

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, June 22, 2010
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Nick Harris, Vice Chair via phone
Chris Wilson
Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director

COMMISSIONERS ABSENT

Teresa Bresaw
Lisa Batey
Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Klein 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 27, 2010

Chair Klein moved to continue the April 27, 2010 meeting minutes to the Special Planning Commission meeting on June 29, 2010. Commissioner Wilson 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 was none.

5.0 Public Hearings

5.1 Summary: 19th Ave Replat and Duplex
Applicant/Owner: Gary Michael and Carolyn Tomei
Address: 11907 SE 19th Ave
File: WG-10-01, WQR-10-01, VR-10-01, R-10-01
Staff Person: Brett Kelter

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

Commissioner Gamba moved to continue the public hearing for WG-10-01, WQR-10-01, VR-10-01, R-10-01 to the Special Planning Commission meeting on June 29, 2010. Commission Wilson seconded the motion, which passed unanimously.

6.0 Worksession Items - None

7.0 Planning Department Other Business/Updates – None

8.0 Planning Commission Discussion Items – None

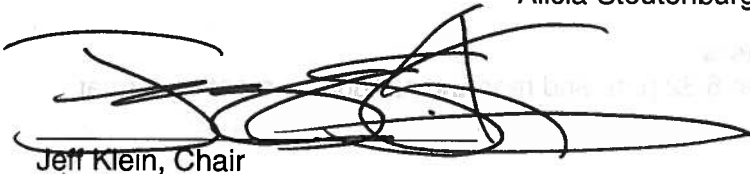
9.0 Forecast for Future Meetings:

- | | |
|---------------|--|
| July 13, 2010 | 1. Public Hearing: WQR-10-02, CSU-10-06 Pond House Deck & Landscaping |
| | 2. Worksession: Review Procedures Code Project briefing part |
| July 27, 2010 | 1. Public Hearing: CPA-10-01 North Clackamas Park North Side Master Plan |

Meeting adjourned at 6:41 p.m.

Respectfully submitted,

Alicia Stoutenburg, Administrative Specialist II



Jeff Klein, Chair



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday June 22, 2010, 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 April 27, 2010
- 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: 19th Ave Replat and Duplex
Applicant/Owner: Gary Michael and Carolyn Tomei
Address: 11907 SE 19th Ave
File: WG-10-01, WQR-10-01, VR-10-01, R-10-01
Staff Person: Brett Kelter
- 6.0 Worksession Items**
- 7.0 Planning Department Other Business/Updates**
 - 7.1 Suggested change to PC packets – send Applicant materials to PC earlier?
- 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 13, 2010
 - 1. Public Hearing: WQR-10-02, CSU-10-06 Pond House Deck & Landscaping
 - 2. Worksession: Review Procedures Code Project briefing part 2
 - July 27, 2010
 - 1. Public Hearing: CPA-10-01 North Clackamas Park North Side Master Plan

Milwaukie Planning Commission Statement

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

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
Nick Harris, Vice Chair
Lisa Batey
Teresa Bresaw
Scott Churchill
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

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PLANNING COMMISSION
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10722 SE Main Street
TUESDAY, April 27, 2010
6:30 PM

COMMISSIONERS PRESENT

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Scott Churchill
Teresa Bresaw
Chris Wilson

STAFF PRESENT

Katie Mangle, Planning Director
Brett Kelter, Associate Planner
Ryan Marquardt, Associate Planner
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Jeff Klein, Chair
Lisa Batey

1.0 Call to Order – Procedural Matters

Vice Chair Harris 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 February 23, 2010

Ms. Mangle stated that Chair Klein submitted two corrections to the minutes via email. One was to add, “*Chair Klein opened the discussion about officer elections. Commissioner Bresaw nominated Chair Klein for another year.*” prior to Line 615 on Page 19 to put the paragraph into context. He also questioned whether he stated “12 to 24 months” in Line 617.

The Commission agreed Chair Klein had stated “12 to 24 months” so no further changes were needed.

Commissioner Bresaw moved to approve the February 23, 2010, Planning Commission meeting minutes as corrected. **Commissioner Wilson** seconded the motion, which passed unanimously.

2.2 March 9, 2010

Commissioner Bresaw moved to approve the March 9, 2010, Planning Commission meeting minutes as written. **Commissioner Wilson** seconded the motion, which passed

unanimously.

Ms. Mangle noted the Design and Landmarks Committee (DLC) would review their portion of the March 9, 2010, minutes at their meeting on April 28, 2010.

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 was none.

5.0 Public Hearings

5.1 Summary: Parking Chapter amendments *cont'd from 3/23/10*

Applicant/Owner: City of Milwaukie

File: ZA-10-01

Staff Person: Ryan Marquardt

Vice Chair Harris called the hearing to order and read the conduct of legislative hearing format into the record. He asked if any Commissioners had any ex parte contacts to declare. There were none.

No Commissioners abstained and no Commissioner's participation was challenged by any member of the audience.

Ryan Marquardt, Associate Planner, presented the staff report via PowerPoint, providing responses to the issues the Commission asked staff to address at the March 23, 2010, hearing, which was continued. Those issues included:

- Doing more Neighborhood District Association (NDA) outreach about Metro's minimum parking space requirements for single-family residences and the impact those regulations have had on other jurisdictions.
- Considering alternatives to, and do NDA outreach about, limiting large parking areas in front yards.
- He clarified that garages would not interfere with the proposed front yard parking limitations because garages are required to be placed behind the required front yard

- 75 setback. The proposed amendment limited parking in the front yard, which is the
76 area between the dwelling and the front property line.
- 77 • **Ms. Mangle** explained one way to visualize it was as a funnel, with the pinch point as
78 the 20-ft curb cut width. The driveway could be wider as it went farther into the
79 property to access a 3-car garage, for example. It was most restrictive at the curb cut
80 with the new restrictions being in the setback.
 - 81 • **Mr. Marquardt** added the advantage of the percentage/ratio-based regulation is that
82 larger properties would have some flexibility in parking design; narrow lots with small
83 front yard setbacks could have a reasonable amount of parking and the ability to
84 pave the entire front yard for parking would be curbed.
 - 85 • Comments from NDAs indicated that 50% still allowed for too much paving. Staff
86 noted, however, that the Code had to apply to a wide variety of lots, and no current
87 regulations addressed how much front yard area could be utilized for parking.
 - 88 • Consider suggestions provided by the Commission about how commercial, RV, and boat
89 parking might be amended.
 - 90 • Additional proposed amendments included housekeeping items such as correcting
91 scriveners' errors and references as well as a policy change regarding the prohibition of
92 roosters within the city at the request of the Code Compliance Department.
 - 93 • **Ms. Mangle** explained staff was already changing this Code section regarding roosters
94 as part of the housekeeping list because it contained provisions that are unenforceable.
95 The Code Compliance Department had talked to the NDAs and did outreach. The
96 rooster issue was raised for the Commission's consideration.
 - 97 • He noted that the blue sheet distributed to the Commission would replace Subsection
98 19.507.1. The underlined section above the graphic was basically to incorporate comments
99 from the Hector Campbell NDA, which were received right before the packet was due and
100 were not included in the staff report.
 - 101 • The actual proposed amendment was contained in Attachment 1, Exhibit B of the
102 packet, which was a clean copy of the Parking Chapter. Exhibit D had the clean copy of
103 all other associated amendments, housekeeping, and policy change that were not part of
104 the Parking Chapter.
 - 105 • The Code and commentary attachment included with the packet had a description of the
106 changes between the March 23rd packet and the packet presented tonight. It was not a
107 complete commentary on all of the Parking Chapter, but just explained what was
108 different between the two packets.

109

110 **Mr. Marquardt** responded to questions and comments from the Commission as follows:

- 111 • When redoing a driveway, a permit was required for anything done in the right-of-way, such
112 as a curb cut or driveway approach. A permit was not required to widen a driveway on the
113 site, but the owner would have to comply with the Parking Chapter standards, including the
114 minimum vegetative requirements.
- 115 • **Ms. Mangle** clarified that many of the new standards were most effective and
116 enforceable at the time of a building permit for a whole site review; the standards would
117 be in place for new development.
- 118 • A homeowner could pave their front yard for low maintenance as long as they met the
119 vegetation requirement. Under the proposed regulations, some physical separation would
120 be required so the area was not entirely used for parking. For example, a play area could be
121 paved, but would have to have something physical to convince staff that it was not part of a
122 parking area.

123

124 **Commissioner Churchill** stated that he had a huge problem with prohibiting roosters as a
125 housekeeping amendment in this Parking Code update. It was fine to address the issue in the
126 Municipal Code, but not by sliding it in under the Parking Code revisions. He would have severe
127 problems participating in such a vote tonight.

128

129 **Mr. Marquardt** continued, responding to questions from the Commission:

- 130 • Thresholds of development were set up so when doubling the floor area or development on
131 a site, the applicant/owner was expected to come into full compliance with the Parking
132 Standards. This applied to commercial and residential properties. When a structure was
133 increased by less than double the size, the standards required that the area be brought
134 closer to compliance, with those improvements capped at 10% of the permit value. The list
135 of standards indicated what elements of parking had to come closer to compliance. A
136 remodel that did not result in increased floor area was exempt from the Parking Chapter
137 requirements.
- 138 • The commercial vehicle parking rules were Code compliance rules that property owners
139 were expected to comply with on an ongoing basis. Complaints were received about
140 commercial vehicles parked in residential areas, which drew staff's attention to the problems
141 with the standards.

- Developing property had to be done correctly within the guidelines. The Romanian Baptist Church graveling their property did not meet the surface requirements for parking under the existing or proposed Code. The City applied the existing Code and issued a citation that was not upheld.
- Gravel was allowed for excess parking areas, such as behind the house or on the side yard of a wide lot, but not within front or side yard setbacks. Staff receives requests for building a shop or additional garage in the back yard on large lots. The owners do not always want a paved driveway to the area, so gravel was generally acceptable, but it should present a nice appearance to the neighborhood and not adversely impact surrounding properties. The side yard setback requirement was an effort to keep gravel out that could get kicked to surrounding properties.

Ms. Mangle read comments from Commissioner Batey who supported adoption of the proposed amendments with one exception. She strongly supported Option 1 as proposed, which required 1 parking space outside of the setback, rather than staff's recommendation to not specify a location (Option 2).

- She also read comments emailed from Chair Klein, who supported the proposal without further comment as his questions had been addressed.

Mr. Marquardt clarified that Portland, Lake Oswego, and Clackamas County had standards similar to Option 1 that were implemented when they brought their Codes into compliance with Metro's requirements about 10 years ago. Staff had not received feedback about how the requirement was working in those jurisdictions.

- He explained that Option 1 would require a minimum of 1 space located outside of the front or side yard setback. The required front yard setback for most lots in Milwaukie is 20 ft and street side yards of 15 ft to 20 ft.
- He confirmed Option 1 allowed for parking 2 cars tandem. It did not change the Code much but did put it in compliance with Metro.

Vice Chair Harris called for public testimony in favor of, opposed, and neutral to the proposed amendments. There was none.

Commissioner Bresaw inquired why the rooster ordinance was brought up at this time and requested details about any complaints received from the public.

176

177 **Tim Salyers, Code Compliance Coordinator**, explained that the City dealt with a noisy rooster
178 case last summer on 34th Ave in the Lake Road neighborhood. The complainant went to the City
179 Council, who asked Code Compliance to look into it. The complaint was addressed through the
180 Prohibited Noises-Designation subsection of the Milwaukie Municipal Code(MMC) 8.08.070.D
181 Animals, which was effective against animals that disturb any person. Since 2006, they had
182 enforced 12 noisy rooster cases, all of which resulted in the roosters being removed from the
183 location.

- 184 • The City does not have jurisdiction to remove a noisy animal, so citations were issued in an
185 attempt to quiet the rooster. Time-wise, this was a good opportunity to move the issue
186 forward, which is why it was before the Commission tonight.
- 187 • The NDAs were contacted and the information presented at numerous meetings. Linwood
188 NDA agreed roosters were not good in the city. Hector Campbell NDA mentioned that they
189 like roosters; however, no rooster compliance cases had occurred in the Hector Campbell
190 neighborhood. Ultimately, there did not seem to be opposition to updating the issue in the
191 Code.

192

193 **Ms. Mangle** explained that 5.1 Page 85 of the packet contained the housekeeping part of
194 changing 19.402.3,C Accessory Uses, General Provisions, deleting a 3-line section that staff
195 already proposed for removal because they were not enforceable. That Code section had been
196 on the Code fix list for some time. Mr. Salyers had requested adding the last sentence, "***The***
197 ***keeping of roosters is prohibited.***" She noted that as with all Code amendment projects, staff
198 tries to do quick Code clean-ups when possible.

199

200 **Commissioner Bresaw** asked if there was a way to keep roosters from crowing.

- 201 • **Mr. Salyers** responded that since 2006, he had done research online and found some
202 suggestions, which he provided to rooster owners. One option was to put the rooster in a
203 small box at night so it could not raise its neck to crow, which seemed inhumane. He noted
204 daytime crowing received as many complaints as early morning and nighttime crowing.

205

206 **Vice Chair Harris** stated that hearing a rooster crow at 4:00 a.m. in July was not fun.

207

208 The Commission took a brief recess and reconvened at 7:50 p.m.

209

Vice Chair Harris closed the public testimony portion of the hearing on File ZA-10-01.

Planning Commission Discussion

Vice Chair Harris suggested addressing the rooster issue first.

Commissioner Bresaw said many people complain when roosters are near them because they crow all the time. Hens cluck all day, but were not as loud as a rooster.

Commissioner Churchill explained his concern was that roosters were a very politically active subject in many communities, including Portland. He did not want it to appear that the Commission was sliding the issue in with a parking ordinance change. Though that may not be the intent, the appearance was there and he could not participate in that. It was healthy to debate and discuss the issue, but not associate it with what was primarily a parking ordinance change.

