or streets.

(4) In addition to conforming to the Ground Floor Windows requirements of Section 4.1135, for any new commercial or mixed-use building subject to a 2-story height minimum, at least 20% of the upper façade area shall be made up of display areas or windows for all facades facing a street.

Lake Oswego

4. Number of Stories. New buildings shall be at least two stories tall, and new and remodeled buildings shall be no greater than three stories tall, except:

a. A fourth story shall be allowed if:

- I. The fourth story is residential and is contained within a gabled or hipped roof;
- II. The site is sloping and the structure has three or fewer stories on the uphill side;
- III. The fourth story is significantly stepped back from the building plane created by the lower stories; or
- IV. Fourth story design elements are used to break up the mass of a building, create visual interest and variety, hide mechanical equipment, define an entry or define a particular building's function. Examples of such design elements include dormers, towers, turrets, clerestories, and similar features.

b. One story construction shall only be allowed if:

- I. It is limited to a small portion of a taller structure, such as an entry area, canopy over an outdoor restaurant, building ends or wings which relate to open space or as a step down to an adjacent one story viable existing structure; or

- II. *When a minimum height of 20 feet is maintained at the right-of-way or street side building edge.*

ATTACHMENT J - INDUSTRIAL USES

- **Gresham Code**

development facilities, professional services primarily serving industrial and business clients and other industry focused uses and limited retail and commercial professional services that cater to the general public.

Permitted Uses

4.0320 Permitted Uses

The types of land use that are permitted in the Industrial Land Use Districts are listed in **Table 4.0320**. Permitted uses are designated with a “P”. An “L” in this table indicates a use that may be permitted in that district, but is limited in the extent to which it may be permitted. An “NP” means that use is not permitted in the specified district(s). “NP” is only used if the use category is “P” or “L” in another district within the Development Code. Each of these uses must comply with the land use district standards of this section and all other applicable requirements of the Community Development Code.

Table 4.0320: Permitted Use Categories in the Industrial Land Use Districts

Use Categories	HI	GI
A. Construction: Contractors and Related Businesses This category comprises businesses whose primary activity is performing specific building or other construction related work. Examples of contractors are residential and nonresidential building construction, utility/civil engineering construction, specialty trade contractors, and moving companies. Examples of related businesses are engineering, architectural and surveying services and which often take place in office-type buildings.	P	P
B. Manufacturing Manufacturing comprises establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products, including the assembly of components parts. Examples of manufacturing include alternative energy development, biosciences, food and beverage processing, software and electronics production, fabrication of metal products, products made from manufactured glass, products made from rubber, plastic or resin, converted paper and cardboard products, and microchip fabrication.	P	P
C. Wholesale Trade Wholesale Trade comprises establishments engaged in selling / and or distributing merchandise to retailers; to industrial, commercial, or professional business users; or to other wholesalers, generally without transformation, and rendering services incidental to the sale of merchandise. Wholesalers sell merchandise to other businesses, not the general public, and normally operate from a warehouse or office and are not intended for walk-in traffic.	NP	P

Table 4.0320: Permitted Use Categories in the Industrial Land Use Districts

Use Categories	HI	GI
D. Transportation/Distribution (Trucking and Rail) This category provides for transportation of cargo using motor vehicles or rail spurs and may include loading docks, temporary outdoor storage, and fleet parking. Goods are generally distributed to other firms or the final customer and are often associated with warehousing and storage facilities.	P	P
E. Warehousing and Storage These industries are primarily engaged in operating warehousing and storage facilities for general merchandise, refrigerated goods, and other products and materials that have been manufactured and are generally being stored in anticipation for delivery to final customer. May provide a range of logistical services including labeling, packaging, price marking and ticketing, and transportation arrangement. Mini-storage facilities are not considered industrial warehousing and storage and are not permitted in the industrial districts.	P	P
F. Information Services Information services are establishments engaged in the producing and distributing information and cultural products; providing the means to transmit or distribute these products as well as data or communications; or processing data. Examples include publishing industries including book, periodical and software publishing; computer systems design; internet web search services; internet service providers; video and motion picture industries; computer data storage services; optical scanning and imaging services, and processing financial transactions such as credit card transactions and payroll processing services. These businesses primarily serve other industries and generate few general public customer visits per day.	NP	P
G. Trade or commercial schools. Establishments whose primary purpose are to provide training to meet industrial needs and often lead to job-specific certification. Examples of this use category are electronic equipment repair training, truck driving school, welding, and operation and repair of industrial machinery and other industrial skills.	NP	P
H. Administration and Support of Industries and Companies and Related Industrial Uses in Office Buildings This category includes uses in office-type buildings that are accessory to an industrial use; establishments which administer, oversee, and manage companies; which manage financial assets and securities; research and design; laboratories and testing facilities, provide industry related health services; provide document preparation and other industrial support services; including corporate offices, company business offices, call centers, and other office type uses that primarily serve other industries and do not generate a significant number of daily customer visits. See Section 4.0321(A).	L	P

Table 4.0320: Permitted Use Categories in the Industrial Land Use Districts

Use Categories	HI	GI
I. Exclusive Heavy Industrial Uses Uses exclusive to the HI are those sites which are primarily rock crushing facilities; aggregate storage and distribution facilities; and concrete and/or asphalt batch plants.	P	NP
J. Waste Management Businesses that provide garbage and recycling hauling, sorting and transferring, including fleet parking and maintenance. See Section 4.0321(B)	P	L
K. Miscellaneous Industrial Firms involved in large scale repair and servicing of industrial, business or consumer electronic equipment, machinery and related equipment, products, or by-products. Examples include welding shops; machine shops; tool, electric motor, industrial instruments repair; sales, repair, storage, salvage or wrecking of heavy machinery, metal and building materials; towing and vehicle storage; auto and truck salvage and wrecking; heavy truck servicing and repair; tire retreading or recapping; exterminators including chemical mixing or storage and fleet storage and maintenance; janitorial and building maintenance services that include storage of materials and fleet storage and maintenance; fuel oil distributors; solid fuel yards; and large scale laundry, dry-cleaning and carpet cleaning plants. Few customers, particularly not general public daily customers, come to the site. See Section 4.0321(C) .	P	L
L. Retail Commercial and Professional Services that Cater to Daily Customers The sales of goods and materials and of professional services to the general public. Examples of retail commercial include restaurants, stores, mini-marts, factory outlet stores and office supplies. Examples of professional services that cater to daily general public customers include bank branches, financial, insurance, real estate, legal, medical and dental offices. See Section 4.0321(D) .	L	L
M. Community Services See Section 8.0100 and Section 8.0121 for limitations on community services within industrial districts.	L	L
N. Temporary Uses See Section 10.1400 .	P	P

4.0321 Additional Standards for Industrial Land Use Categories

- A.** Administration and Support of Companies and Enterprises in the HI
 Only administrative offices which are related to the operation of the industrial use of the property are permitted in the HI. Up to 20% of the total floor area may consist of these administrative offices. Multiple tenant office buildings are prohibited.

Preliminary Assessment of Non-Conforming Uses In Downtown Milwaukie

Business Name	Location	Zoning	C ¹	NC ²
Samaritan Oddfellows Lodge #2	10282 SE Main St	DR	C	
Pietro's Pizza	10300 SE Main St	DR		NC
Kellogg Bowl	10306 SE Main St.	DR		NC
Milwaukie Cleaners	10345 SE Main St.	DC	C	
Laborworks of Oregon LLC	10387 SE Main St	DC	C	
Farmers Insurance Group	10391 SE Main St	DC	C	
Clackamas Community Federal Credit Union	10400 SE Main St	DR		NC
North Lake Physical Therapy	10466 SE Main St	DR		NC
Nelson's Nautilus Plus	10466 SE Main St.	DR		NC
Chan's Steakery, Inc.	10477 SE MAIN ST	DC	C	
Active Credit Services/Telesource Inc.	10501 SE Main St Suite 200	DC	C	
Advantis Credit Union	10501 SE Main St Suite 300	DC	C	
Best Choice Benefit Help Solutions	10505 SE 17th	DO	C	
Daisy Dental	10505 SE 17th	DO	C	
Multnomah Dental Society	10505 SE 17th	DO	C	
PERS Health Insurance Program	10505 SE 17th	DO	C	
Gerri Sue Lent, Attorney	10565 SE 23rd Ave.	R1B	C	
Redman Law Firm	10565 SE 23rd Ave.	R1B	C	
Scott Wood Eliot	10565 SE 23rd Ave.	R1B	C	
Bremer Corporation	10600 SE McLoughlin Blvd	DC	C	
Executive Advisory Institute	10600 SE McLoughlin Blvd	DC	C	
JL Hair Design LLC	10600 SE McLoughlin Blvd	DC	C	
Madonna's Center	10600 SE McLoughlin Blvd	DC	C	
Annie French, RN	10600 SE McLoughlin Blvd Suite 101	DC	C	
PDX Design LLC	10600 SE McLoughlin Blvd Suite 103	DC	C	
Mark Gamba Gallery	10600 SE McLoughlin Blvd Suite 104	DC	C	
Spring Creek Coffee House	10600 SE McLoughlin Blvd Suite 105	DC	C	
MetLife	10600 SE McLoughlin Blvd Suite 201	DC	C	
Harris Law Firm PC	10600 SE McLoughlin Blvd Suite 203	DC	C	
Siegel & Sanders PC	10600 SE McLoughlin Blvd Suite 204	DC	C	
Wellspring Bodywork	10600 SE McLoughlin Blvd Suite 206	DC	C	
Organon Professional Services	10600 SE McLoughlin Blvd Suite 207	DC	C	
Casa de Tamales	10605 SE Main St	DC	C	
Ryder Ministries and Video Production	10607 SE Main St.	DC	C	
Capello Salon Inc.	10609 SE Main St	DC	C	
Wind Horse Coffee & Tea	10611 SE Main St	DC	C	
Envision Tile & Design LLC	10613 SE Main St.	DC	C	
Milwaukie Masonic Lodge 109 AF & AM	10636 SE Main St	DS	C	
Reliable Credit Association	10690 SE McLoughlin Blvd	DC	C	
Chopsticks Express	10801 SE Main St	DS	C	
Milwaukie Popcorn & Candyland	10821 SE Main St.	DS	C	
Curves of Milwaukie	10851 SE Main St	DS	C	
Stanley Home Renovation and Design	10879 SE Main St.	DS	C	
Mekong Thai Cuisine	10880 SE McLoughlin Blvd.	DO		NC
Key Bank of Oregon	10888 SE Main St	DS	C	
Washington Mutual Bank	10900 SE 21st Ave	DR		NC
Main Street Collectors Mall & Soda Fountain	10909 SE Main Street	DS	C	
12,500 Commercial Window Coverings	10921 SE Main St	DS		NC
The Brew Bar and Grill	10933 SE Main St.	DS	C	
CDL Consortium Corp	10951 SE 21st Ave	DS	C	

HBW Mike Gunderson	10952 SE 21st Ave Suite 2	DR		NC
Mass Tram America Inc.	10952 SE 21st Ave Suite 4	DR		NC
Art Brenner, CPA, PC	10952 SE 21st Ave Suite 1	DR		NC
Doug Brenner LTC/Tax Tamer	10952 SE 21st Ave Suite 1	DR		NC
Things From Another World	10955 SE Main St	DS	C	
Dark Horse Comics	10956 SE Main Street	DS		NC
Strategic Design, LTD	10963 SE 21st Ave.	DS	C	
Kanso's Arco AM/PM	10966 SE McLoughlin	DS		NC
Things From Another World	10977 SE Main St	DS	C	
Milwaukie Lumber Co.	10998 SE 21st Ave	DR		NC
Cha Cha Cha Milwaukie Inc.	11008 SE MAIN ST	DS	C	
Astro/Tobacco Toad	11010 SE McLoughlin Blvd	DO		NC
Salon Demara	11011 SE Main St	DO	C	
Milwaukie Tri-Cinema	11011 SE MAIN STREET	DO	C	
Eleven O'49 Studio & Gallery	11049 SE 21st Ave	DS	C	
Rocketpromo, Inc.	11049 SE Main St Suite 102	DS		NC
Pacific Marine & Energy Resources Inc.	11049 SE Main St Suite 103	DS		NC
Bank of the West	11050 SE McLoughlin Blvd	DO	C	
Libbies Restaurant	11056 SE Main St.	DS	C	
Collectors Connections	11062 SE 21st Ave	DR		NC
NW Beauty Salon	11073 SE 21st Ave	DS	C	
J Gary McClain, Attorney	11073 SE Main St	DS		NC
William D McDonald, Attorney	11073 SE Main St	DS		NC
Mundorff & Kovac Attorneys	11073 SE Main St.	DS		NC
Clackamas Community Land Trust	11074 SE 21st Ave	DR		NC
Troy Reichlein, CPA	11074 SE 21st Ave	DR		NC
Doug Naef Insurance Agency	11085 SE 21ST AVE	DS	C	
Foxy's	11094 SE Main St.	DS	C	
Happy Baskets	11097 SE 21st Ave.	DO	C	
The Glass Shop Inc.	11097 SE 21st Ave.	DO	C	
Cash Spot	11100 SE McLoughlin	DO		NC
Altamira Wood Floors	11103 SE Main St	DO	C	
Evergreen Thrift	11103 SE Main St Suite A	DO	C	
Dr. Farid A. Bolouri, DMD PC	11103 SE Main St Suite B	DO	C	
Horizon Marketing Concepts Inc.	11126 SE Main St	DO	C	
Stark Taekwondo LLC	11138 SE Main St	DO	C	
Dr. Andrew Godzyk, Jr., DMD	11162 SE 23rd Ave	R1B	C	
Gatch Gamble & Nugent, Inc.	11165 SE 23rd Ave	R1B	C	
Electrodyne Inc.	11200 SE 21st Ave	DO	C	
Jenco International Inc.	11214 SE 21st Ave	DO	C	
Panky & Friends Salon	11220 SE 21st Ave.	DO	C	
United States Post Office	11222 SE Main St.	DO	C	
Horton Electric Co.	11226 SE 21st Ave	DO	C	
Face & Body Place	11238 SE 21st Ave	DO	C	
Haircuts By Jerry	11242 SE 21st Ave, Suite 4	DO	C	
City Wide Tree Service, Inc.	11254 SE 21st Ave	DO	C	
Milwaukie Wellness Center	11266 SE 21st Ave	DO	C	
The Coreson Company	11266 SE 21st Ave, Suite 102	DO	C	
Larson Design	11266 SE 21st Ave, Suite 104	DO	C	
Roseland Piano Co.	11380 SE 21st Ave	DO	C	
Shear Perfection Salon	1906 SE Monroe St.	DS	C	
Edward Jones & Company	1912 SE Monroe St.	DS	C	
The Barber Shop	1925 SE Jefferson St.	DS	C	
Peake Funeral Chapel	1925 SE Scott St.	DC	C	
Akers & Thomas Upholstery	1925 SE Washington St	DS	C	