Commissioner Bresaw stated she knew people who liked chickens but could not think of anyone passionate about roosters. Why would anyone defend having a rooster in a city?

Commissioner Wilson said that it seemed the existing procedure of using citations was working, because eventually the roosters went away. Neighbors still talked with neighbors, and the NDAs were still involved without putting an actual law into effect.

Commissioner Churchill:

- Noted he was not just concerned about roosters because beekeeping was also mentioned in 19.402.3.D.
- **Mr. Marquardt** clarified that there was actually no change in 19.402.3.D. The proposal would retain that as the current language read.
- **Ms. Mangle** explained the strikeout showed the change from the last version that the Commissioners saw in March. That sentence was erroneously added in the March packet, but it did not actually exist in the current Code. Staff did not want to change that section at all, but it was deleted in this packet to show the change from the March version. The only proposed policy changes were in 19.402.3.C.

- Stated that the only way he could participate in the vote was to strike 19.402.3 Accessories, Uses, and General Provisions from the discussion and proposal tonight. He was not saying it should not be addressed, but it should not be tied in with parking. This hearing was noticed and the agenda did not address such a socially active issue as poultry and roosters, which needed to be a separate issue.

Commissioner Wilson asked if Commissioner Churchill would agree with the Parking Chapter if the rooster issue were stricken from it.

Commissioner Churchill stated that he was open to looking at and discussing Option 1. Commissioner Batey's direction seemed reasonable. He was interested in her thoughts about it and was open to discussion about other options as well.

Commissioner Bresaw said that the Lake Road NDA was not aware of the proposed parking changes; they had not gotten those details in their meetings, but they did agree to the rooster issue. She understood it was not on the agenda as a noted item, so the general public might have missed it.

- The Lake Road NDA was not supportive of more restrictions. Option 1 was more of a compromise and less restrictive, though it was more restrictive for new construction.

Ms. Mangle clarified that Option 1 had two requirements: 1 parking space and where it was located. In Option 2, the only requirement was 1 parking space.

Vice Chair Harris clarified that Option 1 would require new construction to provide a minimum of 1 parking space in front of the house, but outside of the setback. He believed he could support Option 1.

Commissioner Churchill added that it essentially created a tandem parking space for 2 cars.

Commissioner Wilson asked if the issue would need to be addressed again in a couple of years to comply with Metro.

- **Ms. Mangle** clarified that if it was not done now, it would eventually have to be done to comply with Metro. This amendment did comply with Metro.

Vice Chair Harris confirmed that the agendas were published a week in advance. He was torn because he understood where the rooster fit in the Parking amendment as housekeeping, but he agreed with the other Commissioners that it was not listed on the agenda, which made it look like it was out of public view. He would like to vote for it, but could not support it now. He read about the issue on the Internet and learned excluding roosters and limiting the number of chickens was a common change in cities across the country. He offered that Victoria charged a per-chicken fee to offset the enforcement of violators.

Commissioner Wilson asked if a motion could be made to approve Option 1 without the rooster clause.

Mr. Monahan confirmed that the Commission could move to approve the staff recommendations, specifically adding Option 1 and deleting the proposed change to 19.402.3.C.

Commissioner Churchill:

- Appreciated staff's clarification that there were no changes regarding colonies of bees, but proposed that 19.402.3.C. and D be addressed together.
- Asked if any changes would be made if the Commission adopted 19.402.3.D.
 - **Mr. Marquardt** answered there would not be any amendment to 19.402.3.D, it would stay as is.
 - **Ms. Mangle** clarified that the version that went to City Council would not include D at all because there was no change.
- Asked if 19.402.3.C and D should be dropped from the approval.
 - **Mr. Monahan** suggested leaving the changes as staff proposed on 19.402.3.C that were vetted through the process, except for deleting the language that prohibited the keeping of roosters.
 - **Ms. Mangle** explained that the language that staff was proposing to delete was unenforceable, and something the City could not require. It was not a policy change and had probably never been enforced, which was why the amendment was truly a housekeeping item.

Commission Bresaw requested clarification because the bee part said the same thing.

- **Ms. Mangle** clarified that the bee section was also on the Code fix list. One rule staff had for the easy Code fixes was that if more than two conversations about it were required, then it was not “easy” and could not be fixed when other Code changes were made. Only obvious solutions that were not policy changes could be included as Code fixes. After several discussions about how to change the bee colony wording without making policy changes, staff determined it was too complex, and it would remain on staff's fix list as a problem.

Commissioner Churchill confirmed that he did not want to include 19.402.3.C or D with the parking changes tonight. The whole subject justified its own stand-alone decision.

Vice Chair Harris asked if Commissioner Churchill would have felt differently if the rooster issue had been on the agenda.

Commissioner Churchill replied possibly, but it would have had to be noticed that way. He was not averse to waiting 2 weeks to vote on the proposal after public notice was given.

Ms. Mangle stated that if the rooster was the only issue, she preferred adoption of the rest of the package tonight. The rooster issue could be pursued in a different project. She thanked the Commission for their consideration.

Mr. Marquardt noted the definition of agriculture in Chapter 19.103 also had a proposed amendment about the rooster prohibition. He recommended striking it also.

Commissioner Churchill moved to adopt Option 1 of Issue #1 of ZA-10-01, Zoning Ordinance Amendment, striking Subsection 19.402.3.C and D completely and striking the proposed change to Chapter 19.103 Definition of agriculture regarding the rooster prohibition. Commissioner Wilson seconded the motion, which passed unanimously.

Ms. Mangle confirmed that the Commission recommended to City Council to change 19.507.1 Residential Driveways and Vehicle Parking Areas, as described on the blue supplemental sheet distributed to the Commission with the Option 1 requirement. Staff would modify the Code language of this section to reflect the policy in Option 1 and she would share it with the Commission as staff prepared it for the City Council.

Vice Chair Harris restated that the Commission recommended to City Council approval of the ZA-10-01 provisions of the blue sheet provided this evening, Option 1, and removing the previously mentioned sections.

6.0 Worksession Items

6.1 Summary: Natural Resources Overlay project briefing

Staff Person: Brett Kelter

Ms. Mangle introduced the Natural Resources Overlay project, stating that the Commissioners had received copies of emails to the Natural Resources Overlay Advisory Group, but had not discussed it since October. Staff has done a lot of work on this challenging project, which has many constraints and choices to make. It would soon become a Planning Commission project, so this update was the start of that transition.

Brett Kelter, Associate Planner, presented the update on the Natural Resources Overlay project via PowerPoint with these additional comments:

- MMC Chapter 19.322 currently addresses Water Quality Resource Regulations and those rules that are directed by the Statewide Planning Goals & Guidelines. Goal 6 regards certain protected streams and delineated wetlands. Metro helped local jurisdictions adopt rules to put cities in compliance with Goal 6 by establishing Title 3. Code language was adopted in 2002 that brought the City into compliance with Metro's Title 3. Title 3 rules apply to Water Quality Resources (WQR), which are protected features with a buffer area around them that include Kellogg Creek, Johnson Creek, properties along the Willamette, and several specific wetland areas.
- The Natural Resources Overlay project was motivated by Habitat Conservation Areas (HCAs), in response to a statewide goal regarding natural resources, not just WQRs. Statewide Goal 5 prompted Metro to adopt the Title 13 Nature in the Neighborhoods program. When Milwaukie comes into compliance with Metro's Title 13, it would also be in compliance with Statewide Goal 5.
- He explained the differences between high, moderate, and low-value HCAs, and indicated a disturbed area of graveled parking and another area with more vegetation and trees. He noted that the HCAs were related to streams. When completing the inventory, Metro was concerned about habitat areas close to streams. The consideration of habitat was less in

areas farther away from streams. Vegetative cover and shrubbery were also considered with regard to habitat.

- He noted that residential lots in the area near the railroad, Pendleton Woolen Mills, and the Springwater Corridor McLoughlin Blvd crossing also abutted the WQR area. The proposed boundary between the residential properties and resource areas was 100 ft, but perhaps a tighter trigger was needed.

Commissioner Wilson:

- Asked if the resource area where sheds or other minor disturbances were allowed was in the 50-ft buffer zone next to the WQR.
 - **Mr. Kelter** responded that the 50-ft buffer zone tied to the WQR was a restricted area. Any building or disturbance in that area had to be approved by the Planning Commission. The darker yellow area on the Water Quality and Natural Resource Area map was designated as HCA, which was a less restrictive area. A homeowner could build a small shed in an HCA without coming to the Planning Commission.
 - Noted sheds typically were used to store lawnmowers, gas, paints, thinners, solvents, et cetera. There was most likely a slope from the yellow area indicated on the map down to stream.
 - **Mr. Kelter** replied that sheds could not be built in the areas within 50 ft of the stream, but a small shed could be built farther from the stream into other habitat areas. The Code could allow the building of a shed, but could not designate what went in the shed, which was probably more of a hazardous material and public safety concern.
 - **Ms. Mangler** clarified that the Prohibition section of the draft code applied to all of the habitat areas and included more egregious things. She agreed with Commissioner Wilson's concerns, but at present, the Prohibition section included no uncontained areas of hazardous materials, no invasive or noxious vegetation, and no outside storage of materials.
 - **Mr. Kelter** added that if a lawnmower in a shed in a resource area was dripping gas, it would take a complaint to the City for it to be corrected because the Code would not catch that. It allowed for construction of a shed to store the lawnmower. If it became an uncontained hazardous material, then the City could act.
- Stated that he did not want more rules than necessary, but wanted to raise the concern.

Commissioner Churchill stated that the City was careful about invasive vegetation, but did not have rules and regulations to monitor egregious conditions. It was a good footnote to indicate that maybe it should tie back into some sort of enforcement or ordinances that did address the issue. The language was pretty loose about storage of uncontained hazardous materials.

Mr. Kelter agreed it could be tricky, especially when trying to keep the balance of not making the Code so prescriptive concerning specific details. At present, if one were storing uncontained hazardous materials, it could be enforced. The Code was not set up to manage at the micro level what was stored in a shed. However, other agencies and rules already existed that regulated hazardous materials.

Commissioner Wilson:

- Asked if the Code required the implementation or creation of a Spill Prevention Countermeasure and Containment plan (SPCC) in commercial areas. If a certain amount of liquids was stored on a property, an SPCC plan needed to be in place.
 - **Ms. Mangle** responded that staff would get back to him about SPCC.
 - **Mr. Kelter** believed areas of overlapping protections existed; however, the proposed Code had not made a connection with spilled liquids because other agencies and rules were in place to address that issue.
 - **Commissioner Bresaw** said that Portland had a spill hotline to report any hazardous spill issues 24 hours a day. Many people did not know that discharging into the stormwater system was prohibited.
 - **Ms. Mangle** added that next week the Council agenda included a different part of the Code that addressed illegal discharge into the stormwater system.
- Asked if the City had taken an inventory of any Underground Injection Control devices (UIC) within the zones.
 - **Ms. Mangle** believed there was a partial inventory, but she would check on it.
- Explained that the City was going to great extent to protect resources, but a direct conduit to subsurface groundwater was in one of the protected zones.
 - **Mr. Kelter** understood that the first step was knowing where the UICs were within the zone and then to know more about how they functioned.
- Stated that based on the 1996 Clean Water Act, the Department of Environmental Quality (DEQ) began implementing rules in 2008. All UICs needed to be registered, removed, or have filtration systems installed in accordance with DEQ rules. Bottom line, it seemed the

City would want UICs removed within the protected zones.

- Clarified that in large cities, surface flow drainage from roofs and parking lots was captured and drained into the big sewer, then to a treatment plant or a river. In smaller, more rural areas, and commonly throughout Oregon, UICs were just holes in the ground. They worked when originally designed, but today even parking lot surface flow contaminated the ground water, so they needed to be removed or have filtration systems installed.
- Mr. Kelter** agreed that even if the City was not adopting HCA rules, which regarded habitat and more surface-focused water quality, it would be good to understand more about how it interacted with water quality. This project might be an opportunity to require that UICs meet certain standards or be removed.
- Ms. Mangle** added that staff would talk with other departments about reporting water quality compliance. The issue might be addressed by pointing to other sections of the Code.

Commissioner Churchill asked if the City was monitoring water quality in the streams. Efforts were made to prevent issues, but was there a baseline to indicate progress in improving the quality of surface water?

- Ms. Mangle** responded that the drinking water wells were tightly monitored. The City had the total maximum daily load (TMDL) that monitored the stream water temperature and was reported to either the State or federal agencies.

Commissioner Wilson asked if grants were available to encourage graduate students to adopt a stream and monitor surface water.

- Mr. Kelter** said that the Johnson Creek Watershed Council and newly forming North Clackamas Urban Watershed Council would be very interested in grants for graduate students.
- Ms. Mangle** added that part of Metro's Nature in Neighborhoods program was regulatory, but in addition to the two watershed councils, it also had a grant program to encourage restoration, monitoring, and education outreach. Metro might have grants for monitoring surface water or education.
- Regulation was not the City's only tool, but it was the one thing that had not been figured out. Staff would do additional research about what else was being done and to tie the pieces together.

Commissioner Churchill noted that the major tributaries, such as Johnson Creek and Kellogg Creek, had good coverage now, but other tributaries like Spring Creek were not monitored. Perhaps the NDAs and schools could be educated about how the streams could be monitored.