Promotion Auto / Wrex	1925 SE Washington St Suite A	DS		NC
The Green Team	1926 SE Monroe St	DS	C	
Jet Graphics Inc.	1928 SE Scott St.	DC	C	
Dr. Rodney S Nichols DMD PC	2001 SE Jefferson St	DS	C	
Dark Horse Comics	2008 SE Monroe St	DS	C	
Milwaukie Natural Health Care	2025 SE Jefferson St	DS	C	
The Spark of Life Chiropractic and Wellness Cen	2025 SE Jefferson St	DS	C	
Dr. Rick A Warf DMD	2025 SE Washington St.	DS	C	
Dicepool.Com	2026 SE Monroe St	DS	C	
Sully's Café	2035 SE Jefferson St.	DS	C	
Kathy Lyle's Place	2035 SE Washington St.	DS	C	
St Johns Episcopal Church	2036 SE Jefferson St	DS	C	
Town Deli & Grocery	2036 SE MONROE ST	DS	C	
Bernard's Garage, Inc.	2036 SE Washington St	DO		NC
Waterlily Facial Salon	2037 SE Harrison St	DS	C	
Karin Lambert Real Estate	2039 SE Harrison St	DS	C	
Broken Arrow Achery Inc.	2044 SE Adams St	DO		NC
Neogenesis Holistic Heath and Wellness	2045 SE Washington Street	DS	C	
Acupuncture For Wellness	2100 SE Lake Rd	R2	C	
Complete Client Services LLC	2100 SE Lake Rd	R2	C	
Pacific Trading Inland Inc.	2103 SE Adams St	DO	C	
Northwest Mold Supply Inc.	2105 SE Adams St	DO	C	
Doherty Plastics	2105 SE Adams St.	DO	C	
The Tartan & Thistle	2105 SE Washington St.	DR		NC
Remote & Manuel Service	2115 SE Adams St.	DO	C	
Remote & Manuel Service	2126 SE Adams St	DO	C	
American Legion Post 180	2146 SE Monroe St	DR	C	
Harlan Business Consultants	2202 SE Lake Rd.	R2	C	
Business Learning Center	2206 SE Washington St	DO	C	
Dr. Sue Chadwick Walker, DMD	2236 SE Washington St	R1B	C	
Milwaukie Family Dental	2236 SE Washington St	R1B	C	
Milwaukie Optical Eyeglass Express	2236 SE Washington St Ste D	R1B	C	
Dr. Michael D. Sullivan, D.C.	2305 SE Washington St	R1B	C	
Fish Window Cleaning	2305 SE Washington St	R1B	C	
Northwest Natural Medicine	2305 SE Washington St	R1B	C	
Summit Medical Group, LLC	2305 SE Washington St	R1B	C	
Dr. Marian de Stoppelaar, DMD, PC	2305 SE Washington St Suite 103	R1B	C	
Rich Pena Insurance Agency	2305 SE Washington St Suite 104	R1B	C	
Eye Clinic of Milwaukie, PC	2306 SE Washington St	R1B	C	
J. Gary Mitchell Film Company	2308 SE Washington St	R1B	C	
Dr. George N. Corti	2403 SE Monroe Suite A	R1B	C	
Davis Amusement Co.	2403 SE Monroe Suite A1	R1B	C	
Dr. Allen Hutcheson, DC	2403 SE Monroe Suite A2	R1B	C	
Iron Gate Realty	2403 SE Monroe Suite A3	R1B	C	
Horizon Chiropractic and Massage	2403 SE Monroe Suite B	R1B	C	
Dr. Kevin R. Packham, DMD	2403 SE Monroe Suite C	R1B	C	
Dr. Douglas L. Chosholm, DDS	2403 SE Monroe Suite D	R1B	C	
Portland Metro Mechanical	2403 SE Monroe Suite E	R1B	C	
Total:		153	124	29

Conforming: 81%
Non-Conforming: 19%

¹ C = Potentially conforming use

² NC = Potentially non-conforming use



To: Planning Commission

From: Katie Mangle, Planning Director

Date: July 3, 2009, for July 14, 2009 Worksession

Subject: Habitat Conservation Areas – Title 13 Compliance Project Update

ACTION REQUESTED

None. This is the first of a two-part briefing on a project designed to bring Milwaukie into compliance with Metro requirements to protect regionally designated riparian habitat. Staff will introduce this material at the July 14 meeting, with a more thorough discussion planned for July 28. No action is required at this time.

BACKGROUND INFORMATION

All jurisdictions within the Metro region are required to adopt code amendments that substantially conform to Title 13 of the Metro Urban Growth Management Functional Plan. The deadline for compliance was January 2009. The purpose of Title 13 is to protect habitat areas alongside and upland from the region's waterways and to complement Title 3 of the Metro Functional Plan (Water Quality, Flood Management, and Fish and Wildlife Conservation).

Title 13 includes provisions that encourage habitat-friendly development (e.g., pervious paving options, alternative stormwater treatment facilities, transferable development rights, etc.) and regulate development activity within designated Habitat Conservation Areas (HCAs), which are very similar to the areas currently regulated by the City's Water Quality Resource (WQR) regulations.

A. History of Prior Actions and Discussions

- **July, 2008:** Work session briefing on requirements of Metro's Title 13 – Nature in Neighborhoods.
- **October 13, 2008:** Work session briefing on options for the City to comply with Title 13.

B. Current Approach to Protecting Natural Resources

In 2002, the City of Milwaukie adopted its WQR regulations (Section 19.322) to comply with Metro's Title 3. The WQR regulations protect wetland and riparian areas, which are shown on the zoning map. The regulations require development to avoid the resource area, minimize and then mitigate adverse impacts.

The City has several provisions designed to preserve trees within its WQR overlay. These guidelines help protect existing vegetation and require mitigation efforts for cases where tree removal is permitted.

C. Title 13 Compliance Status

The City of Milwaukie has not yet adopted regulations to comply with Metro's Title 13 policy. Since the October 2008 briefing, staff has explored several options for achieving compliance and conducted a thorough analysis of the properties that may be affected by the new regulations. In June 2009, staff met with Metro staff to discuss Milwaukie's proposed approach to complying with Title 13 and received concurrence that implementing the project outlined in this report would fulfill Title 13 requirements.

However, the City is required to comply with Title 13 in the interim. Though Milwaukie has not adopted HCA maps or code, in June 2009 the City was required to begin applying the Metro Title 13 Model Ordinance to regionally mapped HCAs. Required by Metro's Urban Growth Management Functional Plan, this interim implementation step is explained in greater detail on page 4 of this report.

D. Habitat Conservation Land in Milwaukie

At the October 2008 work session, commissioners requested more information about how Metro had mapped HCAs and what lands in Milwaukie are affected. At the July 28 meeting, staff will present Metro's methodology for mapping HCAs. Most of the land outside of public right-of-way (such as on taxlots) that is designated as HCA in Milwaukie is either already protected by the more stringent WQR regulations or in public ownership as parkland. See Attachment 1, Map and Analysis of Habitat Conservation Areas by Current Level of Protection. Of the total mapped HCA areas within Milwaukie:

- 51.1% are already protected by WQR.
- 23.8% are within public ownership.¹
- 25% (43.85 acres) are on private property and not currently protected.²

Staff has evaluated Metro's HCA maps against aerial photography and existing site conditions, and determined that in some areas the City should verify the location of the maps prior to adoption. Metro staff has agreed that the City may correct the maps prior to adoption, as long as the City follows the same methodology as that used by Metro to create the regional HCA map.

¹ The largest contiguous areas of unprotected HCA are located in public parks (Riverfront Park, North Clackamas Park, and Spring Park).

² These 43 acres are spread throughout the city's five square miles, so that on many parcels the additional regulations (in addition to the WQR) would apply to slivers of land.

HABITAT CONSERVATION AREAS PROJECT PLAN

A. Project Elements

Staff has conducted a thorough review of properties affected by HCAs and existing policies, and has had discussions with Metro staff and a consultant with expertise in planning for natural resources protection. As a result, staff is proposing that Milwaukie comply with Title 13 by completing the following work plan:

1. Text Amendments

Draft text amendments to create a Natural Resources Overlay zone that would replace the City's existing Section 19.322 Water Quality Resource regulations, and blend those regulations with additional regulations to comply with Title 13. Doing so would require substantial changes to the text of Section 19.322. This approach is similar to the one being taken by the City of Happy Valley.

Review the Zoning code and propose amendments to promote habitat-friendly development practices. The project will address additional standards that the City could adopt in other sections of the Municipal Code to further encourage property owners to use habitat-friendly development practices.

2. Map Amendments

Create a new Natural Resources zoning overlay that incorporates both water quality and habitat conservation areas in one zone. In addition to amending Section 19.322, the City will amend its maps to create a Natural Resources Overlay that includes Title 3 (WQR) and Title 13 (HCA) resources. Amending the maps to take this approach would entail adding the HCA layer but keeping the WQR layer on top (riparian and wetland buffers only). The WQR layer could be called "Very High Value resource area," and the HCAs outside this area "High, Moderate, or Low value resource areas." Alternatively, the features could continue to be called out separately as "Water Quality Resource Areas" and "Habitat Conservation Areas" (High, Moderate, and Low value) but be grouped together as protected natural resources.

3. Public Involvement

In the past, several commissioners have suggested that the City do more to inform and educate property owners about their responsibility as steward of natural resources on their property. Staff believes this project will be an opportunity not only to involve affected property owners in map verification and policymaking, but also to improve the community's understanding of how to improve the quality of the natural resources that run through the community. To do this, staff is proposing a combination of targeted direct mailings, open houses, and an Advisory Group to help shape the recommendations.

INTERIM IMPLEMENTATION OF TITLE 13 MODEL CODE

Title 8 of Metro's Urban Growth Management Functional Plan requires direct implementation and enforcement of the Functional Plan.³ According to Section 3.07.870 of Title 8, if a city has not adopted regulations to comply with Title 13 of the Functional Plan within two years of its adoption by Metro Council, the city must make land use decisions consistent with that requirement. Since the City of Milwaukie had not adopted local regulations to implement Title 13 in the two years since its adoption by Metro, in January 2009 Metro's Chief Operating Officer notified the City of Milwaukie that it must apply "provisions comparable to the Title 13 Model Ordinance" directly to land use decisions "affecting properties with an identified Habitat Conservation Area," beginning 120 days after receipt of the notification letter.

The City Attorney has advised that the City must implement Title 13 as outlined by Metro. However, he believes it is appropriate for the City to limit its implementation.

As explained in detail in the Director's Interpretation memo found in Attachment 2, the City has begun to implement the Title 13 Model Ordinance with the following limitations:

- The City will exempt areas already subject to MMC 19.322 Water Quality Resources, which are already protected more stringently than Title 13 requires.
- The City will apply the Title 13 Model Ordinance *only* to land use decisions as defined in the Oregon Revised Statutes (ORS). ORS 197.015(10)(b) defines the types of governmental actions that are not considered "land use decisions," specifying that they do not include decisions "made under land use standards that do not require interpretation or the exercise of policy or legal judgment."
- The City will apply a modified version of the Title 13 Model Ordinance.