- **Ms. Mangle** added that Spring Creek was an amazing resource and an interesting test case to consider in terms of the review process necessary to remove concrete and restore Spring Creek, how its underground segments should be shown on the WQR map, et cetera. The City wanted to encourage restoration, but a project like that would affect a lot of property. Spring Creek might be an excellent test case.
- **Mr. Kelter** pointed out the Code process invoked many issues and questions that really were not Code issues. Staff hoped that some conversations and connections would be made that would result in grant money or schools involved in monitoring Spring Creek, for example.
- Milwaukie Presbyterian Church had received Metro funding for restoration of WQRs and HCAs on their property at Kellogg Lake and Lake Rd, close to Milwaukie High School.
- As an educational component, Metro has competitions through the Title 13 program to encourage people in industry to develop designs that promote habitat-friendly development.

Mr. Kelter noted Attachment 1 Ongoing Issues, shown on 6.1S Page 2 of the supplemental packet, tracked the issues raised in the Advisory Group and listed key issues needing the Planning Commission's feedback.

- The variance process even in the existing WQR Code was a specific area that needed to be made clearer, both for staff as well as for property owners and applicants. He explained how stair-step review levels of the current Code could ultimately bring a project before the Planning Commission, but allowed for too much discretion.
 - By the time the application came before the Planning Commission, the applicant would have tried to meet certain clear and objective standards and proposed a particular mitigation plan that fit their needs, so it would look like a variance already.
- One section of the revised Code addresses adjustments and variances and focuses on economic hardship as the main reason for a variance, which was not usually an allowable criterion.
- Staff also questioned whether someone requesting a variance needed to address the three criteria of Chapter 19.700.

Commissioner Churchill believed the proposed economic hardship language was headed in

the right direction. The decision had to be made on the basis of economic viability. For instance, a historic structure could be done out of respect for its historic nature to push that envelope harder, but that was a rare condition.

Commissioner Wilson noted economic hardship was a tough sell for the Planning Commission. Although the zone change off Lake Rd at a previous hearing involved a different set of criteria, the nature of it was economic hardship.

Mr. Kelter suggested that it might be helpful for staff to provide a specific example of the appropriate process for an applicant who did not believe they could comply with other discretionary parts of the Code.

- Staff was considering May 25th for the Planning Commission to meet with the Advisory Group for a hand-off opportunity. The Commission could ask questions and hear what the Advisory Group had done on the Code. Many different viewpoints regarding the level of regulations would be presented.

Commissioner Wilson asked where flood plain maps came into the process and if Metro had completed an overlay and adopted the flood plain areas.

- **Ms. Mangle** responded that the Federal Emergency Management Agency (FEMA) did the flood plain maps, which were adopted by the City. FEMA redrafted their maps a year and a half ago.
- **Mr. Kelter** added that Title 18 of the Code dealt with flood management and paid more attention to the latest FEMA maps and flood information. He understood that Metro's inventory of HCAs did involve looking at flood plain areas. HCAs did not follow the flood plain boundary, but Metro did take it into account when looking at the location of the resources.

7.0 Planning Department Other Business/Updates

7.1 Summary: Fee Schedule Update

Staff Person: Katie Mangle

Ms. Mangle stated the fee schedule was really a City Council decision but she believed the update would give the Commission important background information regarding the Planning Commission's work. If the schedule changed significantly in the future, she would seek the

Commission's formal concurrence. This was a challenging budget year for the City, so staff was researching and reviewing many different items, including fees, procedures, expectations, and service levels, to see what changes might be made. She noted the following findings, and subsequent proposed changes to the Planning Department's Fee Schedule:

- The City's Planning fees were very outdated and were some of the lowest fees in the region. Many discounts were also offered. The fees did not cover all the costs of completing development review and in some cases, did not cover the actual expenses.
- However, there had never been an expectation that fees would cover the development review work, which was different in Milwaukie than in other jurisdictions. The expectation set by the Planning Commission, City Council, and the community was for a high level of customer service and high levels of service to the committees, which was staff's focus. Staff also needed to be efficient with their time and resources.
- Increasing fees to fund services was not the most important issue. The proposal was designed to make sense, make the fee schedule understandable and as simple as possible, and to keep the City from giving money away.
- Staff proposed collapsing the list of 60 fees down to 4 key fee types with a few extras, and reducing discounts substantially. For example, reducing the senior discount to 10%.
 - New fees are proposed to cover services that require staff time but are not currently being charged. For example, a Land Use Compatibility Statement requires research and a staff signature to confirm that a property complies with the Zoning Code. A \$25 fee is proposed for that service. Staff also proposes charging a fee if any applicant changes his application half way through the process, as staff time is involved with the changes.
- Most fees for actual applications would not increase much more than \$100 to \$200. While this still will not cover all of the City's expenses, many applications are for government agencies, non-profits, and small families, and staff wants to be sensitive to that.
- It was helpful for the Planning Commission to be aware of the fee schedule to understand that the applicant paid fees each time they appeared before the Commission and the City incurred expenses every time there was a hearing or an issue was re-noticed.

Commissioner Churchill commented that for a Milwaukie resident to appeal to the City Council, the cost is \$500, which was a stretch, so pushing it to \$1,000 would rule them out. He understood that a reasonable correlation to staff's effort was needed. He was concerned that increasing the fee could be obstructive and prevent anyone who may not agree with the opinion of the Planning Commission from being able to appeal it effectively. For the average developer,

580 \$1,000 was not a problem, but it was a problem for a small homeowner who felt they were not
581 heard. Perhaps the fee could be \$750 or \$800 because the \$1,000 threshold looked onerous.
582

583 **Ms. Mangle** believed that was a fair comment, and explained that her motivation was that
584 having the same \$500 fee for appeal to Planning Commission or to appeal to City Council
585 appeared to devalue the Planning Commission process. The Planning Commission should be
586 and was the deciding body most of the time because very few appeals occurred. The fee
587 increase was not meant to be obstructive.

- 588 • She confirmed that the fee would be waived for an NDA-sponsored appeal if the NDA had
589 commented during the process. One only had standing to appeal if they commented during
590 the process.

591
592 **Commissioner Bresaw** agreed with Commissioner Churchill's comments. She asked about the
593 cost of building a new house in Clackamas County and Milwaukie, since they work in
594 conjunction.

- 595 • **Ms. Mangle** replied that staff did a fee comparison amongst seven cities and the County.
596 The building permit fees were not being changed because most were set by the State. Only
597 Planning staff fees were being reviewed.

598
599 **Vice Chair Harris** commented that reducing the discount for senior citizens might be onerous,
600 since most were on fixed incomes. However, providing any discount for senior citizens was
601 outstanding.

- 602 • **Ms. Mangle** responded that staff had discussed it and noted that many seniors were not on
603 fixed incomes. Some recent applications involved seniors who were doing full development
604 of buildings and projects, and were receiving the discount. Perhaps other metrics could be
605 used, such as a senior who was on a fixed income. The low-income discount was 25%.
 - 606 • Most communities did not have discounts. Milwaukie staff was not expected to generate
607 their own revenue, so they could do community-oriented things like discounts.

608
609 **Ms. Mangle** reported that the fee schedule would go through the budget process, then be
610 presented to City Council in May and adopted in June with the rest of the budget. It was still a
611 draft, so she welcomed additional questions or comments.

- 612 • Staff was in the process of doing a cost forecast. The City offers discounts for multiple
613 applications, for example when a builder applied for Water Quality Resource, Transportation

Facilities Review, and a Variance, the first application was full price and the other two received a 50% discount. Those discounts made it hard to build a forecasting model, but staff was doing it because they wanted to answer that question. Staff had to reconstruct which applications were half price or full price and what the new fees would generate. She would report back to the Commission with those figures.

8.0 Planning Commission Discussion Items—None.

9.0 Forecast for Future Meetings:

May 11, 2010	1. Public Hearing: DR-09-10 Riverfront Park
May 25, 2010	1. Worksession: Review Procedures Code project update

Ms. Mangle stated that the Riverfront Park meeting could be continued to a second meeting if needed because it was a big application. She corrected that if Riverfront Park was not continued, the May 25th meeting would be a joint session with the Natural Resource Overlay Advisory Group.

Meeting adjourned at 9:25 p.m.

Respectfully submitted,

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

Jeff Klein, Chair



To: Planning Commission
Through: Katie Mangle, Planning Director *KM*
From: Brett Kolver, Associate Planner
Date: June 15, 2010, for June 22, 2010, Public Hearing
Subject: Files: WG-10-01, WQR-10-01, VR-10-01, R-10-01
 Applicants: Gary Michael and Carolyn Tomei
 Owners: (same)
 Address: 11907 SE 19th Ave
 Legal Description (Map & Taxlot): 1S1E35DA02700
 NDA: Island Station

ACTION REQUESTED

Approve applications WG-10-01, WQR-10-01, and R-10-01, which would replat the subject property into two developable parcels and allow construction of a new duplex on Parcel 2.

For application VR-10-01, *approve* the variance request to exceed the maximum density for development but *deny* the variance request to reduce the required front yard setback on Parcel 2.

Adopt the Recommended Findings and Conditions in Support of Approval found in Attachments 1 and 2, respectively.

BACKGROUND INFORMATION

The property owners and applicants, Gary Michael and Carolyn Tomei, with the assistance of Planning Resources, Inc., have proposed to replat the subject property into two developable parcels. The subject property is approximately 33,357 sq ft in area and is zoned R-5. An existing single-family residence would remain on Parcel 1 and the applicants propose to build a new single-family detached dwelling ("duplex") on Parcel 2.

The entire subject property is classified as Habitat Conservation Area (HCA), a natural resource designation subject to regulation by Metro's Title 13 (Nature in Neighborhoods). Although the City has not yet adopted code language to directly implement the standards of Title 13, the City

is implementing a modified version of Metro's Model Ordinance for Title 13 as of June 1, 2009. The Model Ordinance is applicable to projects that require Type-II or Minor Quasi-Judicial land use review, such as the proposal in question.

A. Site and Vicinity

The subject property is located at the northern end of 19th Ave in the Island Station neighborhood, where 19th Ave intersects with Eagle St at the southwestern corner of the Kellogg Sewage Treatment Plant site. The site, which abuts the Willamette River to the west, is approximately 33,357 sq ft in area and is comprised of five legal, underlying lots from Block 31 of the Robertson subdivision of 1884. An existing single-family residence and detached garage are situated on the northern half of the property on what is designated as the new Parcel 1.

The surrounding area to the south and east is comprised primarily of single-family residences on lots that range from 5,000 to 19,000 sq ft.

B. Zoning Designation

The subject property, and the area to the south and east, is zoned Residential R-5 with a Willamette Greenway (WG) zoning overlay. The Kellogg Sewage Treatment Plant site, to the north, is zoned for both Downtown Open Space use along the river and for Downtown Office use along McLoughlin Blvd, all with a WG overlay.

C. Comprehensive Plan Designation

Moderate Density (MD)

The Milwaukie Transportation System Plan (TSP) designates 40th Ave as a “local” street and future bike boulevard between Eagle St and Sparrow St.

D. Land Use History

There is no record of past land use applications for the subject property. According to records from the County Assessor's office, the property has had the same tax lot configuration since before 1969.

On September 17, 2009, the City held a pre-application conference with the applicants to discuss a development concept very similar to the proposed development. The City's official notes from that meeting are listed as Attachment 4 (Pre-Application Conference Notes).

E. Proposal

The applicants are seeking land use approval to develop the property at 11907 SE 19th Ave. The proposal includes the following:

1. Replat the subject property into two parcels, retaining the existing house and detached garage on Parcel 1 but removing the portion of the existing driveway that runs across Parcel 2.
2. Construct a new single-family detached dwelling (“duplex”) on Parcel 2.
3. Mitigate for tree removal within the HCA on Parcel 2, including planting 10 new trees and 21 new shrubs.

4. Restore the portion of the Water Quality Resource (WQR) area that will be disturbed to connect the new duplex on Parcel 2 to the existing sewer main line within the WQR area.
5. Pay a fee in lieu of construction of required street improvements. The applicants will add 4 ft of pavement width to 19th Ave along the frontage of Parcel 2.

Refer to Attachment 3 (Applicant's Narrative and Supporting Documentation) for more detail about the proposal.

The project requires approval of the following applications:

1. WG-10-01 (Willamette Greenway zone)
2. WQR-10-01 (Water Quality Resource regulations)
3. VR-10-01 (Variance Request)

The applicant is requesting two variances. One variance is to exceed the maximum density for the replat and future development on Parcel 2. The second variance is to reduce the required front yard setback below the minimum required as part of the conditional use review of projects in the Willamette Greenway zone.

4. R-10-01 (Replat)

KEY ISSUES

Summary

Staff has identified the following key issues 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 request to reduce the front yard setback on Parcel 2 meet the variance criteria of MMC 19.702?
- B. Does the proposed development satisfy the criteria for the Willamette Greenway overlay zone, especially regarding the protection of views both toward and away from the river?
- C. How does the proposed development comply with the applicable requirements related to natural resource protection, particularly those for Habitat Conservation Areas (HCAs)?

Analysis

- A. **Does the request to reduce the front yard setback on Parcel 2 meet the variance criteria of MMC 19.702?**

The subject property is zoned R-5. However, because the site is also within the Willamette Greenway overlay zone, the proposed development must be reviewed as a conditional use. In residential zones, conditional uses are subject to additional yard setbacks beyond those of the underlying zone. MMC 19.602.1 requires that yards be equal to at least two-thirds of the height of the principal structure.

As proposed, the rear yard for the duplex on Parcel 2 would be approximately 115 ft, so the rear yard setback is not an issue for this proposal. In the R-5 zone, the minimum required side yard is 5 feet. The proposed duplex would be approximately 16.5 ft in height; two-thirds of that height is 11 ft, which represents the side yard setback required by MMC 19.602.1. As proposed, the side yards for the duplex on Parcel 2 will be 11 ft, so the side yard setbacks are not an issue for this proposal.

In the R-5 zone, the minimum required front yard is 20 ft. However, many of the existing homes in the immediate area are situated very close to the 19th Ave right-of-way. In particular, the existing house on Parcel 1 has a 0-ft front yard; the existing house at 11921 SE 19th Ave has a 13-ft front yard. MMC 19.401.2.B allows an exemption to the required front yard based on averaging the front yards of adjacent properties. In this case, the duplex on Parcel 2 would only have to provide a 6.5-ft front yard (the average of 0 ft and 13 ft). But the additional yard requirement of MMC 19.602.1 means that the duplex must provide a front yard of at least 11 ft. The applicants have requested a variance to reduce the required front yard setback to 7 ft.

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

Based on the following analysis, staff has concluded that only two of the three criteria are met and **recommends denial of this particular variance request:**

- a. Unusual Conditions – The property abuts the Willamette River along its entire western boundary. A designated water quality resource buffer area extends inland 50 ft from the river and the 100-year floodplain covers the western two-thirds of the site. From 19th Ave, the site slopes steeply down toward the river for approximately 60 ft. The footprint for building outside the 100-year floodplain is constrained and pushes development up the slope and closer to 19th Ave. Furthermore, the entire property is designated as Habitat Conservation Area (HCA); on Parcel 2, most of the designation is as Moderate-value HCA.

The right-of-way at 19th Ave is 60 ft wide; the paved portion of 19th Ave is situated far to the east of the centerline and is 12 ft wide with no curbs or sidewalks. As part of the proposed development, the applicants will be installing 4 ft of additional pavement along the west side of the paved portion of 19th Ave. As a result, the subject property's eastern boundary will be approximately 35 ft from the new pavement. Although the front yard setback is measured from the building face to the front property line, the site provides a larger de-facto front yard by virtue of the large width of undeveloped right-of-way along 19th Ave.

The site does have unusual conditions that warrant consideration of the requested variance.

- b. No Feasible Alternatives/Minimum Necessary – There are a number of alternatives to the requested variance; the applicants have not adequately demonstrated that the variance is the only feasible option.

One alternative would be to shift the proposed building footprint to the west. Such a shift would push the building farther into the 100-year floodplain area, but the move would be a small one and the structure is partially in the floodplain as proposed, with only the ground floor supports below the base flood elevation. The shift would certainly

put the building footprint closer to two mature locust trees, but it is not clear that the trees would definitely be irreparably harmed if the footprint moved closer to them. It is also not clear that 7 ft is the minimum variance necessary to allow reasonable development on Parcel 2. The applicants have not sufficiently demonstrated that a setback between 7 ft and 11 ft is not a workable alternative to the requested setback of 7 ft.

Another alternative would be to modify the building footprint so that the front yard setback requirement is met. Although the applicants have explained the decision-making process that led to the proposed floorplan, staff does not believe that they have sufficiently shown that there is no other building footprint or floorplan that would provide an adequate dwelling space. For example, is it not possible that small adjustments to the rear deck and/or dining room could be made without compromising the feasibility of the proposed duplex? The standard established by this particular criterion requires a demonstration that there is no other feasible alternative besides the variance requested, not that the variance presents the best possible option.

Along these lines, it seems worth noting that even though a duplex is permitted as an outright use in the R-5 zone, the applicants are certainly not required to build a duplex on the site. There are few if any duplexes elsewhere on 19th Ave on lots comparable in size to Parcel 2. Although a single-family house may not meet the applicants' highest goals for the site, it seems feasible to assert that building a slightly smaller single-family home on the site would also be a feasible alternative.

Staff believes that feasible alternatives exist and that the requested variance is not the minimum necessary to allow use of the property in a manner substantially the same as others in the surrounding area.

- c. Mitigation of Impacts – Any adverse impacts from the proposed variance would be minimal and could be adequately mitigated. A front yard setback of 7 ft would put the roofline of the proposed duplex several inches higher than if the required 11-ft setback was met. Although this might slightly affect the view of the river looking over the roof from 19th Ave, it seems reasonable to expect that the existing vegetation that remains will make it difficult to see much over the roofline regardless of its height, at least during those times of year when the deciduous vegetation is in bloom. In this case, staff believes that the views on each side of the proposed duplex are more significant, and the front-yard depth will not substantially affect those views.

Between the paved portion of 19th Ave and the front property line, the undeveloped right-of-way will be approximately 35 ft wide. The area between 19th Ave and the new duplex will be substantially screened and buffered by several existing large trees as well as by new shrubs and other plantings. Furthermore, the proposed setback is slightly greater than what would otherwise be required if not for the conditional use yard standard of MMC 19.602.1. As noted above, MMC 19.401.2.B allows an exception to the front yard setback standard if the setbacks on adjacent lots are nonconforming. At 7 ft, the proposed front yard setback is slightly greater than the 6.5-ft average front yard setback of the existing dwellings to the north and south of the proposed duplex.

Any adverse impacts resulting from this variance would be minimal and would be adequately mitigated.

B. Does the proposed development satisfy the criteria for the Willamette Greenway overlay zone, especially regarding the protection of views both toward and away from the river?

Both the replat and construction of a new duplex on Parcel 2 are developments that are subject to Willamette Greenway (WG) review, with criteria provided in MMC 19.320.6. Among others, the criteria include consideration of whether or not the land has been committed to an urban use, compatibility with the character of the river, protection of views, protection of the natural environment, and conformance to relevant sections of the Comprehensive Plan. An evaluation of all relevant WG criteria is provided in Finding 8.

The proposed development satisfies the relevant WG criteria. The subject property has hosted an urban residential use for many years. The location of the existing house, which is set away from the riverbank, and the existing vegetation are compatible with the character of the river, just as the new duplex on Parcel 2 will be. The entire site is designated as Habitat Conservation Area (HCA) and the proposed development preserves existing vegetation as much as possible, with new trees and plantings proposed as mitigation for disturbance.

With respect to views, in this case the primary consideration of the WG overlay is whether existing views are protected. **Figure 1** shows the subject property in relation to surrounding properties on 19th Ave. There are two properties on the east side of 19th Ave whose views of the river could be affected by the proposed development: 11908 and 11912 SE 19th Ave. The house at 11908 SE 19th Ave is directly across the street from the existing house on Parcel 1, so the location of the proposed duplex on Parcel 2 will not substantially affect the river view from this property.

The proposed development has a greater potential to impact views from the property at 11912 SE 19th Ave. Consideration of view impacts should be conducted with the understanding that the WG code does not establish an intention to prohibit development within the overlay zone. The question in this case is not whether the proposed duplex should be allowed at all but rather whether the development is adequately sensitive to its impact on existing views.

Figure 1. Area map



The applicants' submittal materials describe deliberate choices made in the design and placement of the proposed duplex to maintain the primary view corridor to the river that currently exists just south of the existing house on Parcel 1. The building height is only 16.5 ft above grade, well below the maximum height allowed in the R-5 zone (35 ft). Because the site slopes steeply down toward the river from 19th Ave, much of the duplex's mass will be below the street grade, although the roof will be visible and will obstruct some portion of the view that currently exists through the existing vegetation, depending on the view angle. The East Elevation provided by the applicants demonstrates how much of the duplex will be visible from the street level on 19th Ave (see **Figure 2**).

Figure 2. East Elevation (proposed)

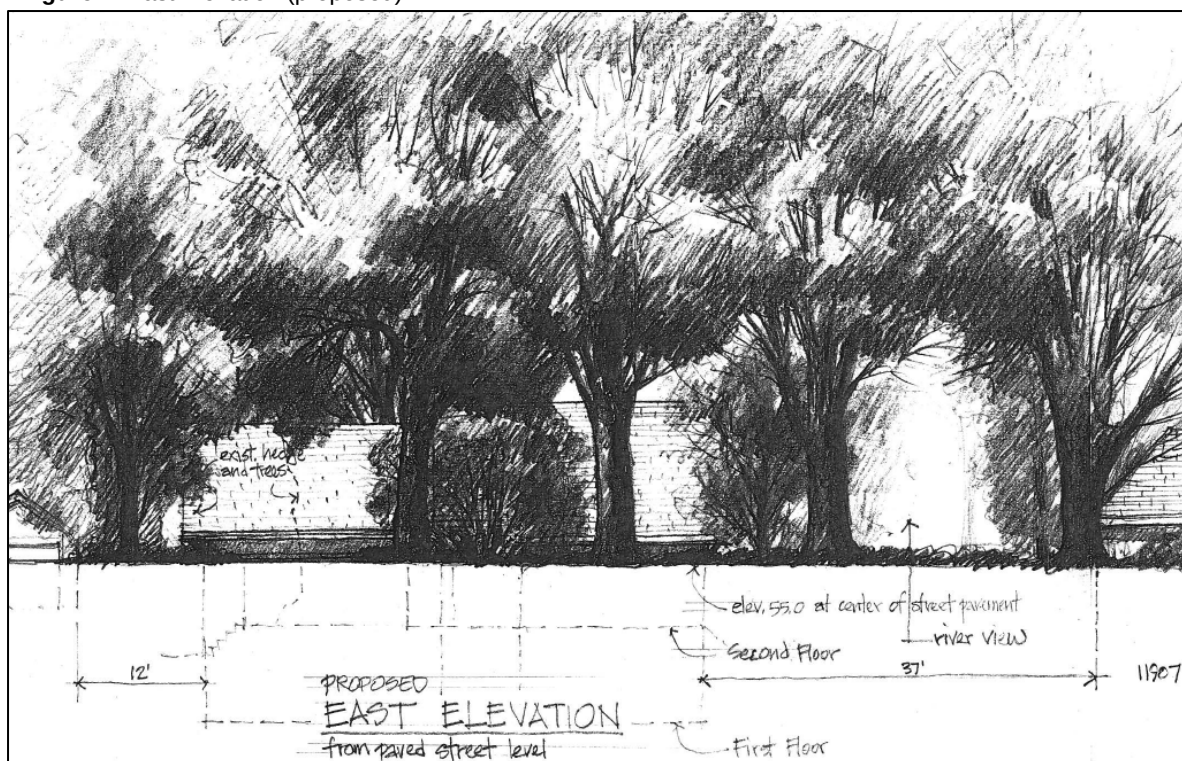
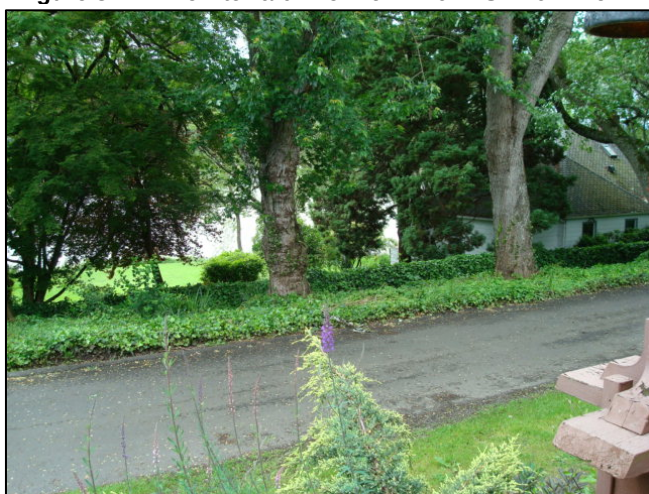


Figure 3. NW view toward river from 11912 SE 19th Ave



The house at 11912 SE 19th Ave is located directly across the street from the proposed duplex on Parcel 2. Views toward the river from 11912 SE 19th Ave are currently limited during the warmer months of the year by existing deciduous trees and other vegetation, except at an angle to the northwest past the southern edge of the existing house on Parcel 1 (see **Figure 3**).

The view changes slightly depending on the viewer's location, whether one is standing at the street versus looking from the porch of 11912 SE 19th Ave (see **Figure 4**) or from the second-floor of 11912 SE 19th Ave (see **Figure 5**).

Figure 4. View toward river from front porch of 11912 SE 19th Ave



As proposed, the new duplex will be situated on Parcel 2 in such a way that the primary view corridor for 11912 SE 19th Ave will not be substantially affected. The additional yard requirements established for conditional uses (MMC 19.602.1) have the effect of narrowing the building footprint. The proposed 11-ft side yards are more than double the minimum 5-ft setbacks required for the R-5 zone. The existing house on Parcel 1 is 26 ft from the boundary of Parcel 2, resulting in a total width of 37 ft between the two buildings, precisely where the best view of the river exists for 11912 SE 19th Ave. Staff concludes that the proposal represents a reasonable development of the site that preserves much of the existing view.

Figure 5. View to river from 2nd floor of 11912 SE 19th Ave



The WG code does not require development to provide new views to the river. However, if the Planning Commission feels that the proposal development would result in significant impacts to the existing views, the Commission could consider establishing a condition to require thinning of specific vegetation areas on Parcel 2. On the whole, staff believes that the proposal meets all relevant WG criteria.

C. How does the proposed development comply with the applicable requirements related to natural resource protection, particularly those for Habitat Conservation Areas (HCAs)?

This item is a key issue because the application represents the City's first opportunity to review a proposal under the newly implemented Habitat Conservation Area (HCA) standards. As noted above, the subject property's location on the Willamette River and the existence of significant vegetation on the site result in the designation of the entire property as HCA of one value level or another. The site also includes a designated Water Quality Resource (WQR) buffer area approximately 50 ft into the site from the top of the riverbank.

For the most part, the proposed development avoids direct disturbance of the WQR area by placing the new duplex on Parcel 2 up the slope and far away from the river. A new stormwater swale will be constructed close to the WQR area, but the related excavation is not proposed within the WQR area itself and any associated plantings are allowed outright in the WQR area as long as they are not noxious or invasive non-native species. The only minor disturbance to the WQR area will be excavation of a narrow trench to allow a connection to the existing sewer main line that runs north-south through the site within the WQR area. This connection will require an intrusion of only 10 to 12 ft into the WQR area; disturbed soils will be restored and new plantings will be installed in the disturbed area as required by MMC 19.322.