ATTACHMENTS

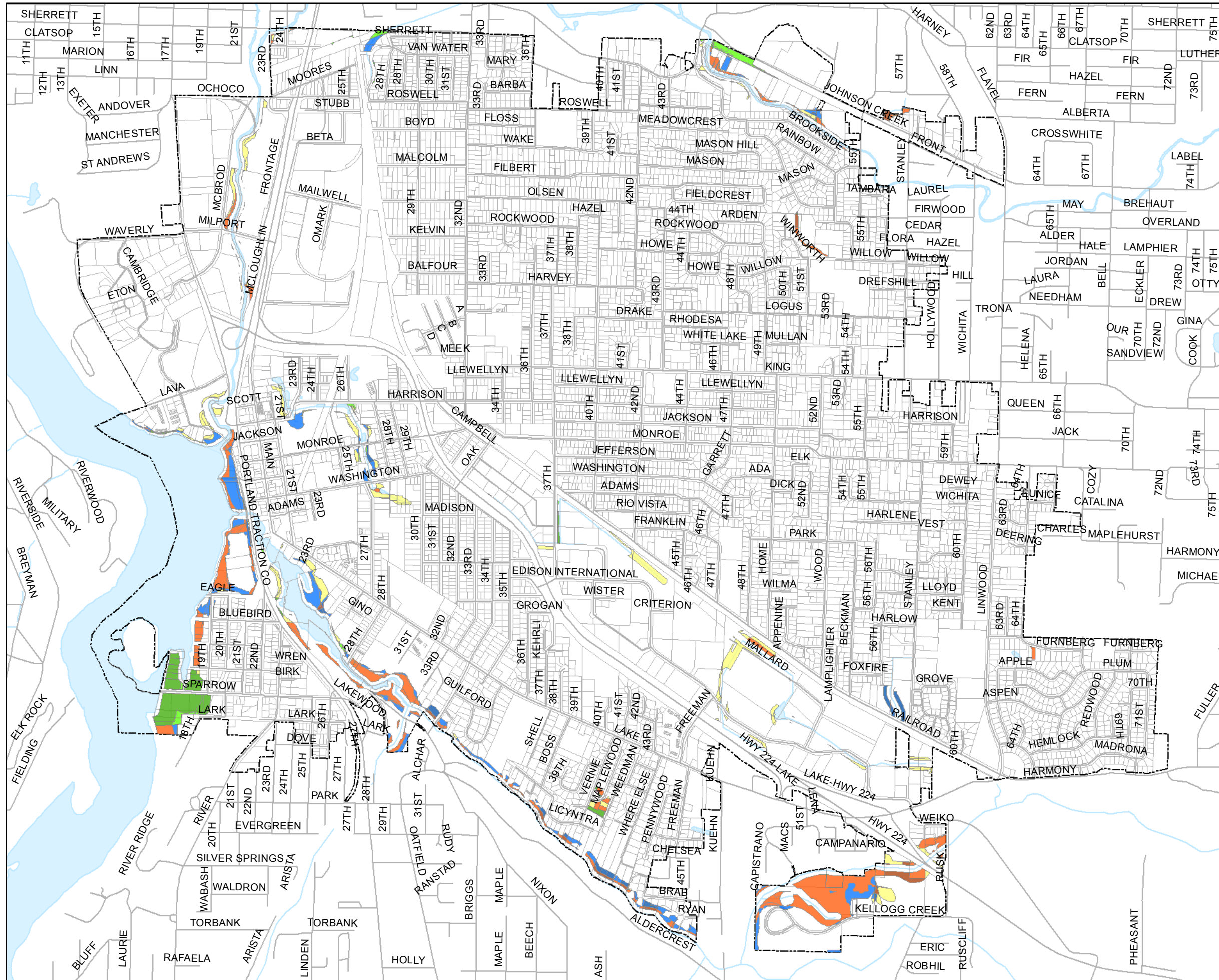
Attachments are provided only to the Planning Commission unless noted as being attached. All material is available for viewing upon request.

1. Map and Analysis of Habitat Conservation Areas by Current Level of Protection
2. Director's Interpretation Memo – Interim implementation of Title 13

³ Enabled by ORS 268.390.5.

City of Milwaukie

Development Risk Analysis Title 13 HCAs



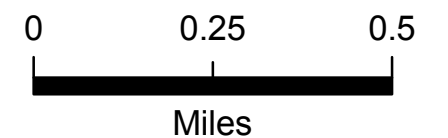
Legend

HCAs with No Protection

HCA Value/Development Risk

- High HCA/High Dev Risk
- High HCA/Mod Dev Risk
- Mod HCA/High Dev Risk
- Mod HCA/Mod Dev Risk
- High HCA/Protected
- Mod HCA/Protected
- Low HCA/Protected
- Other
- City Limits
- Taxlots
- Streams
- Rivers & Ponds

1 inch equals 1,417 feet



DRAFT 6/2/2009



Interoffice Memorandum

To: **Community Development, Planning, Engineering and Building Departments;
Planning Commission**

From: **Katie Mangle, Planning Director**

CC: **Mike Swanson, City Manager; Bill Monahan, City Attorney; Brian Harper, Metro**

Date: **May 29, 2009**

Re: **Planning Director's Interpretation
Interim Implementation of Metro Title 13 – Habitat Conservation Areas**

The purpose of this Planning Director's Interpretation is to define how the City of Milwaukie will fulfill the requirement to implement Metro Functional Plan Title 13 during the period between May 30, 2009 and the City's adoption of amendments to bring the Milwaukie Municipal Code into compliance with Title 13.

Summary

On June 1, 2009, the City will begin to apply the Metro Title 13 Model Ordinance, as required by Metro's Urban Growth Management Functional Plan. The City will apply a modified version of the Title 13 Model Ordinance (see Attachment 1) to the Habitat Conservation Areas mapped by Metro (see Attachment 3). The City will exempt areas already subject to MMC 19.322 Water Quality Resources. The City will apply the Title 13 Model Ordinance only to land use decisions as defined in the Oregon Revised Statutes (ORS), not to development that only triggers a building permit, Type I review, or to Final Plat approval.

Requirement to Implement Title 13 Directly

Title 8 of Metro's Urban Growth Management Functional Plan requires direct implementation and enforcement of the Functional Plan.¹ According to Section 3.07.870 of Title 8, if a city has not adopted regulations to comply with Title 13 of the Functional Plan within two years of its adoption by Metro Council, the city must make land use decisions consistent with that requirement. Since the City of Milwaukie has not adopted local regulations to implement Title 13 in the two years since its adoption by Metro, Metro's Chief Operating Officer notified the City of Milwaukie that it must apply "provisions comparable to the Title 13 Model Ordinance" directly to land use decisions "affecting properties with an identified Habitat Conservation Area" beginning 120 days after receipt of the notification letter mailed January 22, 2009. The City Attorney has advised that the City must implement Title 13 as outlined by Metro. However, he believes it is appropriate for the City to limit its implementation.

Interim Implementation of Title 13

On June 1, 2009, the City will begin to apply the Metro Title 13 Model Ordinance. The Title 13 Model Ordinance is overly complicated and difficult to use. Adopting it would create a new overlay district in the City's code that would be similar to, but separate from, the City's existing Water Quality Resource regulations. Because the resource areas overlap significantly, many

¹ Enabled by ORS 268.390.5.

properties would be subject to the standards in both sections, which would further complicate implementation.

The purpose of this Planning Director's Interpretation is to outline how the City will interpret the Title 13 Model Ordinance to fulfill its responsibility to protect Habitat Conservation Areas. The City will implement the Title 13 Model Ordinance with the following limitations:

1. The City will exempt areas already subject to MMC 19.322 Water Quality Resources.

The Title 13 Model Code was written to apply to regionally-mapped Habitat Conservation Areas (HCAs). The City of Milwaukie adopted its Water Quality Resource (WQR) regulations in compliance with Metro's Title 3. The WQR regulations protect wetland and riparian areas by requiring development to avoid the resource area, minimize and then mitigate adverse impacts. Milwaukie's existing WQR regulations covers just over 51% (89.68 acres) of the HCAs located on tax lots. These areas are already protected more stringently than Title 13 requires.

2. The City will apply the Title 13 Model Ordinance *only* to land use decisions as defined in the Oregon Revised Statutes (ORS). ORS 197.015(10)b, defines the types of governmental actions that are not considered "land use decisions." Land use decisions do not include decisions "made under land use standards that do not require interpretation or the exercise of policy or legal judgment." This limitation is further explained below.

3. The City will apply a modified version of the Title 13 Model Ordinance.

Elsewhere in this memo, references to implementing the Title 13 Model Ordinance is intended to mean implementing the modified Model Ordinance in Attachment 1.

Applicability

1. In addition to the exemptions listed in Section 3 of the Title 13 Model Ordinance, the City will exempt the following types of land use and development applications from compliance with Title 13 because review would involve application of objective standards and therefore does not meet the ORS definition of "land use decision":

- Building Permits, as long as they are reviewed against clear and objective standards.¹
- Development proposals subject to the City's Type I Administrative Review process, as long as the review criteria do not do not require interpretation.²
- Approval of a final subdivision or partition plat.³

2. When a development proposal triggers a Type II or Minor Quasi Judicial (MQJ) land use review on a property that includes a mapped Water Quality Resource (Vegetated Corridor and Wetland Buffer overlay areas on the Milwaukie Zoning Map), Planning staff will check the Milwaukie HCA and WQR map (see Attachment 3). **If the property includes mapped HCA, the City will apply the Title 13 Model Ordinance.**

Review Guidelines

When a development proposal is subject to Title 13, per the Applicability section above, staff will review the proposal and apply the Title 13 Model Ordinance as described below and summarized in Figure 1:

¹ ORS 197.015.10.b.B

² ORS 197.015.10.b.A

³ ORS 197.015.10.b.G

1. Development outside of WQR and HCA: Applications for development on all properties containing a mapped HCA will be required to prepare a construction management plan (see Section 5 of the Title 13 Model Ordinance). Applicants who are partitioning, but are not simultaneously developing their property, do not need to comply with this requirement.

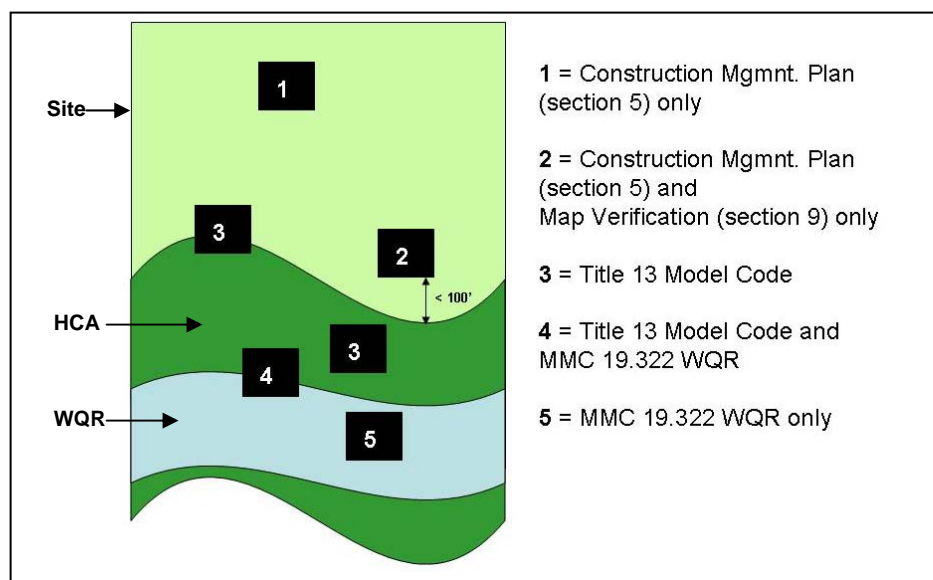
2. Development outside of WQR and HCA, but within 100 feet of HCA: When development is proposed on a property containing a mapped HCA, and the development is proposed to occur outside the HCA but within 100 feet of it, only Section 9 - the map verification process – applies.

3. Development outside of WQR, but within HCA: When development is proposed on a property containing a mapped HCA, and the development is proposed to occur within the HCA but outside of the City's Vegetated Corridor or Wetland Buffer, the Title 13 Model Ordinance applies.

4. Development inside the WQR and HCA: When development is proposed on a property containing a mapped HCA, and the development is proposed to occur across both the HCA and WQR, the Title 13 Model Ordinance applies to the development occurring within the HCA.

5. Development only within WQR areas: When development is proposed only within the City's Vegetated Corridor or Wetland Buffer, MMC 19.322 applies, regardless of the presence of a mapped Habitat Conservation Area.

Figure 1 – Summary of Requirements



Further Interpretation

When applying the Model Code, it is likely that staff will find conflicts between this policy and the City's adopted Zoning and Land Division Ordinances. When specific questions arise, further Director's Interpretations will be issued.

Attachments

1. Title 13 Model Ordinance with modifications as noted
2. ORS definitions of "land use decision" and "limited land use decision"
3. City of Milwaukie HCA and WQR Map

Attachment 1

Title 13 Model Ordinance

*Until the City has adopted regulations to comply with Title 13, Milwaukie will apply the Title 13 Model Ordinance with the modifications noted below, subject to the limitations outlined in the Planning Director's Interpretation issued on May 29, 2009. The City will not enforce the text shown in this document as a ~~strikeout~~. Notes regarding the City's modifications to the text are in **red**. Text highlighted for emphasis are shown in **blue**.*

Section 1. Intent

The purpose of this ordinance is to comply with Section 4 of Title 13 of Metro's Urban Growth Management Functional Plan.

- A. To protect and improve the following functions and values that contribute to fish and wildlife habitat in urban streamside areas:
 - 1. Microclimate and shade;
 - 2. Stream-flow moderation and water storage;
 - 3. Bank stabilization, sediment and pollution control;
 - 4. Large wood recruitment and retention and channel dynamics; and
 - 5. Organic material sources.
- B. To protect and improve the following functions and values that contribute to upland wildlife habitat in new urban growth boundary expansion areas:
 - 1. Large habitat patches
 - 2. Interior habitat
 - 3. Connectivity and proximity to water; and
 - 4. Connectivity and proximity to other upland habitat areas
- C. To establish High, Moderate, and Low Habitat Conservation Areas (HCA) to implement the performance standards of Title 13 of the Urban Growth Management Functional Plan.
- D. To provide clear and objective standards and a discretionary review process, applicable to development in Habitat Conservation Areas, in accordance with Statewide Land Use Planning Goal 5.
- E. To allow and encourage habitat-friendly development, while minimizing the impact on fish and wildlife habitat functions.
- F. To provide mitigation standards for the replacement of ecological functions and values lost through development in Habitat Conservation Areas.