The HCA regulations come from Metro's Model Ordinance for Title 13 (Nature in Neighborhoods). The new rules allow for some disturbance within HCAs, with greater allowances for properties with large areas of HCA like the subject property. These allowances are determined by subtracting the area of existing WQR areas (where more strict rules apply) from the total lot area and then calculating a percentage of the remaining area. In this case, the calculations allow 4710 sq ft of disturbance on Parcel 2 (see **Figure 6**). Since the proposed development would disturb only approximately 3130 sq ft, the proposal meets the requirement.

**Figure 6. Worksheet for HCA disturbance calculations for Parcel 2
(from Section 6-C of Model Ordinance)**

Total lot area of Parcel 2 = 11,744 sq ft Lot area excluding WQR area = 7245 sq ft HCA designation outside WQR area = Moderate Total HCA disturbance allowed (as per Table 1 in Model Ordinance) = 65% of lot area (6000 sq ft max) = 4710 sq ft

The HCA regulations also address mitigation for trees removed as part of development, prescribing a particular number of trees and shrubs that must be planted for each tree removed, depending on the tree's size. To construct the new duplex on Parcel 2, the applicants propose to remove 3 trees from the property, with diameters of 10, 14, and 24 inches at breast height. The mitigation scheme outlined in Table 3 of Section 6-E of Metro's Model Ordinance for Title 13 requires that a total of 10 new trees and 21 new shrubs be planted on the site. The proposal includes this mitigation and therefore complies with this requirement.

Finally, the Model Ordinance also requires that partitions of properties containing HCAs must balance the distribution of HCA across the new parcels or put a majority of the HCA into an undevelopable tract. The intent is to prevent the concentration of HCA on one parcel, where a potentially substantial portion of the natural resource area could be

disturbed according to the Model Ordinance's allowances for impacts. Although the proposed development includes a replat of the property and not a partition, the net result is similar to a partition in that a new buildable parcel will result. In this case, the fact that the entire site is designated as HCA means that any land division will result in an equal distribution of the percentage of HCA on each new parcel.

CONCLUSIONS

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

1. Approve the proposed replat to allow the establishment of 2 developable parcels and erase the five underlying subdivision lots.
2. Approve the Willamette Greenway conditional use request to allow the replat and construction of a duplex on Parcel 2.
3. Approve the variance request to allow the proposed development to exceed the maximum density of 0.
4. Deny the variance request to reduce the required front yard setback for the new duplex on Parcel 2 to 7 ft. Require the duplex to provide a front yard setback of 11 ft.
5. Approve the request to pay a fee in lieu of construction of required street improvements, with the condition that the applicants add 4 ft of pavement along the Parcel 2 frontage on 19th Ave to make the street adequate in accordance with the City's standards for minimum safety and functionality.
6. Approve the request for a 1-year extension of the conditional use permit, allowing a total of 18 months to complete substantial construction of the project.
7. Adopt the attached Recommended Findings and Conditions in Support of Approval.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to Milwaukie Municipal Code (MMC) Title 17 Land Division and the following provisions of MMC Title 19 Zoning:

- MMC Subsection 19.1011.3 Minor quasi-judicial review
- MMC 19.303 Residential R-5 zone
- MMC 19.320 Willamette Greenway zone
- MMC 19.322 Water quality resource regulations
- MMC 19.500 Off-street parking and loading
- MMC 19.600 Conditional uses
- MMC 19.700 Variances, exceptions, and home improvement exceptions
- MMC 19.1400 Public facility improvements

The applicant's variance request makes the application 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 application was originally submitted on March 17, 2010, and was deemed complete on May 7, 2010. The final decision on this application, which includes any appeals to the City Council, must be made by **September 4, 2010**, 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 application was sent to the following agencies and persons for review and comment on May 7, 2010: City of Milwaukie Building and Engineering Departments, Clackamas County Fire District #1, Island Station Neighborhood District Association (NDA), Metro, Oregon Department of Transportation (ODOT), Oregon Parks and Recreation Department, Division of State Lands, Oregon Department of Fish and Wildlife, and State Marine Board.

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:

- **Tom Larsen, City Building Official:** No comments at this time.
- **Douglas Baer, State Marine Board:** No comments.
- **Gail Curtis, Senior Planner with ODOT:** ODOT considers the Willamette River as a transportation corridor and would want to weigh in only if a trail was proposed in conjunction with the application.

Staff Response: *The proposed development does not include any trails.*

- **Charles Bird, chair of the Land Use Committee for the Island Station NDA:** No problem with a narrow 19th Ave. There appears to be enough property for the duplex. Double-check the flood elevation. Recommend separating the two sides of the proposed single-opening (but two-stall) garage. Unclear whether the project is in compliance with the Habitat Conservation Area requirements.

Staff Response: *At 11, 744 sq ft, Parcel 2 is large enough to support a duplex, meeting the 5000-sq-ft minimum required per dwelling unit. The base elevation for the 100-year floodplain is correctly shown on the applicants' plans, at 36 ft. The proposal does comply*

with all relevant HCA standards of Metro's Model Ordinance for Title 13, as addressed in Finding 10.

- **Miranda Bateschell, Metro:** The proposal looks fine, given the [resource] classification of the area and the proposed mitigation efforts. Metro has no formal comments.
- **Brad Albert, City Engineering Department:** Various comments related primarily to MMC Title 17 Land Division and MMC 19.1400 Public Facility Improvements.

Staff Response: *Comments from the Engineering Department have been incorporated into the recommended findings (primarily Findings 6 and 14) and recommended conditions of approval.*

- **Kathy Schutt, Oregon Parks and Recreation Department:** No comments.
- **Mike Boumann, Clackamas County Fire District #1:** All portions of any new construction must be located within 150 ft of approved Fire District apparatus access roads. A fire hydrant must be located within 600 ft of all portions of any new construction.

Staff Response: *These are standard requirements that will be addressed as part of the building permit review process.*

ATTACHMENTS

1. Recommended Findings in Support of Approval
2. Recommended Conditions of Approval
3. Applicant's Narrative and Supporting Documentation, stamped received on May 7, 2010, unless otherwise noted.
 - a. Applicant's Statement
 - b. Plans & Drawings (11" x 17")
4. Pre-Application Conference Notes (from September 17, 2009)
5. Comments Received
6. Exhibits List

ATTACHMENT 1

Recommended Findings in Support of Approval

1. The applicants, Gary Michael and Carolyn Tomei (“the applicants”), are seeking land use approval to replat the subject property at 11907 SE 19th Ave to establish two parcels and then construct a new single-family attached dwelling (“duplex”) on one of the new parcels. The property is zoned Residential R-5 with a Willamette Greenway zoning overlay, which requires conditional use approval for new development. The proposal involves minor disturbance within the designated Water Quality Resource area and Habitat Conservation Area and includes two variance requests: (1) to exceed the minimum density for development (technically 0 because of the natural resource designations), and (2) to reduce the front yard setback required for conditional uses.

2. The subject property is located at the northern end of 19th Ave in the Island Station neighborhood, where 19th Ave intersects with Eagle St at the southwestern corner of the Kellogg Sewage Treatment Plant site. The site is approximately 33,357 sq ft in area and is comprised of five legal, underlying lots from Block 31 of the Robertson subdivision of 1884. An existing single-family residence and detached garage are situated on the northern half of the property on what is designated as the new Parcel 1.

3. The proposal is subject to Milwaukie Municipal Code (MMC) Title 17 Land Division and the following provisions of MMC Title 19 Zoning:
 - MMC Subsection 19.1011.3 Minor quasi-judicial review
 - MMC 19.303 Residential R-5 zone
 - MMC 19.320 Willamette Greenway zone
 - MMC 19.322 Water Quality Resource regulations
 - City-implemented portions of Metro’s Model Ordinance for Title 13 (Nature in Neighborhoods)
 - MMC 19.500 Off-street parking and loading
 - MMC 19.600 Conditional uses
 - MMC 19.700 Variances, exceptions, and home improvement exceptions
 - MMC 19.1400 Public facility improvements

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 ft of the site. The Planning Commission held a duly advertised public hearing considering the application on June 22, 2010.

5. The Planning Commission reviewed the application for compliance with the code sections listed in Finding 3. The Planning Commission finds that code sections not addressed in these findings are not applicable to the decision.

6. MMC Title 17 Land Division

A. MMC 17.12.030 Approval criteria for lot consolidation, property line adjustment, and replat

The subject property consists of five legal, underlying subdivision lots from the Robertson subdivision of 1884. The applicants have proposed to adjust the boundary of one of those underlying lots in order to accommodate the proposed duplex. According to the definition of MMC 17.08.250, such a reconfiguration of subdivision lots is a replat.

The Planning Commission finds that the proposed replat is consistent with the approval criteria provided in MMC 17.12.030.A as follows:

- i. As conditioned and with approval of the variance request regarding density, Parcels 1 and 2 comply with the standards of MMC 19.303 Residential zone R-5 and all other applicable regulations.
 - ii. The proposed replat, with approval of the accompanying variance request related to density, allows reasonable development of the subject property and does not create a future need for a variance of any land division or zoning standard. The proposed lots will support construction of single-family residences that meet the development standards of the R-5 zone.
 - iii. The applicant submitted a detailed narrative demonstrating how the proposed replat conforms to all applicable code sections and design standards.
- B. The Planning Commission finds that the proposed replat application is consistent with provisions governing the content and quality of applications for replats as established in MMC 17.16.050 and MMC 17.20.
- C. MMC 17.28 Design standards
- i. MMC 17.28.030.A requires that easements for public utilities shall be dedicated whenever necessary and provided in accordance with the City's Public Works Standards. An underground sanitary sewer main line runs along the west side of the subject property. The existing 10-ft easement for the sewer line is shown on the site plan and will be shown on the final plat for Parcel 1 and Parcel 2. A condition has been established to ensure that this standard will be met.
 - ii. MMC 17.28.040 establishes guidelines for general lot design, including requirements for rectilinear lot shape except where not practicable. The subject property is generally rectilinear except where the western boundary meets the Willamette River. As proposed, Parcels 1 and 2 will also be rectilinear except where they meet the Willamette River. This standard is met.

As conditioned, the Planning Commission finds that the proposed replat meets the applicable design standards of MMC 17.28.

The Planning Commission finds that, as conditioned, the proposal meets all applicable standards of MMC Title 17.

7. MMC 19.303 Residential R-5 zone

MMC 19.303.3 establishes standards for lots in the R-5 zone. Table 1 (below) evaluates each of the proposed parcels with respect to the applicable standards. For Parcel 2, many of the development standards will be evaluated at the time of building permit review.

Table 1 – Standards of the R-5 Zone

Development Standard	R-5 Standard	Existing Property	Parcel 1 (as developed)	Parcel 2 (as proposed)
Lot Size	5,000 sq ft	33,357 sq ft	21,613 sq ft	11,744 sq ft
Lot Width	50 ft	250 ft	180 ft	70 ft
Lot Depth	80 ft	62 ft to 180 ft to water's edge (121 ft avg.)	62 ft to 180 ft (121 ft avg.)	180 ft (avg.)
Front Yard Setback¹	20 ft	0 ft (see footnote 2)	0 ft (see footnote 2)	7 ft (see footnote 3)
Side Yard Setback⁴	5 ft, 15 ft for street-side yards	73 ft / 96 ft	73 ft / 26 ft	11 ft / 11 ft
Rear Yard Setback⁴	20 ft	95 ft (to water's edge)	95 ft (to water's edge)	115 ft (to water's edge)
Off-Street Parking	2 spaces per unit (incl. 1 covered)	4+ spaces (2 covered)	4+ spaces (2 covered)	4 spaces (2 covered)
Height Restriction	35 ft or 2.5 stories	16 ft (measured from grade at front of house)	16 ft	16.5 ft
Lot Coverage	35% max	10.9%	16.7%	21.2%
Minimum Vegetation	25% min	82.6%	73.1%	74.9%
Frontage Requirements	35 ft	250 ft	180 ft	70 ft
Density⁵	7.0 to 8.7 dwelling units per net acre	1.3 units per acre	2 units per acre	7.4 units per acre
Transportation Requirements	As per MMC 19.1400		See Finding 14.	See Finding 14.

¹ The setback listed is that required for the R-5 zone. However, MMC 19.401.2.B allows exceptions to the front yard requirement in cases where abutting front yards are less than the minimum. The existing house to the north on Parcel 1 (11907 SE 19th Ave) has a front yard of 0 ft and the house to the south at 11921 SE 19th Ave has a front yard of 13 ft; the average is 6.5 ft, which would be the minimum required front yard on Parcel 2 if not for the conditional use yard standard triggered by the Willamette Greenway overlay (as per MMC 19.602.1). The evaluation of the proposed development with respect to the conditional use yard standard is addressed in Finding 12-B-i.

² According to the applicants' site plans, small portions of the existing house and detached garage on Parcel 1 encroach a few feet into the public right-of-way. Encroachments across property lines are generally prohibited by the municipal code, so these particular encroachments represent nonconforming situations. However, the proposed replat does not affect the status of either encroachment and so is not relevant to the application.

³ The applicants have requested a variance to reduce the conditional use yard standard established in MMC 19.602.1 (11 ft, in this case) to 7 ft.

⁴ The setbacks listed are those required for the R-5 zone. The conditional use aspect of the proposal triggers the additional yard requirement of MMC 19.602.1 and is addressed in Finding 12-B-i.

⁵ The definition of "net acre" in MMC 19.103 states that designated natural resource areas are excluded from the calculation of net acreage. The entire subject property is designated as Habitat Conservation Area, which reduces the net acreage to 0. Therefore, any units on the property are in excess of the density standard and require a variance.