Section 2. Applicability

- ~~A. This ordinance applies to all properties containing mapped Habitat Conservation Areas (HCA).~~
- B. All applicants must provide **Construction Management Plans**, in accordance with Section 5 of this ordinance.
- C. Where applicants are proposing development entirely **outside of the HCA, but within 100 feet** of its boundary, applicants must verify this boundary through the procedures outlined in Section 9 of this ordinance.
- D. Where applicants are proposing development **within the HCA**, they must comply with the **Development Standards** found in Section 6 and Section 7 of this ordinance, and the Map Verification procedures found in Section 9 of this ordinance. Conditioned Uses, and Activities that are exempt from these requirements, may be found in Section 3 of this ordinance.
- E. Applicants proposing to **partition or subdivide properties** containing HCA must comply with the partition and subdivision standards found in Section 6(F) of this ordinance, or the Discretionary standards in Section 7 of this ordinance; as well as the Map Verification procedure in Section 9 of this ordinance.
- ~~F. The Development Standards found in Sections 6 and 7 of this ordinance do not apply to development that occurs entirely outside of any portion of the HCA.~~
- ~~G. The requirements of this ordinance apply in addition to other applicable local, state, regional, and federal development requirements, including those for Water Quality Resource Areas and Flood Management Areas; except that:~~
 - ~~1. Applicants using the discretionary review process in Section 7 of this ordinance do not need to engage in any additional review process for Water Quality Resource Areas; and~~
 - ~~2. This ordinance shall not impose any mitigation requirements for wetlands beyond those required by federal and state law.~~
- H. "Development," "Partition," and "Subdivision" are defined in Section 11 of this ordinance.

Section 3. Exempt Uses and Conditioned Activities

The following uses and activities are exempt from the requirements of this chapter:

- A. Change of ownership.
- B. Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005; unless such development required obtaining a land use decision, ~~or a building, erosion control, or grading permit.~~
- ~~C. A building permit for a phased development project for which the applicant has previously met the application requirements, so long as the site for new construction was identified on the original permit and no new portion of the HCA will be disturbed.~~
- ~~D. Where a property has been subdivided under subsection 6(F) of this ordinance, and the mitigation requirements of subsection 6(E) (and, if appropriate, subsections 7(B) and 7(C)) have been completed for the subdivision, development on the individual lots may proceed~~

~~without further review under this ordinance. Similarly, where a property has been subdivided under subsection 7(D) of this ordinance, and the mitigation requirements of subsection 7(D) have been completed for the subdivision, development on the individual lots may proceed without further review under this ordinance.~~

- E. Limited types of development, redevelopment, operations, and improvements, including the following:
1. Maintenance, alteration, expansion, repair and replacement of existing structures, provided that;
 - a. The rebuilding of existing residential and non-residential structures damaged by fire or other natural hazards occurs within the same foundation lines ("building footprint"); and
 - b. The alteration, expansion, or replacement of a structure will not intrude more than 500 sq. ft. into the HCA, and so long as the new intrusion is no closer to the protected water feature than the pre-existing structure or improvement.
 2. Minor encroachments not to exceed 120 sq. ft. of impervious surface such as accessory buildings, eave overhangs, exterior building improvements for access and exiting requirements, or other similar features.
 3. Temporary and minor clearing not to exceed 200 square feet for the purpose of site investigations and pits for preparing soil profiles, provided that such areas are restored to their original condition when the investigation is complete.
 4. Up to 10% of vegetative cover within the original mapped HCA on a lot or parcel may be removed, provided that no more than 20,000 square feet is removed; and provided that if more than 10% has been removed at the time of a development application, the review process shall use the original mapped HCA, subject to map verification, as the basis for determining the Maximum Disturbance Area in Section 6(C) of this ordinance and Mitigation standards in Sections 6(E) and 7(B), 7(C), 7(D)(1)(b) and 7(D)(2)(d) of this ordinance.
 5. Maintenance of existing gardens, pastures, lawns and landscape perimeters, including the installation of new irrigation systems within existing gardens, pastures, lawns, and landscape perimeters.
 6. Removal of plants identified as nuisance or prohibited plants on the *Metro Native Plant List* and the planting or propagation of plants identified as native plants on the *Metro Native Plant List*. Handheld tools must be used to remove nuisance or prohibited plants, and after such removal all open soil areas greater than 25 square feet must be replanted.
 7. deleted
 8. deleted
 9. Maintenance, alteration, repair, and replacement of roads and utilities when no additional incursion into the HCA is proposed.
 10. Maintenance and repair of existing streets, railroads, shipping terminals, and utilities within rights-of-way, easements, and access roads.

11. Existing water-dependent uses that can only be carried out on, in, or adjacent to water because they require access to the water for waterborne transportation or recreation.
 12. Operation, maintenance, and repair of manmade water control facilities such as irrigation and drainage ditches, constructed ponds or lakes, wastewater facilities, and stormwater pretreatment facilities.
 13. Projects with the sole purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat areas, provided that the project is part of an approved local, state, or federal restoration or enhancement plan.
 14. Low-impact outdoor recreation facilities for public use, outside of Water Quality Resource Areas, including, but not limited to, multi-use paths, access ways, trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture, provided that the facility meets the following requirements:
 - a. It contains less than 500 sq. ft. of new impervious surface; and,
 - b. Its trails shall be constructed using non-hazardous, pervious materials, with a maximum width of four feet.
- F. Emergency procedures or activities undertaken which are necessary to remove or abate hazards and nuisances or for the protection of public health, safety and welfare; provided that such remedial or preventative action must take place within a timeframe too short to allow for compliance with the requirements of this ordinance. After the emergency, the person or agency undertaking the action shall fully restore any impacts to the HCA resulting from the emergency action. Hazards that may be removed or abated include those required to maintain aircraft safety.
- G. deleted
- H. deleted

Section 4. Prohibitions

- A. The planting of any invasive non-native or noxious vegetation is prohibited within the HCA.
- ~~B. Outside storage of materials is prohibited within the HCA, unless such storage began before the effective date of this ordinance; or, unless such storage is approved during development review under either Section 6 or Section 7 of this ordinance.~~

Section 5. Construction Management Plans

In order to ensure that trees and vegetation within HCAs are not damaged during construction, all applicants, even those not developing within an HCA, shall provide a construction management plan that includes the following information:

- A. Location of site access and egress that construction equipment will use;
- B. Equipment and material staging and stockpile areas;
- C. Erosion and sediment control measures; and
- D. Measures to protect trees and other vegetation located within the HCA, but outside of the disturbance area approved under the provisions of section 6 or section 7 of this ordinance.

Section 6. Development Standards

The development standards described in this section apply to all development and redevelopment that occurs entirely, or partially, within Habitat Conservation Areas, unless such development is exempt under Section 3, or unless the applicant chooses to follow the discretionary process in Section 7 of this ordinance. This section also applies to subdivisions and partitions of properties that contain HCAs.

Application for a land use, ~~building, grading~~, land division, or other development permit through the clear and objective process ~~may be~~ **is** an administrative (Type I) decision.

- A. **Application Requirements.** Applications for a ~~building permit~~ or development permit must provide a development plan and accompanying narrative explanation that includes the following information in addition to any other building permit or development permit requirements. All of the application requirements must be met prior to approval of a ~~building~~ or development permit.
1. Applicants must verify the HCA on their property as described in Section 9 of this ordinance.
 2. For the entire subject property (HCA and non-HCA), applicants must submit a scale map of the property that includes:
 - a. Location of all High, Moderate, and Low HCAs on the property; **(City to provide GIS map)**
 - b. Outline of any existing disturbance area, including the location of existing adjacent streets and paved areas, utilities, culverts, stormwater management facilities, or bridges;
 - c. Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area; **(City to provide GIS map)**
 - d. Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation; **(City to provide GIS map)** and
 - e. Topography shown by contour lines of 2-ft. intervals for slopes less than 15% and by 10 ft. intervals for slopes 15% or greater. On properties that are two acres or larger, such a contour map is required only for the portion of the property to be developed. **(City to provide GIS map)**
 3. Detailed site plan of proposed development outlining total disturbance area, including, proposed building footprints, site property improvements, utilities and landscaping.
 4. The following additional information shall be provided about the HCA:
 - a. For properties containing less than one acre of HCA, the location of all trees within the HCA that are greater than six inches diameter at breast height (DBH), shall be identified by size and species. For properties containing one acre or more of HCA, the applicant may approximate the number of trees and the diameter range, and provide a listing of the dominant species;
 - b. For proposed disturbance areas containing less than one acre of HCA, all trees with a diameter of six inches or greater that will be removed shall be specifically identified as to diameter at breast height (DBH) and species. For proposed disturbance areas

containing one acre or more of HCA an approximate of the number of trees, their diameters and the dominant species; and

- c. If grading will occur within the HCA, a grading plan showing the proposed alteration of the ground at 1-ft. vertical contours in areas of slopes less than 5%, and 2-ft. vertical contours in areas of slopes 6-15%, and at 5-ft. vertical contours of slopes 15% or greater.

B. Methods for avoiding Habitat Conservation Areas. The following habitat-friendly development practices may be used to avoid or minimize development within HCAs by allowing flexible site design:

1. **Building setback flexibility** to avoid, or minimize, development within HCAs. The minimum building setback of the base zone may be reduced to any distance between the base zone minimum and ~~zero~~ **10 feet**, unless this reduction conflicts with applicable fire or life safety requirements.
2. **Flexible landscaping requirements** to avoid, or minimize, development within HCAs.
 - a. Landscaping requirements, apart from those required for parking lots or street berms, may be met by preserving the HCA.
 - b. Facilities that infiltrate stormwater onsite, including the associated piping, may be placed within the HCA so long as the forest canopy and the areas within the driplines of the trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strip, and vegetated infiltration basins. Only native vegetation may be planted in these facilities.
3. **Flexible Site Design** (On-site Density Transfer) to avoid or minimize development within HCAs.
 - a. *Residential.* For residential development proposals on lands with a HCA, a **50%** transfer of density **within the property** site is permitted. ~~[Cities/counties may establish the appropriate percentage of density that may be transferred, provided that it is not less than 50% of the maximum density that would have been permitted in the portion of property within the HCA under the applicable zoning code requirements.]~~
 - b. In order to accommodate the transferred density, dimensional standards and lot sizes may be adjusted by no more than **20** percent. ~~[Cities/counties may set the percentage of the adjustment, provided that it is no lower than 20%.]~~
 - c. *Commercial and Industrial Zones.* For on-site density transfers in Commercial or Industrial zones, the transfer credit is 10,000 sq. ft floor area ratio (FAR) per acre of land within the HCA.
 - d. *Mixed-Use Zones.* Within mixed-use zones the density transfer credit can be factored using either 3(a) or 3(c) above, depending on the type of development proposed.
 - e. All remaining HCA shall be permanently restricted from development and maintained for habitat functions, such as by making a public dedication or executing a restrictive covenant.

4. ~~**Site Capacity Incentives.** The following site capacity standards provide flexibility in the design of land divisions in order to allow ways to better protect HCAs.~~

- ~~a. Density bonus if HCA is protected. In multi-family residential zones, a 25 percent density bonus may be allowed for any development of four (4) or more dwelling units if 75 percent or more of the HCA on a site is permanently preserved, such as by making a public dedication or executing a restrictive covenant. The bonus density shall be in addition to the base density allowed in the applicable zoning district.~~
- ~~b. All area within a HCA, or any portion of it, may be subtracted from the calculations of net size for purposes of determining minimum density provided that such area is protected, such as by making a public dedication or executing a restrictive covenant.~~

5. deleted

C. **Development within HCAs.** The following development standards apply to all development that occurs *within the HCA* except for exempt uses and conditioned activities addressed in Section 3 of this ordinance and utility facilities addressed in subsection 6(D) of this ordinance. If all development occurs outside of an HCA on a property, these standards do not apply. These standards also do not apply to development that occurs pursuant to the standards established by the alternative discretionary development standards in Section 7 of this ordinance.

1. **Disturbance area limitations** to minimize impact to HCA.

- a. *Single-family residential.* The maximum disturbance area (MDA) allowed within HCAs is determined by subtracting the area of the lot or parcel outside of the HCAs from the total disturbance area (TDA) calculated as described in Table 1 below.
(TDA – Area outside the HCA = MDA)
 - i. Moderate and Low HCAs are subject to the same disturbance area limitations.
 - ii. Calculation of maximum disturbance area. If a lot or parcel includes both High and Moderate/Low HCAs then:
 - (A) If there is more High HCA than Moderate/Low HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were High, per Table 1 below; or
 - (B) If there is more Moderate/Low HCA than High HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were Moderate/Low, per Table 1 below.
 - iii. Location of MDA. If a lot or parcel includes different types of HCAs, then:
 - (A) The amount of development that may occur within the High HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High HCA (TDA – non-High HCA = MDA). If the area of the lot or parcel outside the High HCA is greater than the total disturbance area, then development shall not occur within the High HCA:

(Area outside High HCA > TDA = no development in High HCA);
 - (B) The amount of development that may occur within the Moderate HCA is

equal to the total disturbance area minus the area of the lot or parcel outside of the High and Moderate HCA ($TDA - (Low\ HCA + non-HCA) = MDA$). If the area of the lot or parcel outside the Moderate HCA is greater than the total disturbance area, then development shall not occur within the Moderate HCA:

(Area outside Moderate HCA > TDA = no development in Moderate HCA);

and

- (C) The amount of development that may occur within the Low HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High, Moderate and Low HCA ($TDA - non-HCA = MDA$). If the area of the lot or parcel outside the Low HCA is greater than the total disturbance area, then development shall not occur within the Low HCA:

(Area outside Low HCA > TDA = no development in Low HCA).

Table 1. HCA Total Disturbance Area Limitations for SFR.

HCA type	Total Disturbance Area
High	50 percent of the lot area, up to maximum of 5,000 sq. ft.
Moderate/Low	65 percent of the lot area, up to maximum of 6,000 sq. ft.

- b. *All other zones.* The maximum disturbance area (MDA) allowed by right within Low, Moderate and High HCAs in these zones is found in Table 2 below; this MDA is subject to the mitigation requirements described in subsection 6(E) of this ordinance.

Table 2. HCA Disturbance Area Limitations for all zones other than SFR.

HCA type	Maximum Disturbance Area
High	10 percent of HCA on site
Moderate	15 percent of HCA on site
Low	50 percent of HCA on site

- c. Development within an HCA in accordance with the provisions of this ordinance shall not result in a change of the HCA status of such developed areas on a property. In the case of a later development request seeking to develop within previously undisturbed HCAs on a property where a prior development request was subject to the provisions of this ordinance, the calculation of the MDA allowed on the property shall be based on the location of the HCA, notwithstanding the location of any authorized development within the HCA.
2. **Protection of habitat during site development.** During development of any site containing a HCA, the following standards apply:
- Work areas shall be marked to reduce potential damage to the HCA.
 - Trees in HCAs shall not be used as anchors for stabilizing construction equipment.
 - Native soils disturbed during development shall be conserved on the property.
 - An erosion and sediment control plan is required and shall be prepared in compliance with requirements set forth in the **Water Quality Resource** zone;
 - Prior to construction, the HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed.

- f. All work on the property shall conform to the Construction Management Plan described in Section 5 of this ordinance.

D. ~~Utility facility standards.~~ The following disturbance area limitations apply to new utilities, private connections to existing or new utility lines, and upgrade

- a. ~~The disturbance area for utility facility connections to utility facilities is no greater than 10 feet wide.~~
- b. ~~The disturbance area for the upgrade of existing utility facilities is no greater than 15 feet wide.~~
- c. ~~The disturbance area for new underground utility facilities is no greater than 25 feet wide and disturbs no more than 200 linear feet of Water Quality Resource Area, within any 1,000 linear foot stretch of Water Quality Resource Area; provided that this disturbance area shall be restored with the exception of necessary access points to the utility facility.~~
- d. ~~No fill or excavation is allowed within the ordinary high water mark of a stream, unless a permit is obtained from the US Army Corps of Engineers through the Standard Local Operating Procedures for Endangered Species (SLOPES) process.~~
- e. ~~Mitigation is required as described in subsection E below.~~

E. Mitigation requirements for disturbance in HCAs. In order to achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in section 1(A) of this ordinance, tree replacement and vegetation planting are required *when development intrudes into a HCA* according to the following standards, except for wetlands mitigation requirements imposed by state and federal law.

1. **Required plants and plant densities.** All trees, shrubs and ground cover must be native plants selected from the *Metro Native Plant List*. An applicant must meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the disturbance area is one acre or more, the applicant shall comply with Mitigation Option 2:
- a. *Mitigation Option 1.* In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site must be replaced as shown in Table 3. Conifers must be replaced with conifers. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Table 3. Tree Replacement

Size of tree to be removed (inches in diameter)	Number of trees and shrubs to be planted
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

- b. *Mitigation Option 2.* In this option, the mitigation requirement is calculated based on the size of the disturbance area within a HCA. Native trees and shrubs are required

to be planted at a rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

2. **Plant size.** Replacement trees must be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs must be in at least a 1-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.
3. **Plant spacing.** Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on center. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.
4. **Plant diversity.** Shrubs must consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.
5. **Location of mitigation area.** All vegetation must be planted on the applicant's site within the HCA or in an area contiguous to the HCA; provided, however, that if the vegetation is planted outside of the HCA then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. (Note: an off-site mitigation option is provided in a streamlined discretionary review process).
6. **Invasive vegetation.** Invasive non-native or noxious vegetation must be removed within the mitigation area prior to planting.
7. **Tree and shrub survival.** A minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.
8. **Monitoring and reporting.** Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind. For a period of five years, the property owner must submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site. ~~{Optional: the city or county may require the property owner to post a performance bond in the amount sufficient to cover costs of plant material and labor associated with site preparation, planting, and maintenance in lieu of the monitoring and reporting requirement.}~~
9. To enhance survival of the mitigation plantings, the following practices are required:
 - a. **Mulching.** Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
 - b. **Irrigation.** Water new plantings one inch per week between June 15th to October 15th, for the three years following planting.

- c. Weed control. Remove, or control, non-native or noxious vegetation throughout maintenance period.
10. To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:
- a. Planting season. Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.
 - b. Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.

F. **Standards for Partitions and Subdivisions.** The purpose of this section is to allow for partitions in a manner that limits the total amount of allowable development within HCAs on the partitioned parcels; and to require that new subdivision plats delineate and show the Moderate and High HCAs as a separate unbuildable tract.

1. ***Standards for Partitions containing HCAs:***

- a. When partitioning a property into parcels, an applicant shall verify the boundaries of the HCA on the property according to Section 9 of this ordinance.
- b. Applicants who are partitioning, but are not simultaneously developing their property, do not need to comply with Section 5 of this ordinance.
- c. When partitioning a property into parcels there shall be no more than a 30% ~~percentage point~~ difference in the percentage of HCA on the parcels; for example, a partition that produces two parcels, one that is 55% HCA and the other that is 35% HCA is permissible; whereas a partition that produces two parcels, one that is 75% HCA and the other that is 30% HCA is not permissible. However, an applicant may partition a property such that at least 90% of the original property's High HCA and 80% of its moderate HCA is on a separate unbuildable parcel, protected by a restrictive covenant or a public dedication.
- d. Subsequent development on any parcels containing HCAs shall comply with Section 5, and the development standards of either section 6 or section 7 of this ordinance.

2. ***Standards for Subdivisions containing HCAs:***

- a. Applicants who are subdividing, but not developing, must verify the location of the HCA boundary according to Section 9 of this ordinance, and comply with this subsection 6(F); such applicants do not need to comply with Section 5 of this ordinance. Applicants who are subdividing, but not developing, property may:
 - i. Complete the mitigation requirements of subsection 6(E) of this ordinance (and, if appropriate, subsections 7(B) and 7(C)) and thereby exempt all subsequent development on lots containing HCA from further review under this ordinance; or
 - ii. Not complete the mitigation requirements of subsections 6(E), 7(B), or 7(C) of this ordinance, thus requiring that any subsequent development within an HCA be subject to this ordinance.
- b. Applicants who are subdividing and developing properties must comply with Sections 5, 6, and 9 of this ordinance.

- c. When a property containing any HCA is subdivided, this ordinance requires that new subdivision plats delineate and show the Moderate and High HCA as a separate unbuildable tract according to the following process:
 - i. The applicant must place at least 90% of the High HCA and 80% of the Moderate HCA in a separate tract.
 - (A) If over 50% of the HCA on a property is of a High designation, the entire calculation is for High (i.e., 90% of the HCA must be placed within a separate tract).
 - (B) If over 50% of the HCA on a property is of a Moderate designation, the entire calculation is for Moderate (i.e., 80% of the HCA must be placed within a separate tract).
 - ii. If the tract is adjacent to the backyard for residences, the minimum backyard requirement is reduced to 10 ft.
 - iii. The standards for subdivisions in Moderate and High HCAs shall apply in addition to the requirements of the city/county land division ordinance and zoning ordinance.
 - iv. Prior to preliminary plat approval, the Moderate and/or High HCA shall be shown as a separate tract, which shall not be a part of any lot used for construction of a dwelling unit.
 - v. Prior to final plat approval, ownership of the HCA tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:
 - (A) Private natural area held by the owner or homeowners association by a restrictive covenant; or
 - (B) For residential subdivisions, private natural area subject to an easement conveying storm and surface water management rights to the city/county and preventing the owner of the tract from activities and uses inconsistent with the purpose of this ordinance; or
 - (C) At the owner's option, public natural area where the tract has been dedicated to the city/county or other governmental unit, or a private non-profit with the mission of land conservation.

Section 7. Alternative Discretionary Development Standards

Applicants may choose to use the alternative discretionary development standards provided in this section rather than the development standards provided in section 6 of this ordinance. There are four discretionary review processes provided in this section: subsection A provides discretionary review for an applicant seeking only to partition a property; subsection B provides discretionary review for an applicant who will comply with the development standards in section 6 of this ordinance, except that the applicant seeks to meet the mitigation requirements of that section on a different property from the property on which a HCA will be disturbed; subsection C provides discretionary review for an applicant who will comply with the development standards in section 6 of this ordinance, except that the applicant seeks to meet the mitigation requirements of that section by proportionally varying the number and size of plants required to be planted; and subsection D provides general discretionary review standards applicable to an

applicant seeking some other type of discretionary approval of development that will disturb an HCA.

A. Discretionary Review for Partitions. An applicant seeking to partition land in ways that do not accord with the standards established in Section 6(F)(1) may seek review under this subsection 7(A).

1. The applicant shall verify the boundaries of the HCAs on the property according to Section 9 of this ordinance.
2. The applicant shall submit the following application materials:
 - a. A scale map of the entire property that includes:
 - i. Location of all High, Moderate, and Low HCA on the property;
 - ii. Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area;
 - iii. Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation; and
 - iv. A delineation of the proposed partition.
 - b. A written and documented explanation of how and why the proposed partition satisfies the approval criteria in subsection 7(A)(3). Such written documentation shall include an alternatives analysis of different possible partition plans, based on the characteristics and zoning of the property.
3. **Approval Criteria.** A partition shall be approved under this subsection 7(A) provided that the applicant demonstrates that it is not practicable to comply with the partition standards in Section 6(F)(1) of this ordinance, and that the applicant's partition plan will result in the smallest practicable percentage point difference in the percentage of HCA on the parcels created by the partition (this will minimize the amount of allowable disturbance areas within HCAs on the parcels, assuming that the development standards in this Section 6 were applied to future development on such parcels).
4. Subsequent development on any parcels created by the partition and containing HCAs shall comply with all provisions of this ordinance, except that the map verification completed and approved as part of the partition may be used to satisfy the requirements of section 9 of this ordinance for any such development.

B. Discretionary Review To Approve Off-Site Mitigation. An applicant seeking discretionary approval only for off-site mitigation within the same subwatershed (6th Field Hydrologic Unit Code), but who will comply with all other provisions of Section 6 of this ordinance, may seek review under this subsection 7(B). (An applicant who seeks to conduct the mitigation in a different subwatershed may apply for such approval under subsection 7(D) of this ordinance.)

1. The applicant shall submit:

- a. A calculation of the number of trees and shrubs the applicant is required to plant under Section 6(E) of this ordinance; and
- b. A map and accompanying narrative that details the following:
 - i. The number of trees and shrubs that can be planted on-site;
 - ii. The on-site location where those trees and shrubs can be planted;
 - iii. An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and
 - iv. The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a HCA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.
2. Approval Criteria. Off-site mitigation shall be approved under this subsection 7(B) provided that the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry out and ensure the success of the off-site mitigation on a property within the same subwatershed (6th Field Hydrologic Unit Code) as the related disturbed HCA.
3. Mitigation approved under this subsection 7(B) of this ordinance shall be subject to all of the requirements of subsection 6(E) of this ordinance, except for the requirements of subsection 6(E)(5) of this ordinance.

C. Discretionary Review To Approve Mitigation That Varies the Number and Size of Trees and Shrubs. An applicant seeking discretionary approval only to proportionally vary the number and size of trees and shrubs required to be planted under subsection 6(E), for example to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs, but who will comply with all other provisions of Section 6 of this ordinance, may seek review under this subsection 7(C).

1. The applicant shall submit:
 - a. A calculation of the number of trees and shrubs the applicant would be required to plant under Section 6(E) of this ordinance;
 - b. The numbers and sizes of trees and shrubs that the applicant proposes to plant;
 - c. An explanation of why the numbers and sizes of trees and shrubs that the applicant proposes to plant will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of subsection 6(E) of this ordinance. Such explanation shall be prepared and signed by a knowledgeable and qualified natural resources professional or a certified landscape architect and shall include discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity, plant spacing, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control; and

- d. The applicant's mitigation site monitoring and reporting plan.
2. **Approval Criteria.** A request to vary the numbers and sizes of trees and shrubs to be planted shall be approved if the applicant demonstrates that the proposed planting will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of subsection 6(E) of this ordinance. Such determination shall take into consideration all of the information required to be submitted under subsection 7(C)(1) of this ordinance.
 3. Mitigation approved under this subsection 7(C) of this ordinance shall be subject to the requirements of subsections 6(E)(4) through 6(E)(9) of this ordinance, and it is recommended that such mitigation also follow the practices recommended in subsection 6(E)(10) of this ordinance.
- D. **Discretionary Review.** An applicant seeking discretionary approval to undertake any development activity *within a HCA* that does not comply with subsection 6 of this ordinance and is not described in subsections 7(A), (B), or (C) of this ordinance may file an application under this section 7(D) of this ordinance.
1. **Application Requirements.** The applicant shall provide all items described in subsection 6(A) of this ordinance, except that, for utility projects undertaken by public utilities across property that is not owned by the utility, the utility shall not be required to map or provide any information about the property except for the area within 300 feet of the location of the proposed disturbance area of the utility's project, and the applicant shall also provide all of the following:
 - a. **Impact Evaluation and Alternatives Analysis.** An impact evaluation and alternatives analysis is required to determine compliance with the approval criteria and to evaluate development alternatives for a particular property. The alternatives must be evaluated on the basis of their impact on the HCA, the ecological functions provided by the HCA on the property, and off-site impacts within the subwatershed (6th Field Hydrologic Unit Code) where the property is located. The impact evaluation shall include all of the following items:
 - i. Identification of the ecological functions of riparian habitat found on the property as described in Table 4 of this ordinance and the habitat connectivity ecological functions described in subsection 7(D)(1)(a)(ii)(C) and (D) of this ordinance.
 - ii. For upland habitat in areas to be added to the Metro urban growth boundary areas after October 1, 2005, identification of the impact the proposed development would have on the following ecological functions provided by upland wildlife habitat:
 - (A) Habitat patch size;
 - (B) Interior habitat;
 - (C) Connectivity of the habitat to water; and
 - (D) Connectivity of the habitat to other habitat areas.