The Planning Commission has denied the requested variance to reduce the required front yard setback for Parcel 2 (see Finding 13-B). As conditioned, and with the approval of the requested variance to exceed the density requirements (see Finding 13-A), the Planning Commission finds that both of the new parcels will comply with the applicable standards for the R-5 Zone (MMC 19.303).

8. MMC 19.320 Willamette Greenway zone

MMC 19.320 provides standards for properties located within the boundary of the Willamette Greenway as shown on the City's zoning map.

The Planning Commission finds that the subject property is within the Willamette Greenway overlay zone and so is subject to the standards of MMC 19.320.

- A. MMC 19.320.3 requires that, for properties within the Willamette Greenway overlay zone, all land use actions and any change or intensification of use, or development permitted in the underlying zone, are conditional uses subject to the standards of MMC 19.600.

The Planning Commission finds that the proposed development, which would replat the subject property into two distinct parcels and establish a new single-family attached dwelling on one of those parcels, constitutes a change or intensification of use as per MMC 19.320.3 and so requires conditional use review subject to the standards of MMC 19.600 (see Finding 12).

- B. MMC 19.320.5 establishes procedures for the processing of Willamette Greenway applications, including requirements to provide notice of the application and associated public hearing to various agencies. Specifically, notice of the application is required to be provided to the Oregon Department of Transportation, Oregon Parks and Recreation Department, Oregon Division of State Lands, Oregon Department of Fish and Wildlife, and State Marine Board.

The Planning Commission finds that the applicable procedures and relevant standards in MMC 19.320.5 have been followed and met.

- C. MMC 19.320.6 provides the criteria to be taken into account in the consideration of a conditional use in the Willamette Greenway overlay zone.

- i. *Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan.*

The subject property is zoned Residential R-5 and is designated for Moderate Density (MD) residential use in the City's Comprehensive Plan. The existing house was built in 1916. The subject property and the surrounding area, which includes the grounds of the Kellogg Creek Treatment Facility for sewage, have been committed to an urban use for many decades.

- ii. *Compatibility with the scenic, natural, historic, economic, and recreational character of the river.*

The proposed development will be compatible with the residential character of the surrounding area, which is zoned for residential use and is adjacent to the open space and grounds of the sewage treatment facility. The existing house is

situated far from the river; the proposed duplex will also be set far back from the river.

iii. Protection of views both toward and away from the river.

The applicants are not proposing to remove any existing vegetation along the riverbank. The existing house on Parcel 1 is screened from the river by mature trees, as will be the proposed duplex on Parcel 2. Views from the river would not significantly change as a result of the proposed development.

The subject property and adjacent undeveloped portion of public right-of-way on 19th Ave include a number of existing trees and shrubs that limit views to the river from 19th Ave. Views from the 19th Ave frontage of Parcel 1 will not change. The primary view from the 19th Ave frontage of Parcel 2 is at a northwest angle along the southern edge of the existing house on Parcel 1. As proposed, the new duplex on Parcel 2 will be located approximately 37 ft from the existing house on Parcel 1, which will leave this primary view corridor largely unchanged.

iv. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable.

Four existing trees will be removed to construct the new duplex on Parcel 2; to mitigate, the applicants propose to plant 10 new trees and 21 new shrubs on Parcel 2. These and other remaining trees will provide screening between the new duplex and the river. The new duplex will be situated closer to 19th Ave than to the riverbank and will preserve much of the existing open space adjacent to the river.

v. Public access to and along the river, to the greatest possible degree, by appropriate legal means.

The subject property is private property and does not provide legal public access to the river. This situation will not change as a result of the proposed development.

vi. Emphasis on water-oriented and recreational uses.

The subject property is zoned for residential use and accommodates only those water-oriented or recreational activities as may be deemed normal for the average residential use near the river. This situation will not change as a result of the proposed development.

vii. Maintain or increase views between the Willamette River and downtown.

The subject property is not located directly between the Willamette River and downtown Milwaukie. The proposed development will not affect views between the Willamette River and downtown.

viii. Protection of the natural environment according to regulations in Natural Resource overlay zone.

As proposed, trees within the designated Habitat Conservation Area that are removed for the proposed development will be replaced according to the mitigation requirements of Metro's Model Ordinance for Title 13 (see Finding 10-B-iv). Disturbance within the designated water quality resource area will be minimized and mitigated (see Finding 9-D-iv). Stormwater from new impervious areas on Parcel 2 will be treated in a new stormwater swale west of the new

duplex. At the time of submission of a building permit, the applicants will be required to show that the proposed development will not result in disturbance of or direct stormwater discharge to the water quality resource area. As conditioned, the proposed development will protect the natural environment as required by the Water Quality Resource regulations (MMC 19.322) and Metro's Model Ordinance for Title 13.

- ix. Advice and recommendations of the Design and Landmark Committee, as appropriate.*

The subject property is not in a downtown zone and therefore does not require review by the Design and Landmarks Committee.

- x. Conformance to applicable Comprehensive Plan policies.*

Within the City's Comprehensive Plan, Chapter 3 (Environmental and Natural Resources) and Chapter 4 (Land Use) both contain elements that relate to the proposed development. The project's compliance with applicable Comprehensive Plan policies is addressed in Finding 12-A-ii(c). The proposal is consistent with the relevant policies of the Comprehensive Plan.

- xi. The request is consistent with applicable plans and programs of the Division of State Lands.*

The proposed development is consistent with applicable plans and programs of the Division of State Lands in that it does not include any work in or near the Willamette River and conforms to the principles of Statewide Land Use Planning Goal 15 (Willamette River Greenway).

- xii. A vegetation buffer plan meeting the conditions of Subsections 19.320.8.A through C.*

The proposed development does not include any disturbance within 25 ft of the ordinary high water line, where the vegetation buffer identified in MMC 19.320.8 is located. This requirement is not applicable.

As conditioned, the Planning Commission finds that the proposal satisfies all applicable criteria of MMC 19.320.6.

- D. MMC 19.320.7 requires that uses that are not water-dependent or water-related be evaluated according to the criteria of MMC 19.320.6 so that they are directed away from the water.

The proposed development is not water-dependent or water-related. The existing house and the proposed new duplex are both situated on the eastern side of the site and far away from the river. As discussed in Finding 8-C, above, the Planning Commission finds that both structures are directed away from the water. This standard is met.

- E. MMC 19.320.8 establishes requirements for maintaining a vegetation buffer along the river. Specifically, MMC 19.320.8.B requires the submission of a vegetation buffer plan prior to development within a 25-ft strip upland of the ordinary high water line.

The Planning Commission finds that the proposed development will not disturb the vegetation buffer area. This standard is not applicable.

The Planning Commission finds that, as conditioned, the proposed development meets all applicable standards of the Willamette Greenway zone (MMC 19.320).

9. MMC 19.322 Water Quality Resource regulations

- A. MMC 19.322.2 requires coordination with the standards of MMC 19.320, Willamette Greenway zone. Specifically, MMC 19.322.2 establishes that the water quality resource requirements of MMC 19.322 shall apply where they are more restrictive than the Willamette Greenway requirements of MMC 19.320, except that nothing in MMC 19.322 shall prohibit the maintenance of view windows authorized under MMC 19.320. The applicants are not proposing any activity within the water quality resource area that will impact existing views.

The Planning Commission finds that the proposed development presents no conflict between the requirements of MMC 19.322 and those of MMC 19.320.

- B. MMC 19.322.3 establishes applicability of the water quality resource requirements, including all properties containing protected water features as shown on the City's Water Quality Resource map. The subject property's western boundary is adjacent to the Willamette River, which is designated as a primary protected water feature on the Water Quality Resource map.

The Planning Commission finds that the water quality resource requirements of MMC 19.322 are applicable to the proposed development.

- C. MMC 19.322.7 requires that certain activities within the designated water quality resource area, including new public or private utility facility construction, shall be subject to minor quasi-judicial review as per the standards of MMC 19.1011.3. The proposed development includes construction of a lateral sewer connection from the new duplex to the existing sewer main line that runs north-south across the western side of the subject property and is located within the designated water quality resource area. The new lateral connection will require minor disturbance approximately 10 to 12 ft into the water quality resource area.

The Planning Commission finds that the disturbance related to construction of the lateral sewer connection to the new duplex on Parcel 2 is subject to the relevant standards of MMC 19.322.

- D. MMC 19.322.9 establishes application requirements for projects requiring Type II and minor quasi-judicial review.

- i. MMC 19.322.9.A requires a topographic map of the site at contour intervals of 5 ft or less showing a delineation of the water quality resource area as established in Table 19.322.9.A. Similarly, MMC 19.322.9.B requires the identification of all existing natural features, including all trees with a greater than 6-in diameter at breast height.

The applicants have provided a site plan that includes 1-ft contour intervals and that demarcates the water quality resource area in relation to the top of bank as provided in Table 19.322.9.A. The site plan also shows the location of existing trees with their diameter at breast height.

The Planning Commission finds that the requirement to provide the information listed in MMC 19.322.9.A and 19.322.9.B has been met.

- ii. MMC 19.322.9.E requires an assessment of the existing condition of the water quality resource area in accordance with Table 19.322.9.E. The table

establishes three categories to qualify the existing conditions: Good, Marginal, and Degraded. The categories are differentiated by the percentage of trees, shrubs, and ground cover on the site. MMC 19.322.9.F requires an inventory of vegetation within the water quality resource area, including percentage of ground and canopy coverage.

The applicants have asserted that the existing condition of the water quality resource area is Marginal, that the resource area is typical of residential development with open lawn and a few trees. However, the applicants' own materials indicate that there is less than 25% tree canopy coverage in the vegetated corridor

The Planning Commission finds that the existing condition of the water quality resource area on the subject property is classified as Degraded.

- iii. MMC 19.322.9.G requires an analysis of alternatives to the proposed disturbance, including demonstration that the following criteria are met:

- (a) No practicable alternatives to the requested development exist that will not disturb the water quality resource area.

The existing sewer main line running under the subject property serves most of the other residential properties on 19th Ave in Island Station and is the closest and most logical facility for the proposed duplex to connect to for sanitary sewer service. There is no practicable alternative for serving the proposed duplex with this essential public facility.

- (b) Development in the water quality resource area has been limited to the area necessary to allow for the proposed use.

The proposed disturbance of the water quality resource area will be a trench approximately 1 ft wide and 10 to 12 ft long. The proposed trenching is a standard procedure for establishing sewer lateral connections and represents the minimum disturbance to the water quality resource area.

- (c) The water quality resource area can be restored to an equal or better condition in accordance with MMC Table 19.322.9.E.

The applicants have proposed to restore the water quality resource area disturbed by construction of the sewer lateral connection to an equal or better condition, by replanting to match the existing lawn area.

As noted above in Finding 9-C-ii, the existing condition of the water quality resource area is Degraded. According to MMC Table 19.322.9.E, the requirements applicable to disturbances of Degraded water quality resource areas include vegetating disturbed areas with non-nuisance plants from the Milwaukie Native Plants List. A condition has been established to ensure that the disturbed area shall be revegetated with non-nuisance plants from the Milwaukie Native Plants List.

- (d) An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.

The proposed development includes the sewer lateral connection because no other alternatives exist to provide sanitary sewer service to the proposed duplex.

- iv. MMC 19.322.9.I requires a mitigation plan for the water quality resource area that includes information about adverse impacts to resource areas; how adverse impacts will be avoided, minimized, and/or mitigated; a list of all responsible parties; a map showing where specific mitigation activities will occur; and an implementation scheme.

As noted above in Finding 9-C-iii, the proposed disturbance of the water quality resource area will be a trench approximately 1 ft wide and 10 to 12 ft long. A condition has been established to ensure that the disturbed area is revegetated in accordance with MMC Table 19.322.9.E. Another condition has been established to require that the applicants provide a revised landscaping plan to show the proposed mitigation for disturbance related to the sewer lateral connection.

As conditioned, the Planning Commission finds that the relevant application requirements of MMC 19.322.9 will be met.

The Planning Commission finds that, as conditioned, the proposed development meets all applicable standards of the Water Quality Resource regulations (MMC 19.322).

10. Metro's Title 13 Model Ordinance (Nature in Neighborhoods)

On June 1, 2009, the City began applying the Metro Model Ordinance implementing Title 13 of the Urban Growth Management Functional Plan. Title 13 regulations are intended to protect designated Habitat Conservation Areas (HCAs). Until the City adopts local regulations that comply with Title 13, it will directly apply a limited version of the Model Ordinance to land use decisions that affect regionally mapped HCAs.

The subject property borders the Willamette River on the west and includes a 50-ft vegetated corridor measured from the top of bank that is designated as a water quality resource area. In addition, almost the entire site is designated as HCA, with a majority considered Moderate-value HCA but also with small portions of High- and Low-value HCA.

- A. Section 5 of the Model Ordinance requires a construction management plan to ensure that trees and vegetation within the HCA are not damaged during construction.

The applicants have not provided a construction management plan per se but rather have indicated that more detailed information will be provided as part of the building permit process. A condition has been established to ensure that this standard will be met.

- B. Section 6 of the Model Ordinance establishes standards for development within HCAs.
 - i. Subsection 6-A provides application requirements, including a detailed site plan showing the location of existing trees within the HCA with a greater than 6-in diameter at breast height. The applicants have provided site plans that show the requested information. This standard is met.
 - ii. Subsection 6-B provides methods for avoiding HCAs. Specifically, Subsection 6-B-1 allows required setbacks of the base zone to be reduced to as little as 10

ft to avoid or minimize impacts to the HCA.⁶ However, this allowance relates only to the standards of the base zone. In this case, the Willamette Greenway overlay triggers conditional use review and subjects the proposal to the higher standards for yards provided in MMC 19.602.1. This allowance is not applicable to the proposed development.