Table 4. Ecological functional values of riparian corridors.

Ecological function	Landscape features providing functional values
Microclimate and shade	Forest canopy or woody vegetation within 100 feet of a stream; a wetland ¹ ; or a flood area ² .
Streamflow moderation and water storage	A wetland or other water body ³ with a hydrologic connection to a stream; or a flood area ² .
Bank stabilization, sediment and pollution control	All sites within 50 feet of a surface stream; Forest canopy, woody vegetation, or low structure vegetation/open soils within 100 feet of a stream or a wetland; or forest canopy, woody vegetation, or low structure vegetation/open soils within a flood area; and, Forest canopy, woody vegetation, or low structure vegetation/open soils within 100-200 feet of a stream if the slope is greater than 25%.
Large wood and channel dynamics	Forest canopy within 150 feet of a stream or wetland; or within a flood area; and The channel migration zone is defined by the floodplain, but where there is no mapped floodplain a default of 50 feet is established to allow for the channel migration zone.
Organic material sources	Forest canopy or woody vegetation within 100 feet of a stream or wetland; or within a flood area.

¹Refers to "hydrologically-connected wetlands," which are located partially or wholly within ¼ mile of a surface stream or flood area.

²Developed floodplains are not identified as HCAs because they do not provide primary ecological functional value.

³"Other water body" could include lakes, ponds, reservoirs, or manmade water feature that is not a water quality facility or farm pond.

- iii. Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the HCAs and the ecological functions provided on the property. At a minimum, the following approaches must be considered:
 - (A) The techniques described in subsection 6(B) of this ordinance;
 - (B) Multi-story construction;
 - (C) Minimizing building and development footprint;
 - (D) Maximizing the use of native landscaping materials; and
 - (E) Minimal excavation foundation systems (e.g., pier, post or piling foundation).
- iv. Determination of the alternative that best meets the applicable approval criteria and identification of significant detrimental impacts that are unavoidable.
- b. **Mitigation Plan.** The purpose of a mitigation plan is to compensate for unavoidable significant detrimental impacts to ecological functions that result from the chosen development alternative as identified in the impact evaluation. However, when development occurs within delineated wetlands, then the mitigation required under

subsection 7(D)(2)(d) shall not require any additional mitigation than the mitigation required by state and federal law for the fill or removal of such wetlands.

- i. An applicant may choose to develop a mitigation plan consistent with the requirements of subsection 6(E) of this ordinance. If an applicant so chooses, then the applicant shall submit a mitigation plan demonstrating such compliance.
- ii. If an applicant chooses to develop an alternative mitigation plan that would not comply with the requirements of subsection 6(E) of this ordinance, including, for example, a proposal to create an alternative plant community type such as an oak savannah or a low-structure plant community, or where an applicant demonstrates that a portion of identified HCA on its property provides only impaired ecological functions, then the applicant shall submit a mitigation plan that includes all of the following:
 - (A) An explanation of how the proposed mitigation will adequately compensate for the impacts to ecological functions described in the impact evaluation required by subsection 7(D)(1)(a). The applicant may use the mitigation that would be required under subsection 6(E) of this ordinance as the baseline mitigation required to compensate for disturbance to a HCA that provides an average level of ecological functions. Such explanation shall include:
 - (1) If the applicant uses the mitigation that would be required under subsection 6(E) of this ordinance as the baseline mitigation required to compensate for disturbance to a HCA, then the applicant shall submit a calculation of the number of trees and shrubs the applicant would be required to plant under subsection 6(E) of this ordinance;
 - (2) A site plan showing where the specific mitigation activities will occur and the numbers and sizes of trees and shrubs that the applicant proposes to plant; and
 - (3) A discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity, plant spacing, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control.
 - (B) Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies.
 - (C) A list of all parties responsible for implementing and monitoring the mitigation plan and, if mitigation will occur off-site, the names of the owners of property where mitigation plantings will occur.
 - (D) The applicant's mitigation site monitoring and reporting plan.
 - (E) If the proposed mitigation will not be conducted on-site, the applicant shall submit a map and accompanying narrative that details the following:
 - (1) The number of trees and shrubs that can be planted on-site;
 - (2) The on-site location where those trees and shrubs can be planted;
 - (3) An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and

- (4) The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a HCA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.
- (F) If the mitigation area is off-site and not within the same subwatershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall submit an explanation of why it is not practicable to conduct the mitigation within the same subwatershed and of why and how, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed.
- (G) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. If the applicant is proposing any in-stream work in fish-bearing streams as part of the mitigation project, then the applicant shall submit documentation that such work will be done in accordance with the Oregon Department of Fish and Wildlife in-stream work timing schedule.
- c. The Impact Evaluation and Alternatives Analysis required by subsection 7(D)(1)(a) and the Mitigation Plan required by subsection 7(D)(1)(b) shall be prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. The application shall include a description of the qualifications and experience of all persons that contributed to the Impact Evaluation and Alternatives Analysis and to the Mitigation Plan, and, for each person that contributed, a description of the elements of such reports to which the person contributed.

2. Approval Criteria.

- a. All application requirements in subsection 7(D)(1) shall be met.
- b. **Avoid.** An applicant shall first avoid the intrusion of development into the HCA to the extent practicable. The development that is proposed must have less detrimental impact to HCAs than other practicable alternatives, including significantly different practicable alternatives that propose less development within HCAs. If there is more than one type of HCA on a property then the applicant shall first avoid the intrusion of development into the higher-valued HCA, to the extent practicable, and the development that is proposed must have less detrimental impact to the higher-valued HCAs than other practicable alternatives. To avoid development in HCAs, and to the extent practicable, applicants shall use the approaches described in subsection 7(D)(1)(a)(iii).
- c. **Minimize.** If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then the development proposed by the applicant within the HCA shall minimize detrimental impacts to the extent practicable. If there is more than one type of HCA on a property then the development within

higher-valued HCAs shall be considered more detrimental than development within lower-valued HCAs.

- i. Development must minimize detrimental impacts to ecological functions and loss of habitat consistent with uses allowed by right under the base zone, to the extent practicable;
- ii. To the extent practicable within the HCA, the proposed development shall be designed, located, and constructed to:
 - (A) Minimize grading, removal of native vegetation, and disturbance and removal of native soils by using the approaches described in subsection 6(C)(2), reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post or piling foundation);
 - (B) Minimize adverse hydrological impacts on water resources such as by using the techniques described in Part (a) of Table 5, unless their use is prohibited by an applicable and required State or Federal permit issued to a unit of local government having jurisdiction in the area, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;
 - (C) Minimize impacts on wildlife corridors and fish passage such as by using the techniques described in Part (b) of Table 5; and
 - (D) Consider using the techniques described in Part (c) of Table 5 to further minimize the impacts of development in the HCA.

Table 5. Habitat-friendly development practices.¹

Part (a): Design and Construction Practices to Minimize Hydrologic Impacts
<ol style="list-style-type: none"> 1. Amend disturbed soils to original or higher level of porosity to regain infiltration and stormwater storage capacity. 2. Use pervious paving materials for residential driveways, parking lots, walkways, and within centers of cul-de-sacs. 3. Incorporate stormwater management in road right-of-ways. 4. Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge. 5. Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics. 6. Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens. 7. Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering. 8. Use multi-functional open drainage systems in lieu of more conventional curb-and-gutter systems. 9. Use bioretention cells as rain gardens in landscaped parking lot islands to reduce runoff volume and filter pollutants. 10. Apply a treatment train approach to provide multiple opportunities for storm water treatment and reduce the possibility of system failure. 11. Reduce sidewalk width and grade them such that they drain to the front yard of a residential lot or retention area. 12. Reduce impervious impacts of residential driveways by narrowing widths and moving access to the rear of the site. 13. Use shared driveways. 14. Reduce width of residential streets, depending on traffic and parking needs. 15. Reduce street length, primarily in residential areas, by encouraging clustering and using curvilinear designs. 16. Reduce cul-de-sac radii and use pervious vegetated islands in center to minimize impervious effects, and allow them to be utilized for truck maneuvering/loading to reduce need for wide loading areas on site. 17. Eliminate redundant non-ADA sidewalks within a site (i.e., sidewalk to all entryways and/or to truck loading areas may be unnecessary for industrial developments). 18. Minimize car spaces and stall dimensions, reduce parking ratios, and use shared parking facilities and structured parking. 19. Minimize the number of stream crossings and place crossing perpendicular to stream channel if possible. 20. Allow narrow street right-of-ways through stream corridors whenever possible to reduce adverse impacts of transportation corridors.
Part (b): Design and Construction Practices to Minimize Impacts on Wildlife Corridors and Fish Passage
<ol style="list-style-type: none"> 1. Carefully integrate fencing into the landscape to guide animals toward animal crossings under, over, or around transportation corridors. 2. Use bridge crossings rather than culverts wherever possible. 3. If culverts are utilized, install slab, arch or box type culverts, preferably using bottomless designs that more closely mimic stream bottom habitat. 4. Design stream crossings for fish passage with shelves and other design features to facilitate terrestrial wildlife passage. 5. Extend vegetative cover through the wildlife crossing in the migratory route, along with sheltering areas.

¹ These development practices represent the state of scientific knowledge at the time of this ordinance's enactment, if more effective habitat-friendly practices become available, they should be used.

Part (c): Miscellaneous Other Habitat-Friendly Design and Construction Practices

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| <ol style="list-style-type: none"> 1. Use native plants throughout the development (not just in HCA). 2. Locate landscaping (required by other sections of the code) adjacent to HCA. 3. Reduce light spill-off into HCAs from development. |
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- d. **Mitigate.** If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then development must mitigate for adverse impacts to the HCA. All proposed mitigation plans must meet the following standards.
- i. The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological functions provided by HCAs, after taking into consideration the applicant's efforts to minimize such detrimental impacts through the use of the techniques described in Table 5 and through any additional or innovative techniques. A mitigation plan that requires the amount of planting that would be required under subsection 6(E) of this ordinance based on the amount of proposed disturbance area within the HCA, and that otherwise complies with all of the mitigation requirements in subsection 6(E) of this ordinance, shall be considered to have satisfied the requirements of this subsection 7(D)(2)(d) of this ordinance.
 - ii. Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry out and ensure the success of the off-site mitigation, as described in subsection 7(B)(1)(b)(iv) of this ordinance. In addition, if the off-site mitigation area is not within the same subwatershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall demonstrate that it is not practicable to complete the mitigation within the same subwatershed and that, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed. Mitigation shall not be allowed outside of the Metro jurisdictional boundary.
 - iii. All re-vegetation plantings shall be with native plants listed on the *Metro Native Plant List*.
 - iv. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream work-timing schedule.
 - v. A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting, and compliance with the plan shall be a condition of development approval.
- e. **Municipal Water Utility Facilities Standards.** Except as provided within this subsection, in addition to all other requirements of subsection 7(D)(2) of this ordinance, municipal potable water, storm water (drainage) and wastewater utility facilities may be built, expanded, repaired, maintained, reconfigured, rehabilitated, replaced or upsized if not exempted in Section 3 of this ordinance. These facilities may include but are not limited to water treatment plants, wastewater treatment plants, raw water intakes, pump stations, transmission mains, conduits or service lines, terminal storage reservoirs, and outfall devices provided that:

- i. Such projects shall not have to comply with the requirements of subsection 7(D)(2)(b) of this ordinance, provided that, where practicable, the project does not encroach closer to a water feature than existing operations and development, or for new projects where there are no existing operations or development, that the project does not encroach closer to a water feature than practicable;
- ii. Best management practices will be employed that accomplish the following:
 - (A) Account for watershed assessment information in project design;
 - (B) Minimize the trench area and tree removal within the HCA;
 - (C) Utilize and maintain erosion controls until other site stabilization measures are established, post-construction;
 - (D) Replant immediately after backfilling or as soon as effective;
 - (E) Preserve wetland soils and retain soil profiles;
 - (F) Minimize compactions and the duration of the work within the HCA;
 - (G) Complete in-water construction during appropriate seasons, or as approved within requisite Federal or State permits;
 - (H) Monitor water quality during the construction phases, if applicable; and
 - (I) Implement a full inspection and monitoring program during and after project completion, if applicable.

Section 8. Variances

- A. The purpose of this Section is to ensure that compliance with this ordinance does not cause unreasonable hardship. To avoid such instances, the requirements of this ordinance may be varied. Variances are also allowed when strict application of this ordinance would deprive an owner of all economically viable use of land.
- B. This Section applies in addition to the standards governing proposals to vary the requirements of the base zone.
- C. Notice of variance applications shall be provided:
 1. Upon receiving an application to vary the requirements of this ordinance, the notice shall be provided to all property owners within **300'** of the subject property inside the urban growth boundary, ~~and within [insert appropriate distance consistent with state law and other local notice provisions] feet of the subject property outside the urban growth boundary~~, to Metro, to any neighborhood or community planning organization recognized by the [city/county] and whose boundaries include the property, and to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property.
 2. Within seven (7) days of a decision on the variance, notice of the decision shall be provided to Metro, to any neighborhood or community planning organization recognized by the City and whose boundaries include the property, to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries

include the property, and to any other person required to receive notice of such a decision under state law.