- iii. Subsection 6-C establishes non-discretionary standards for development within HCAs, including limitations on disturbance area. Projects that can meet the non-discretionary standards are not subject to the additional analysis and requirements as established in Section 7 of the Model Ordinance.

- (a) Specifically, Subsection 6-C-1 provides a means for calculating the maximum allowed disturbance of the HCA for single-family residential projects. The calculations begin by removing the square footage of designated Water Quality Resource (WQR) area on the property. On Parcel 2, which has an area of 11,744 sq ft, only 7245 sq ft are outside the designated WQR area; all 7245 sq ft are designated as Moderate-value HCA.

According to Table 1 within Subsection 6-C-1, 65% of the non-WQR area constitutes the Total Disturbance Area allowed on Parcel 2, or approximately 4710 sq ft. Because all of the non-WQR area is HCA, the maximum HCA disturbance allowed on Parcel 2 is 4710 sq ft. As proposed, the new duplex footprint, including the rear deck and paved front driveway area, is approximately 3130 sq ft. The non-discretionary standard for allowed disturbance of the HCA on Parcel 2 is met.

- (b) Subsection 6-C-2 establishes standards for protection of the HCA during development, including a requirement to mark work areas and a prohibition on using trees in HCAs as anchors for stabilizing construction equipment. These standards are applicable to the proposed development.

- iv. Subsection 6-E establishes mitigation requirements for disturbance within HCAs, including options for determining the number of required plantings and standards for those plantings. Mitigation Option 1 bases the required mitigation upon the number and size of trees that are removed from the site. As proposed, three deciduous trees will be removed from the HCA on the property, with diameters of 10, 14, and 24 in. According to Table 3 in Subsection 6-E-1-a, the total required mitigation for the proposed tree removal is 10 new trees and 21 new shrubs.

As proposed, 10 new trees and 17 new shrubs will be planted on Parcel 2. Four additional shrubs were proposed to be planted in the public right-of-way in front of the new duplex. A condition has been established to ensure that all required mitigation plantings are installed on Parcel 2 itself. The additional standards of Subsection 6-E, regarding plant size, spacing, diversity, survival, etc., are applicable to the proposed development.

- v. Subsection 6-F-1 establishes standards for partitions involving HCAs. The standards include a requirement that there be no more than a 30-point difference in the percentage of HCA on each parcel.

⁶ The original version of the Model Ordinance allows setbacks to be reduced to 0; however, in the Planning Director's implementing memo, the minimum setback reduction was raised to 10 ft.

Although the proposed development is a replat and not technically a partition, the effect of the replat, which will establish two developable parcels where there was previously a single property with five underlying lots of record, is the same as that of a partition. Since the entire subject property is designated as HCA, both new parcels will therefore also be entirely covered by HCA. The standards of Subsection 6-F are met.

- C. Section 9 of the Model Ordinance outlines the process for verifying the HCA boundary. In particular, Subsection 9-F-1 establishes the basic verification approach of agreeing that the HCA map is accurate, which includes submittal of a detailed property description, copy of the HCA map, and 2005 aerial photograph of the property.

The applicants have asserted that the HCA map is accurate and have submitted the required information. The entire subject property is designated as HCA; most of it is Moderate-value HCA but there are small areas of High- and Low-value HCA on the property as well. This standard is met.

The Planning Commission finds that the proposed development, as conditioned, meets the applicable standards of Metro's Title 13 Model Ordinance.

11. MMC 19.500 Off-street parking and loading

MMC 19.503.9 establishes off-street parking standards for specific uses, including residential uses. Single-family residences require a minimum of two parking spaces per dwelling unit, at least one of which must be covered. Residential off-street parking spaces must have minimum dimensions of 9 ft by 20 ft and must have a durable and dust-free surface.

The existing house on Parcel 1 provides the required off-street parking with a driveway and detached two-car garage on the north side of the property. Removal of the driveway from the south side of the property will not prevent the existing house from meeting the off-street parking standard.

Off-street parking for the proposed duplex on Parcel 2 will be evaluated at the time of development and will be subject to the standards in effect at the time of submission of the building permit.⁷ The applicants have proposed to provide four off-street parking spaces, with two spaces in an attached garage and two outside in the driveway. As proposed, the two driveway spaces are only 18 ft long instead of the 20 ft required by the current code. However, since the building permit for the new duplex will be processed under the recently revised parking regulations, this difference will be irrelevant, because of the new minimum dimension for required spaces and because only one off-street space will be required per dwelling unit.

The Planning Commission finds that the proposed replat meets the applicable standards of MMC 19.500 and that the proposed duplex will meet the applicable standards of the newly revised MMC 19.500.

⁷ The application was originally submitted on March 17, 2010. On May 18, 2010, the City Council adopted a new version of MMC 19.500, the off-street parking chapter (land use file ZA-10-01). The new chapter will be in effect as of June 17, 2010. One of the changes is a reduction of required spaces for single-family residential uses, from two per unit to one per unit (for reference, see the new MMC 19.505). Another change is the elimination of the requirement for covered off-street parking for residential uses. In the new parking chapter, the minimum dimension of required spaces is 9 ft by 18 ft instead of 9 ft by 20 ft and required parking can no longer be located within the required front yard setback (for reference, see the new MMC 19.507.1).

12. MMC 19.600 Conditional uses

- A. MMC 19.601 establishes the authority of the Planning Commission to grant or deny conditional use requests through the minor quasi-judicial review process outlined in MMC 19.1011.3 and under the specific criteria listed in Sections 19.601 and 19.602.

- i. MMC 19.601.1 requires any change to an existing conditional use, including a change in lot area, to be reviewed by the Planning Commission to assure conformance with current requirements.

The existing house on the subject property is an established conditional use in the Willamette Greenway overlay zone. The proposed replat would result in the existing house being situated on Parcel 1, which is smaller than the subject property.

The Planning Commission finds that the accompanying change in lot area does not cause the existing house to go farther out of conformance with any applicable standards of the R-5 zone, as evaluated in Finding 7.

- ii. MMC 19.601.2 establishes general review criteria for conditional uses, which must be met in addition to any other requirements in MMC 19.600 that are more specific to the proposed use.

- (a) The use meets the requirements of a conditional use in the zone currently applied to the site.*

The Willamette Greenway zone designation of the subject property requires conditional use approval for the proposed development. As addressed in Finding 8, the proposed development meets the applicable requirements of the Willamette Greenway zone.

- (b) The use meets the standards for the underlying zone.*

As addressed in Finding 7 and in combination with the variance requests evaluated in Finding 13, the proposed development, as conditioned, meets the applicable standards of the Residential R-5 zone.

- (c) The proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use.*

Within the City's Comprehensive Plan, Chapter 3 (Environmental and Natural Resources) and Chapter 4 (Land Use) both contain elements that relate to the proposed development.

- (1) Open Spaces, Scenic Areas, and Natural Resources Element (Chapter 3)

The goal of this element includes conserving open space and protecting and enhancing natural and scenic resources. In particular, Objective #2 (Natural Resource Areas) focuses on regulating development to preserve and maintain important natural habitats and vegetation by protecting and enhancing riparian areas and significant tree and vegetative cover.

As noted above in Findings 9 and 10, the proposed development is subject to the requirements of the Water Quality Resource regulations as per MMC 19.322 and the Habitat Conservation Area rules of Metro's Title 13, respectively. As addressed in those findings, and as provided in the related conditions of approval, the proposed development is adequately protective of natural resources.

(2) Air, Water, and Land Resources Quality Element (Chapter 3)

The goal of this element is to meet federal and state air, noise, and water quality standards. As evaluated in Finding 9 and as provided in the related conditions of approval, the proposed development satisfies the applicable requirements of the City's Water Quality Resource regulations, which are in compliance with Statewide Planning Goal 6 (Air, Water, and Land Resources Quality).

(3) Residential Land Use and Housing Element (Chapter 4)

The goal of this element includes providing for the development of sound, adequate new housing to meet the needs of local residents while preserving and enhancing local neighborhood quality and identity. Specifically, Objective #1 (Buildable Lands) focuses on utilizing lands according to their relative measure of buildability, which may be influenced by any one of several special considerations such as the designation of significant natural features and wildlife habitat.

The proposed development includes construction of a duplex, an outright permitted use in the R-5 zone. The effect of designated natural resources on the density potential for the subject property, which reduces the maximum allowed density to "0," is evaluated in the context of the variance request addressed in Finding 13-A. With approval of the variance to exceed the maximum allowed density, the proposed development will provide adequate new housing to meet local needs.

(4) Willamette Greenway Element (Chapter 4)

The goal of this element is to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River.

Specifically, Objective #3 (Land Use) focuses on providing compatible uses within the Willamette Greenway by requiring conditional use approval for new construction or intensification of existing uses and directing non-water-dependent uses away from the river. The proposed development is being reviewed as a conditional use. The building footprint of the proposed duplex on Parcel 2 is oriented to the east end of the property rather than near the riverbank. The proposal includes mitigation for the removal of several existing trees and will result in enhancement of the designated natural resource areas on the site.

Objective # 5 (Public Access and View Protection) focuses on providing, improving, and maintaining public access and visual access within the Willamette Greenway and to the Willamette River. In particular, the City is charged with evaluating all proposals within the vicinity of the Willamette Greenway for their effect on visual corridors. There is currently no public access to the river through the subject property and that will not change as a result of the proposed development. The new duplex on Parcel 2 will not significantly impact the existing views of the river from 19th Ave. The new structure's side yard setbacks will meet the standards required for conditional uses in MMC 19.602.1 (see Finding 12-B, below) and will allow for adequate view corridors on either side of the new building.

Objective #6 (Maintenance of Private Property) focuses on ensuring that the rights of private landowners are enforced by restricting access between public and private land. As noted above, there is currently no public access to the river through the subject property and that will not change as a result of the proposed development. The subject property is located across the Eagle St right-of-way from the Kellogg Sewage Treatment Plant and its accompanying public grounds, which include a multi-use pathway. Access to the subject property from the grounds of the treatment plant will not change as a result of the proposed development.

The proposed development will adequately protect, conserve, and enhance the various qualities of the land along the Willamette River.

The Planning Commission finds that the proposed development satisfies all applicable goals and policies of the Comprehensive Plan. This standard is met.

- (d) *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features.*

The subject property slopes down toward the Willamette River from the public right-of-way at 19th Ave. The subject property's topography and its proximity to the river make construction more challenging than normal. But the site is already occupied by one single-family detached dwelling, which is located on the northern end of the property and situated upslope from the river near the public right-of-way at 19th Ave. An existing sanitary sewer main line runs north-south underground along the western third of the property, with capacity available to handle additional development on the site. There is sufficient open space on the property south of the existing house to accommodate the proposed duplex. This standard is met.

- (e) *The proposed use is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use.*

Water and sanitary sewer service are available to serve the proposed development. A condition has been established to ensure that the public street on 19th Ave will be made adequate according to City standards. As conditioned, this standard is met.

- (f) *The proposed use complies with the transportation requirements and standards of Chapter 19.1400.*

As discussed in Finding 14, the proposed development will comply with all applicable requirements of MMC 19.1400. As conditioned, this standard is met.

As conditioned, the Planning Commission finds that the proposed development meets all applicable review criteria for conditional uses as established in MMC 19.601.2.

- iii. MMC 19.601.3 authorizes the Planning Commission to attach conditions and restrictions to any conditional use approval. Conditions and restrictions may include specific limitations of use, landscaping requirements, off-street parking, performance standards, and other safeguards that would uphold the intent of the

Comprehensive Plan and mitigate any potential adverse impacts on adjoining properties.

The Planning Commission has established a number of conditions to accompany the approval of the conditional use.

- iv. MMC 19.601.4 establishes limits on the validity of an approved conditional use permit. Specifically, MMC 19.601.4.A, in combination with MMC 19.1013, voids a newly approved conditional use permit if substantial construction has not taken place within 6 months of approval. MMC 19.601.4.B authorizes the Planning Commission to extend a newly approved conditional use permit for an additional year, upon receiving a written request from the applicant.

As part of the larger application, the applicants have included a request for an additional 1-year extension of the conditional use permit.

The Planning Commission acknowledges that the Willamette Greenway overlay zone creates an unusual circumstance, in that a development that is an outright permitted use in the R-5 zone is instead subjected to conditional use review. Most single-family residential construction projects are not held to a specific timeline to demonstrate substantial construction.

The Planning Commission finds that a 1-year extension to the conditional use approval is justified for the proposed development.

As conditioned, the Planning Commission finds that the proposed development meets the applicable standards of MMC 19.601.

B. MMC 19.602 establishes specific standards for conditional uses.

- i. MMC 19.602.1 requires that the yard setbacks (front, side, and rear) for conditional uses in residential zones must be equal to at least two-thirds of the height of the principal structure. This standard applies both the existing house on Parcel 1 and the proposed duplex on Parcel 2.

The height of the existing house on Parcel 1 is approximately 16 ft, resulting in minimum yard setbacks of 11 ft as per MMC 19.602.1. The existing house encroaches approximately 1 to 2 ft into the public right-of-way and is nonconforming with respect to the front yard standard. The proposed replat involves the southern side of the existing house and will not affect the front or rear yards of the existing house. The south-side setback will be approximately 26 ft, which meets the 11-ft standard established by MMC 19.602.1.

The proposed duplex on Parcel 2 will be 16.5 ft in height, which also requires minimum yard setbacks of 11 ft as per MMC 19.602.1. As noted in Finding 7, the proposed duplex will meet or exceed this standard for the side and rear yards. The applicants have requested a variance from the 11-ft setback requirement for the front yard and have proposed a 7-ft front yard setback. The Planning Commission has denied this variance request (see Finding 13-B). As conditioned, the front yard of the new duplex on Parcel 2 will meet the 11-ft standard established by MMC 19.602.1.