- D. Hardship Variance.** Variances to avoid unreasonable hardship caused by the strict application of this ordinance are permitted subject to the criteria set forth in this section. To vary from the requirements of this ordinance, the applicant must demonstrate the following:
1. The variance is the minimum necessary to allow the proposed use or activity;
 2. Unless the proposed variance is from mitigation under Section 6(E) or mitigation under Section 7(B), (C), or (D)(1)(b) and D(2)(d), the proposed use will comply with those standards, as applicable; and
 3. The proposed use complies with the standards of the base zone.
- E. Buildable Lot Variance.** A variance to avoid the loss of all economically viable use of a lot that is partially inside a HCA is permitted. Applicants must demonstrate the following:
1. Without the proposed variance, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that:
 - a. The proposed use cannot meet the standards in Section 8(D) (hardship variance); and
 - b. No other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.
 2. The proposed variance is the minimum necessary to allow for the requested use;
 3. The proposed variance will comply with Section 6(E) or 7(B), (C), or D(1)(b) and D(2)(d) (mitigation); and
 4. The proposed use complies with the standards of the base zone.
- F. Variance Conditions.** Conditions may be imposed to limit any adverse impacts that may result from granting any variance.

Section 9. Map Administration and HCA Verification

- A. Exempt development.** Development that is outside of any HCA and no closer than 100 feet to the border of an HCA (including all impervious surfaces and landscaping), based on the HCA map, may proceed without having to comply with this section or any other portion of this ordinance except for Section 5, Construction Management Plan. ~~*[Note: At the time a city or county adopts this model ordinance and its HCA map, such city or county may decrease the 100-foot "safe harbor" distance provided in this section to no fewer than 25 feet provided that it conducts additional analysis to correct any misalignment errors of the type described in section 9(E)(2) of this ordinance and adopts sufficient findings of fact to justify such corrections.]*~~
- B.** Verification of the location of HCAs as described in this section shall not be considered a comprehensive plan amendment. *[Note: Adjustment of the mapped HCA shall only proceed as provided in this ordinance.]*

- C. Map verification is available to correct for mistakes in the location of HCAs on properties. Map verification shall not be used to dispute whether identified HCAs provide the ecological functions that they are assumed to provide based on the ecological criteria used to identify them. If an applicant believes that a properly identified HCA does not provide the ecological functions that it has been identified as providing, then the applicant may use the discretionary review process to decrease the amount of mitigation required for disturbing such an area.
- D. The map verification requirements described in this section 9 of this ordinance shall be met at the time an applicant requests a building permit, grading permit, tree removal permit, land division approval, or some other land use decision. A property owner, or another person with the property owner's consent, may request to verify the location of HCAs on a real property lot or parcel pursuant to this Section 9 of this ordinance at other times, but whether the City ~~[city/county]~~ processes such request shall be at the Planning Director's sole discretion, based on staff availability, funding resources, and policy priorities. If a person receives a verification separate from a simultaneous request for a building permit, grading permit, tree removal permit, land division approval, or some other land use decision, then the person may use the verification to satisfy the requirements of this section at any time up until five years after the date the verification was issued.
- E. Notwithstanding any other provisions of this Section 9 of this ordinance, for utility projects undertaken by public utilities across property that is not owned by the utility, the utility shall not be required to map or provide any information about the property except for the area within 300 feet of the location of the proposed disturbance area of the utility's project.
- F. **Basic Verification Approaches.** The basic verification approaches described in subsections 9(F)(1) through (3) of this ordinance are available for applicants who believe either (1) that the HCA map is accurate, (2) that there is a simple incongruity between the HCA map and the boundary lot lines of a property, or (3) that the property was developed prior to *[insert date—either the effective date of this ordinance or two years after acknowledgement of the regional program, whichever is earlier]*.
1. ***Applicant Believes HCA Map is Accurate.*** An applicant who believes that the HCA map is accurate may comply with this subsection 9(F)(1) of this ordinance. The applicant shall submit the following information regarding the real property lot or parcel:
 - a. A detailed property description;
 - b. A copy of the applicable HCA map;
 - c. A summer 2005 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);
 - d. The information required to be submitted under Section 6 or 7 of this ordinance if the applicant proposes development within any HCA under those provisions; and
 - e. Any other factual information that the applicant wishes to provide to support map verification.
 2. ***Obvious Misalignment Between Mapped Habitat and Property Lot Lines.*** In some cases, the mapped vegetative cover layer in the GIS database might not align precisely with the tax lot layer that shows property lines, resulting in a HCA map that is also misaligned with tax lot lines. An applicant who believes that the HCA map is inaccurate

based on such an obvious misalignment may comply with this subsection 9(F)(2) of this ordinance. The applicant shall submit the following information regarding the real property lot or parcel:

- a. The information described in subsections 9(F)(1)(a) through (e) of this ordinance; and
- b. A documented demonstration of the misalignment between the HCA map and the property's tax lot boundary lines. For example, an applicant could compare the boundary lot lines shown for roads within 500 feet of a property with the location of such roads as viewed on the aerial photograph of the area surrounding a property to provide evidence of the scale and amount of incongruity between the HCA maps and the property lot lines, and the amount of adjustment that would be appropriate to accurately depict habitat on the property.

3. ***Property Developed Between Summer 2002 and 2007.*** Where a property was developed between the summer of 2002 (when the aerial photo used to determine the regional habitat inventory was taken) and *[insert date that the regional program was approved]*, the applicant shall submit the following information regarding the real property lot or parcel:

- a. The information described in subsection 9(F)(1)(a) through (e) of this ordinance;
- b. A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);
- c. Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and *insert date that the regional program was approved*; and
- d. A clear explanation and documentation, such as supporting maps or drawings or an more recent aerial photograph, indicating the new development that has occurred and where previously identified habitat no longer exists because it is now part of a developed area.

4. ***Decision Process.*** The Planning Director's map verification decision made pursuant to this subsection 9(F) of this ordinance may be an administrative decision. The Planning Director's decision shall be based on consideration of the information submitted by the applicant, any information collected during a site visit to the lot or parcel, any information generated by prior map verifications that have occurred on adjacent properties, and any other objective factual information that has been provided to the Planning Director.

- G. **Detailed Verification Approach.** All applicants who believe that the HCA map is inaccurate for a reason other than as described in subsections 9(F)(2) and (3) may file a verification request consistent with this subsection 9(G) of this ordinance.

1. ***Application requirements.*** The applicant shall submit a report prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. Such report shall include:

- a. A description of the qualifications and experience of all persons that contributed to the report, and, for each person that contributed, a description of the elements of the analysis to which the person contributed;
 - b. The information described in subsections 9(F)(1)(a) through (e) of this ordinance;
 - c. The information described in subsections 9(F)(2)(b) and 9(F)(3)(b) through (d) of this ordinance, if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel;
 - d. Additional aerial photographs if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert's interpretation of the additional information they provide;
 - e. A map showing the topography of the property shown by contour lines of 2 foot intervals for slopes less than 15% and by 10 foot intervals for slopes 15% or greater; and
 - f. Any additional information necessary to address each of the verification criteria in subsection 9(G)(4) of this ordinance, a description of where any HCAs are located on the property based on the application of the verification criteria in subsection 9(G)(4) of this ordinance, and factual documentation to support the analysis.
2. **Notice requirements.** Upon receipt of a completed application pursuant to this subsection 9(G) of this ordinance, the Planning Director shall provide notice of the map verification application to Metro, to the owners of record of property on the most recent property tax assessment roll where such property is located within 100 feet of the subject property, *[Note: A city or county may increase the 100 feet neighbor notification requirement if it so chooses]* to any neighborhood or community planning organization recognized by the governing body and whose boundaries include the property, and to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property. The notice provided by the jurisdiction shall comply with the notice requirements of ORS 197.763. The Planning Director shall accept written public comments regarding the matter during a public comment period.
 3. **Decision process.** The Planning Director shall apply the verification criteria in subsection 9(G)(4) of this ordinance to confirm the location of any HCAs based on the HCA map, the information submitted by the applicant, any information received during the public comment period, and any additional information readily available, including information collected during a site visit to the lot or parcel. The applicant and all persons that submitted written comments shall be provided with a written explanation of the Planning Director's decision.
 4. **Verification Criteria.** The verification of the location of HCAs shall be according to the four-step process described in this subsection 9(G)(4) of this ordinance. A verification application shall not be considered complete and shall not be granted unless all the information required to be submitted with the verification application has been received.
 - a. **Step 1. Verifying boundaries of inventoried riparian habitat.** Locating habitat and determining its riparian habitat class is a four-step process:
 - i. Locate the Water Feature that is the basis for identifying riparian habitat.
 - (A) Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.

- (B) Locate all flood areas within 100 feet of the property.
 - (C) Locate all wetlands within 150 feet of the property based on the Local Wetland Inventory map (if completed) and on the Metro 2002 Wetland Inventory Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742). Identified wetlands shall be further delineated consistent with methods currently accepted by the Oregon Division of State Lands and the U.S. Army Corps of Engineers.
- ii. Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.
 - (A) Vegetative cover status shall be as identified on the Metro Vegetative Cover Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
 - (B) The vegetative cover status of a property may be adjusted only if (1) the property was developed prior to the time the regional program was approved (see subsection 9(F)(3) of this ordinance, above), or (2) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the definitions of the different vegetative cover types provided in Section 11 of this ordinance.
 - iii. Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% (using the methodology as described in *[insert a reference to the city or county code section that describes the methodology used to identify Water Quality Resource Areas pursuant to Title 3 of the Urban Growth Management Functional Plan]*); and
 - iv. Identify the riparian habitat classes applicable to all areas on the property using Table 6 and the data identified in subsections 9(G)(4)(a)(i) through (iii).

Table 6: Method for Locating Boundaries of Class I and II Riparian Areas.

Distance in ft from Water Feature	Development/Vegetation Status ¹			
	Developed areas not providing vegetative cover	Low structure vegetation or open soils	Woody vegetation (shrub and scattered forest canopy)	Forest Canopy (closed to open forest canopy)
Surface Streams				
0-50	Class II	Class I	Class I	Class I
50-100		Class II ²	Class I	Class I
100-150		Class II ² if slope>25%	Class II ² if slope>25%	Class II ²
150-200		Class II ² if slope>25%	Class II ² if slope>25%	Class II ² if slope>25%
Wetlands (Wetland feature itself is a Class I Riparian Area)				
0-100		Class II ²	Class I	Class I
100-150				Class II ²
Flood Areas (Undeveloped portion of flood area is a Class I Riparian Area)				
0-100			Class II ²	Class II ²

¹The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as “forest canopy” the forested area had to be part of a larger patch of forest of at least one acre in size.

²Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro’s Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

- b. **Step 2. Verifying boundaries of inventoried upland habitat in future urban growth boundary expansion areas.** Upland habitat was identified based on the existence of contiguous patches of forest canopy, with limited canopy openings. The “forest canopy” designation is made based on analysis of aerial photographs, as part of determining the vegetative cover status of land within the region. Upland habitat shall be as identified on the HCA map unless corrected as provided in this subsection.
 - i. Except as provided in subsection 9(G)(4)(b)(ii), vegetative cover status shall be as identified on the Metro Vegetative Cover Map used to inventory habitat at the time the area was brought within the urban growth boundary (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
 - ii. The only allowed corrections to the vegetative cover status of a property are as follows:
 - A) To correct errors made when the vegetative status of an area was determined based on analysis of the aerial photographs used to inventory the habitat at the time the area was brought within the urban growth boundary. For example, an area may have been identified as “forest canopy” when it can be shown that such area has less than 60% canopy crown closure, and therefore should not have

been identified as “forest canopy.” The perimeter of an area delineated as “forest canopy” on the Metro Vegetative Cover Map may be adjusted to more precisely indicate the dripline of the trees within the canopied area provided that no areas providing greater than 60% canopy crown closure are de-classified from the “forest canopy” designation. To assert such errors, applicants shall submit an analysis of the vegetative cover on their property using the aerial photographs that were used to inventory the habitat at the time the area was brought within the urban growth boundary and the definitions of the different vegetative cover types provided in Section 11 of this ordinance; and

- (B) To remove tree orchards and Christmas tree farms from inventoried habitat; provided, however, that Christmas tree farms where the trees were planted prior to 1975 and have not been harvested for sale as Christmas trees shall not be removed from the habitat inventory.
- iii. If the vegetative cover status of any area identified as upland habitat is corrected pursuant to subsection 9(G)(4)(b)(ii)(A) to change the status of an area originally identified as “forest canopy,” then such area shall not be considered upland habitat unless it remains part of a forest canopy opening less than one acre in area completely surrounding by an area of contiguous forest canopy.
- c. **Step 3. Urban Development Value of the Property.** The urban development value of property designated as regionally significant habitat is depicted on the Metro Habitat Urban Development Value Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
 - i. A property’s urban development value designation shall be adjusted upward if the Metro 2040 Design Type designation for the property lot or parcel has changed from a category designated as a lower urban development value category to one designated as a higher urban development value category. 2040 Design Type designations are identified on the Metro 2040 Applied Concept Map (also available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).
 - ii. Properties in areas designated on the 2040 Applied Concept Map as the Central City, Regional Centers, Town Centers, and Regionally Significant Industrial Areas are considered to be of high urban development value; properties in areas designated as Main Streets, Station Communities, Other Industrial Areas, and Employment Centers are of medium urban development value; and properties in areas designated as Inner and Outer Neighborhoods and Corridors are of low urban development value.
 - iii. As designated in Title 13 of Metro’s Urban Growth Management Functional Plan, properties owned by a regionally significant educational or medical facility are designated as high urban development value.
- d. **Step 4. Cross-Reference Habitat Class With Urban Development Value.** City and county verification of the locations of High, Moderate, and Low Habitat Conservation Areas shall be consistent with Tables 7 and 8.

Table 7: Method for Identifying Habitat Conservation Areas (“HCA”)

Fish & wildlife habitat classification	High Urban development value¹	Medium Urban development value²	Low Urban development value³	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+ ⁴
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+ ⁴
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA ⁵ / High HCA+ ⁴
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA ⁵ / High HCA+ ⁴

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.

¹ Primary 2040 design type: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas

² Secondary 2040 design type: Main Streets, Station Communities, Other Industrial areas, and Employment Centers

³ Tertiary 2040 design type: Inner and outer neighborhoods, Corridors

⁴ Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.

⁵ All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Table 8: Method for Identifying Habitat Conservation Areas (“HCA”) in Future Urban Growth Boundary Expansion Areas

Fish & wildlife habitat classification	High Urban development value¹	Medium Urban development value²	Low Urban development value³	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+ ⁴
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+ ⁴
Class A Upland Wildlife	Low HCA	Moderate HCA	Moderate HCA	High HCA / High HCA ⁵ / High HCA+ ⁴
Class B Upland Wildlife	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA ⁵ / High HCA+ ⁴

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.

¹ Primary 2040 design types: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas

² Secondary 2040 design types: Main Streets, Station Communities, Other Industrial areas, and Employment Centers

³ Tertiary 2040 design types: Inner and outer neighborhoods, Corridors

⁴ Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.

⁵ All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Section 10. Severability

The provisions of this ordinance are severable. If any section, clause, or phrase of this ordinance is adjudged to be invalid by a court of competent jurisdiction, the decision of that court shall not affect the validity of the remaining portions of this ordinance.

Section 11. Definitions

Unless specifically defined in this section, words or phrases used in this ordinance shall be interpreted to give them the same meaning as they have in common usage and to give this ordinance its most reasonable application.

Building site - The area on a lot or parcel that is designated to contain a structure, impervious surface, or non-native landscaping.

Building footprint - The area that is covered by buildings or other roofed structures. A roofed structure includes any structure more than 6 feet above grade at any point, and that provides an impervious cover over what is below. Building footprint also includes uncovered horizontal structures such as decks, stairways and entry bridges that are more than 6 feet above grade. Eaves are not included in building coverage. Underground facilities and structures are defined based on the foundation line.

Developed areas not providing vegetative cover - are areas that lack sufficient vegetative cover to meet the one-acre minimum mapping units of any other type of vegetative cover.

Developed floodplain - Any man-made change to improved or unimproved lands within a FEMA defined floodplain, including but not limited to buildings or other structures, dredging, filling, grading, paving, excavation, or storage of equipment and materials.

Development - Any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than: either 10 percent or 20,000 square feet of the vegetation in the Habitat Conservation Areas on the lot is defined as development. When individual trees are removed, the area contained within the tree's drip line shall be the basis for calculating the square footage of vegetation removed.

Development does not include the following: (a) Stream enhancement or restoration projects approved by cities and counties; or (b) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of this ordinance.

Disturb - Man-made changes to the existing physical status of the land, which are made in connection with development. The following uses are excluded from the definition:

- enhancement or restoration of the Water Quality Resource Area;
- planting native cover identified in the Metro Native Plant List.

Disturbance Area - An area that contains all temporary and permanent development, exterior improvements, and staging and storage areas on the site. For new development the disturbance area must be contiguous. The disturbance area does not include agricultural and pasture lands or naturalized areas.

Dripline - The outermost edge of a tree's canopy; when delineating the drip line on the ground, it will appear as an irregularly shaped circle defining the canopy's perimeter.

Ecological functions - The primary biological and hydrologic characteristics of healthy fish and wildlife habitat. Riparian ecological functions include microclimate and shade, streamflow moderation and water storage, bank stabilization and sediment/pollution control, sources of

large woody debris and natural channel dynamics, and organic material sources. Upland wildlife ecological functions include size of habitat area, amount of habitat with interior conditions, connectivity of habitat to water resources, connectivity to other habitat areas, and presence of unique habitat types.

Effective Impervious Area - A subset of total impervious area that is hydrologically connected via sheet flow or discrete conveyance to a drainage system or receiving body of water

Emergency - Any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

Engineer - A registered professional engineer licensed by the State of Oregon.

Enhancement - The process of improving upon the natural functions and/or values of an area or feature that has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate beneficial processes and features that occur naturally.

Erosion - Erosion is the movement of soil particles resulting from actions of water or wind.

Fill - Any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a wetland or floodplain for the purposes of development or redevelopment.

Floodplain - The land area identified and designated by the United States Army Corps of Engineers, the Oregon Division of State Lands, FEMA, or (identify name) county/city that has been or may be covered temporarily by water as a result of a storm event of identified frequency. It is usually the flat area of land adjacent to a stream or river formed by floods.

Floodway - The portion of a watercourse required for the passage or conveyance of a given storm event as identified and designated by the (identify name) city/county pursuant to this Ordinance. The floodway shall include the channel of the watercourse and the adjacent floodplain that must be reserved in an unobstructed condition in order to discharge the base flood without flood levels by more than one foot.

Flood Management Areas - All lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

Flood areas - Those areas contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and all lands that were inundated in the February 1996 flood (note that areas that were mapped as flood areas but were filled to a level above the base flood level prior to September 30, 2005, consistent with all applicable local, state, and federal laws shall no longer be considered habitat based on their status as flood areas).

Floor Area Ratio (FAR) - The amount of floor area in relation to the amount of site area, expressed in square feet. For example, a floor area ratio of 2 to 1 means two square feet of floor area for every one square foot of site area.

Forest canopy - Areas that are part of a contiguous grove of trees of one acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 feet of the relevant water feature.

Habitat Conservation Area or HCA - An area identified on the Habitat Conservation Areas Map and subject to the development standards.

Habitat-friendly development - A method of developing property that has less detrimental impact on fish and wildlife habitat than does traditional development methods. Examples include clustering development to avoid habitat, using alternative materials and designs such as pier, post, or piling foundations designed to minimize tree root disturbance, managing storm water on-site to help filter rainwater and recharge groundwater sources, collecting rooftop water in rain barrels for reuse in site landscaping and gardening, and reducing the amount of effective impervious surface created by development.

Invasive non-native or noxious vegetation - Plant species that are listed as nuisance plants or prohibited plants on the Metro Native Plant List as adopted by Metro Council resolution because they are plant species that have been introduced and, due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities.

Lot - Lot means a single unit of land that is created by a subdivision of land. (ORS 92.010).

Low structure vegetation or open soils - Areas that are part of a contiguous area one acre or larger of grass, meadow, crop-lands, or areas of open soils located within 300 feet of a surface stream (low structure vegetation areas may include areas of shrub vegetation less than one acre in size if they are contiguous with areas of grass, meadow, crop-lands, orchards, Christmas tree farms, holly farms, or areas of open soils located within 300 feet of a surface stream and together form an area of one acre in size or larger).

Mitigation - The reduction of adverse effects of a proposed project by considering, in the order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the affected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas or habitat conservation areas.

Native vegetation or native plant - Vegetation listed as a native plant on the Metro Native Plant List as adopted by Metro Council resolution and any other vegetation native to the Portland metropolitan area provided that it is not listed as a nuisance plant or a prohibited plant on the Metro Native Plant List.

Open space - Land that is undeveloped and that is planned to remain so indefinitely. The term encompasses parks, forests and farmland. It may also refer only to land zoned as being available to the public, including playgrounds, watershed preserves and parks.

Owner or property owner - The person who is the legal record owner of the land, or where there is a recorded land sale contract, the purchaser thereunder.

Parcel - Parcel means a single unit of land that is created by a partitioning of land. (ORS 92.010).

Partition - Partition means to divide land into two or three parcels of land within a calendar year. (ORS 92.010)

Phased development project - A phased development plan includes the following:

- A site plan showing the proposed final development of the site and phases, including the

- initial and interim phases.
- A written statement describing each phase, including the potential uses, and the approximate timeline for each phase of development.

Practicable - means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose and probable impact on ecological functions. The practicability of a development option shall include consideration of the type of HCA that will be affected by the proposed development. For example, High HCAs have been so designated because they are areas that have been identified as having lower urban development value and higher-valued habitat, so it should be more difficult to show that alternative development options that avoid the habitat are not practicable. On the other hand, Low HCAs have been so designated because they are areas that have been identified as having higher urban development value and lower-valued habitat, so it should be less difficult to show that alternative development options that avoid the habitat are not practicable.

Redevelopment – Development that occurs on sites that have previously been developed.

Restoration - The process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

Riparian - Those areas associated with streams, lakes and wetlands where vegetation communities are predominately influenced by their association with water.

Routine repair and maintenance - Activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

Set-back adjustment - The placement of a building a specified distance away from a road, property line or protected resource.

Significant negative impact - An impact that affects the natural environment, considered individually or cumulatively with other impacts on the HCA, to the point where existing fish and wildlife habitat functional values are degraded.

Statewide Land Use Planning Goal 5 - Oregon's statewide planning goal that addresses open space, scenic and historic areas, and natural resources. The purpose of the goal is to conserve open space and protect natural and scenic resources.

Steep slopes - Steep slopes are those slopes that are equal to or greater than 25%. Steep slopes have been removed from the "buildable lands" inventory and have not been used in calculations to determine the number of acres within the urban growth boundary that are available for development.

Stormwater pre-treatment facility - Any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

Stream - A body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

Structure - A building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles or irrigation system components, that are not customarily regulated through zoning codes.

Subdivision - A Subdivision of land means to divide land into four or more lots within a calendar year. (ORS 92.010).

Top of Bank - The same as “bankful stage” defined in OAR 141-85-010.

Urban Development Value - The economic value of a property lot or parcel as determined by analyzing three separate variables: assessed land value, value as a property that could generate jobs (“employment value”), and the Metro 2040 design type designation of property. The urban development value of all properties containing regionally significant fish and wildlife habitat is depicted on the Metro Habitat Urban Development Value Map

Urban Growth Boundary or UGB - means an urban growth boundary adopted pursuant to ORS chapter 197.

Utility facilities - Buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television. Utility facilities do not include stormwater pre-treatment facilities.

Variance - means a discretionary decision to permit modification of the terms of an implementing ordinance based on a demonstration of unusual hardship or exceptional circumstances unique to a specific property.

Water-dependent - A use which can be carried out only on, in, or adjacent to water because it requires access to the water for waterborne transportation or recreation. Water-dependent also includes development, which by its nature, can be built only on, in, or over water. Bridges supported by piers or pillars, as opposed to fill, are water-dependent development.

Water feature - All rivers, streams (regardless of whether they carry year-round flow, i.e., including intermittent streams), springs which feed streams and wetlands and have year-round flow, Flood Management Areas, wetlands, and all other bodies of open water.

Water Quality Resource Area - is an area identified by a city or county as a Water Quality Resource Area in order to comply with Title 3 of Metro’s Urban Growth Management Functional Plan, Metro Code sections 3.07.310- 3.07.370.

Watershed - A watershed is a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake or wetland.

Wetlands - Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

Woody vegetation - Areas that are part of a contiguous area one acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of a surface stream.

Attachment 2
197.015 Definitions for ORS chapters 195, 196 and 197.

(10) “Land use decision”:

(a) Includes:

- (A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:
 - (i) The goals;
 - (ii) A comprehensive plan provision;
 - (iii) A land use regulation; or
 - (iv) A new land use regulation;
- (B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or
- (C) A decision of a county planning commission made under ORS 433.763;

(b) Does not include a decision of a local government:

- (A) That is made under land use standards that *do not require interpretation* or the exercise of policy or legal judgment;
 - (B) That approves or denies *a building permit issued under clear and objective land use standards*;
 - (C) *That is a limited land use decision*;
 - (D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a *transportation facility* that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;
 - (E) That is an expedited land division as described in ORS 197.360;
 - (F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquid petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460; or
 - (G) That approves or denies approval of a *final subdivision or partition plat* or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan;
- (c) Does not include a decision by a school district to close a school;
- (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and
- (e) Does not include:
- (A) A writ of mandamus issued by a circuit court in accordance with ORS

215.429 or 227.179; or

- (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.

(12) “Limited land use decision”:

(a) Means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

- (A) The approval or denial of a *tentative subdivision or partition plan*, as described in ORS 92.040 (1).
- (B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to *site review and design review*.

(b) Does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

City of Milwaukie HCA and WQR

Legend

 City Boundary

WQR

 Vegetated Corridor

 Wetland Buffer

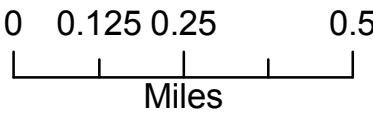
 Water Body

HCA Value

 High

 Moderate

 Low



Author: City of Milwaukie Planning Department
Revised: May 2009
Source: City of Milwaukie GIS, Clackamas County GIS,
Metro Data Resource Center
All data depicted is approximate.
Not suitable for building or engineering purposes.



MILWAUKIE
Dogwood City of the West