- ii. MMC 19.602.7 establishes standards for single-family attached dwellings (duplexes) that require conditional use approval.

The City allows duplexes as conditional uses in R-7 and R-10 residential zones, but the R-5 zone allows duplexes as an outright permitted use. The conditional

use review of this application is due to the Willamette Greenway overlay zone and is not necessary to approve the proposed duplex. This standard does not apply.

As conditioned, the Planning Commission finds that the proposed development meets the applicable standards of MMC 19.602.

In summary, the Planning Commission finds that, as conditioned, the proposed development meets the applicable standards for conditional uses as established in MMC 19.600.

13. MMC 19.700 Variances, exceptions, and home improvement exceptions

MMC 19.701 authorizes the Planning Commission to grant variances from the standards and requirements of Title 19 Zoning, within the limitations prescribed in MMC 19.702. The applicant has requested two variances: (1) to exceed the maximum density for development and (2) to reduce the required front yard setback for Parcel 2.

A. The applicant has requested a variance to exceed the maximum density for the R-5 zone, which is established in MMC 19.303.L but adjusted according to the definition of “net acre” provided in MMC 19.103. Net acreage excludes natural resources protected under Statewide Goal 5, which includes Habitat Conservation Areas (HCAs). The entire subject property is covered by HCA designation, which reduces the net acreage to 0 and therefore the allowable density to 0 units per net acre. The applicant has requested the variance in order to maintain the existing home on Parcel 1 and to construct a new duplex on Parcel 2. This request is evaluated against the three criteria established in MMC 19.702.1:

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

The subject property is zoned for residential use, but the entire site is designated as natural resource. The property abuts the Willamette River along its western boundary, where a 50-ft vegetated buffer is designated for the purpose of water quality protection. In addition, most of the site is considered Moderate-value HCA as per the inventory conducted by Metro for the Title 13 program. Those portions of the site not designated Moderate-value HCA are either High- or Low-value HCA.

The subject property has been in residential use for a long time. The property consists of five underlying subdivision lots that were legally established in 1884, and the existing house was built on the site in 1916. At 33,357 sq ft, the subject property is larger than the average size of other lots in the immediate area and could accommodate additional development without a need for additional variances. Furthermore, the stated intent of the City’s Water Quality Resource regulations, as established in MMC 19.322.1.G, is to allow development in situations where adverse impacts can be avoided or mitigated and where strict application of the rules would deny reasonable economic use of the property. Likewise, the stated intent of Metro’s Title 13 Model Ordinance, as established in Section 1, is to allow and encourage habitat-friendly development and to provide mitigation standards for the impacts of development allowed in HCAs.

The Planning Commission finds that the property in question has unusual conditions over which the applicant has no control, including conditions for which the City's code provides allowances for development. This standard is met.

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

The applicants could develop the underlying subdivision lots without having to go through a land division process. Construction of new buildings on the existing platted lots would trigger Willamette Greenway review but not the density requirements. Additionally, if each of the underlying lots were to develop, this would result in an even higher density than what is being proposed. A similarly sized lot elsewhere in the neighborhood, with natural resource designations but not covered by the Willamette Greenway overlay, would not trigger the same density restriction and would be allowed to fully develop.

Replatting the subject property into two parcels, as opposed to three or more parcels, allows reasonable development of the property without significantly increasing the current density. A future proposal to further partition Parcel 1 into smaller parcels would require a similar variance request that would have to be considered by the Planning Commission.

The Planning Commission finds that there are no feasible alternatives to the variance and that the variance is the minimum necessary to allow the applicants reasonable use of the property. This standard is met.

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

The natural resource designations on the subject property reduce the allowable density to 0. Without those designations in place, the Willamette Greenway overlay would still evaluate the impacts of proposed development on views to and from the river. As noted above in Finding 13-A-i, the standards in place that protect the designated natural resources (the Water Quality Resource regulations of MMC 19.322 and the HCA rules of Metro's Model Ordinance) acknowledge the potential for development that disturbs resource areas. They account for that disturbance by requiring evaluation, analysis, and mitigation. The proposal is designed to minimize impacts to the resource and includes mitigation activities that will improve the affected parts of what has been determined to be a Degraded water quality resource area. As proposed and conditioned, view corridors will be maintained so that other properties will not be significantly affected.

The Planning Commission finds that, as conditioned, the adverse effects of the proposed development upon other properties that may be the result of this variance shall be mitigated to the extent feasible. This standard is met.

The Planning Commission finds that the three criteria established in MMC 19.702.1 are met and approves the variance request to exceed the maximum density of the R-5 zone, calculated using the definition of "net acre" in MMC 19.103.

- B. The applicant has requested a variance to reduce the required front yard setback for Parcel 2. As noted in Finding 7, the standard front yard setback in the R-5 zone is 20 ft, but MMC 19.401.2.B allows exceptions to the front yard requirement in cases

where abutting front yards are less than the minimum. The front yards abutting Parcel 2 average 6.5 ft (0 ft at Parcel 1 to the north; 13 ft at 11921 SE 19th Ave to the south). According to the allowance of MMC 19.401.2.B, Parcel 2 would only have to provide a minimum front yard setback of 6.5 ft.

However, the Willamette Greenway overlay requires conditional use approval for new development, which makes the additional yard requirements of MMC 19.602.1 applicable to the proposed development. Under that standard, all yards, including the front yard, must be at least two-thirds of the height of the building. The proposed duplex on Parcel 2 is 16.5 ft in height, which requires an 11-ft setback on all sides.

The applicant has requested a variance to reduce the front yard setback on Parcel 2 from 11 ft to 7 ft. This request is evaluated against the three criteria established in MMC 19.702.1:

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

The property abuts the Willamette River along its entire western boundary, and the 100-year floodplain covers the western two-thirds of the site. From the river, a restrictive water quality resource buffer area extends 50 ft toward the proposed duplex footprint. From 19th Ave, the site slopes steeply down toward the river for approximately 60 ft. The footprint for building outside the 100-year floodplain is constrained and pushes development up the slope toward 19th Ave. The entire site is designated as Habitat Conservation Area (HCA), with additional regulations that limit the allowed disturbance and require mitigation.

The right-of-way at 19th Ave is 60 ft wide; the paved portion of 19th Ave is situated far to the east of the centerline and is 12 ft wide with no curbs or sidewalks. As conditioned, 4 ft of additional pavement will be added along the west side of the paved portion of 19th Ave. Thus, the subject property's front property line will be approximately 35 ft from any improvements in the right-of-way.

The Planning Commission finds that the subject property has unusual conditions over which the applicant has no control. This standard is met.

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

One alternative to the variance request is to shift the proposed building footprint to the west. Such a shift would push the building farther into the 100-year floodplain area, although the structure is partially in the floodplain as proposed. The shift would also put the building footprint closer to the two mature locust trees located just west of the proposed rear deck. However, the applicants have not demonstrated that the trees would be irreparably harmed if the footprint moved closer to them. Neither have the applicants demonstrated that any setback between 7 ft and 11 ft is not a workable alternative to the requested setback of 7 ft. It is not clear that 7 ft is the minimum variance necessary.

Another alternative is to modify the building footprint so that the front yard setback requirement is met. While the applicants have explained the process of decision making that led to the proposed floorplan, it is not clear that there is no other building footprint or floorplan that would provide an adequate dwelling

space. The applicants have not made a substantive argument that small adjustments (for example, to the rear deck and/or dining room) cannot be made without compromising the feasibility of the proposed duplex. The standard established by this particular criterion is to demonstrate that there is no other feasible alternative besides the variance requested, not that the variance presents the best possible option.

Even though a duplex is permitted as an outright use in the R-5 zone, there are few, if any, duplexes elsewhere on 19th Ave on lots comparable in size to Parcel 2. The applicants may be allowed to construct a duplex, but they are not required to do so. Although a single-family house may not meet the applicants' highest goals for the site, it seems feasible to assert that building a slightly smaller single-family home on the site would also be a feasible alternative.

The Planning Commission finds that there are feasible alternatives to the proposed variance and that the variance is not the minimum necessary to allow reasonable use of the property. This standard is not met.

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

If allowed, a front yard setback of 7 ft would put the roofline of the proposed duplex several inches higher than if the required 11-ft setback is maintained. This would affect the view of the river looking over the roof from 19th Ave, but only slightly, and it seems reasonable to expect that the remaining vegetation will make it difficult to see much over the roofline regardless of its height. The views on each side of the proposed duplex are more significant in this case, and the depth of the front yard will not substantially affect the views along the sides of the duplex.

With the requirement to widen the paved portion of 19th Ave by 4 ft along the frontage of Parcel 2, the undeveloped right-of-way between the front property line of Parcel 2 and the pavement on 19th Ave will be approximately 35 ft wide. Several large trees as well as new shrubs and plantings in the right-of-way will provide some screening and buffering between 19th Ave and the new duplex. As noted above in the introduction to this variance request, MMC 19.401.2.B allows an exception to the front yard setback standard if the setbacks on adjacent lots are nonconforming. The 7-ft front yard setback proposed by the applicants is slightly greater than the 6.5-ft average front yard setback of the existing dwellings to the north and south of the proposed duplex.

The Planning Commission finds that there are no significant adverse impacts that would result from the granting of this variance. This standard is met.

The Planning Commission finds that only two of the three criteria of MMC 19.702.1 have been met for the request to vary from the required front yard setback. The Planning Commission denies the requested variance. A condition has been established to ensure that the required front yard setback of 11 ft will be met on Parcel 2.

In summary, the Planning Commission approves the variance request to exceed the maximum allowed density on both parcels and denies the variance request to reduce the required front yard setback for the proposed duplex on Parcel 2.

14. MMC 19.1400 Public facility improvements

MMC 19.1400 applies to partitions, subdivisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicant proposes to replat the existing parcel into two new parcels. The new parcels will consist of Parcel 1, which retains the existing single-family residence, and Parcel 2, which is the site of the proposed duplex. The new duplex on Parcel 2 is projected to slightly increase vehicle trips to the site.

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

The Planning Commission finds that the proposed development complies with all applicable criteria of MMC 19.1400, as follows:

A. MMC 19.1403 Review process

MMC 19.1403 requires for minimum safety and functionality standards to be met before a development permit will be issued.

The proposed Parcel 2 does not have adequate paved width along the site's frontage on 19th Ave. The existing paved width on 19th Ave is 12 ft. The minimum paved width along the site's frontage that is allowed is 16 ft. The applicant is required to pave an additional 4 ft in width along the Parcel 2 frontage on 19th Ave.

As conditioned, the Planning Commission finds that the requirements of MMC 19.1403 will be met for the proposed development.

B. MMC 19.1404 Transportation impact evaluation

MMC 19.1404 requires submission of a transportation impact study documenting the development impacts on the surrounding transportation system.

The proposed development will not trigger a significant increase in trip generation and therefore does not require a transportation impact study.

i. MMC 19.1404.4 requires that transportation impacts of the proposed development be mitigated.

The proposed development does not trigger mitigation of impacts beyond the required frontage improvements. The impacts are minimal and the surrounding transportation system will continue to operate at the level of service previous to the proposed development.

The Planning Commission finds that the requirements of MMC 19.1404.4 have been met for the proposed development.

The Planning Commission finds that the requirements of MMC 19.1404 have been met for proposed development.

C. MMC 19.1406 Fee in lieu of construction

MMC 19.1406 establishes specific criteria for accepting a fee in lieu of construction of required transportation facility improvements.

The applicant has proposed to pay a fee in lieu of construction of the required transportation facility improvements triggered by the construction of a new duplex on Parcel 2. The Engineering Director accepts the fee in lieu of construction on the

basis that the required improvements may present a safety hazard because Parcel 2 is mid-block and the required improvements are not feasible to construct. The applicant must pay the fee in lieu of construction for the required frontage improvements prior to a development permit being issued. A condition has been established to ensure that this requirement is met.

The Planning Commission finds that, as conditioned, the requirements of MMC 19.1406 will be met for the proposed development.

D. MMC 19.1408 Transportation facility requirements

- i. MMC 19.1408.1 requires all development to comply with access management, clear vision, street design, connectivity, and intersection design and spacing standards.

The proposed Parcel 2 currently has a driveway access fronting 19th Ave that is currently nonconforming to the standards of the Americans with Disabilities Act (ADA).

The applicant is required to reconstruct the driveway approach to meet all ADA guidelines on 19th Ave. The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line. A condition has been established to ensure that these standards will be met.

The applicant is required to remove all signs, structures, or vegetation in excess of 3 ft in height from “vision clearance areas” at intersections of streets, driveways, and alleys. A condition has been established to ensure that this standard is met.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC 19.1408.1.

- ii. MMC 19.1408.2 establishes standards for street design and improvement.

The applicant is responsible for street improvements along the Parcel 2 frontage adjacent to 19th Ave. The street improvement includes construction of a 12-ft wide paved one-way street, standard curb and gutter on both sides, minimum 3-ft wide planter strip, and minimum 8-ft wide setback sidewalk to accommodate pedestrians and bikes. The street improvements are a modified cross section based on the useable right-of-way that exists along 19th Ave. The applicant has proposed a fee in lieu of construction for the required street improvements. As noted above in Finding 14-C, the Engineering Director accepts the fee in lieu of construction on the basis that the required improvements may present a safety hazard because Parcel 2 is mid-block and the required improvements are not feasible to construct.

The existing right-of-way width of 19th Ave fronting the proposed development is 60 ft. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of 19th Ave a local street. According to MMC Table 19.1408.2 Street Design Standards, the required right-of-way width for a local street is between 20 ft and 68 ft depending on the required street improvements. The required right-of-way needed for the required street improvements is 25 ft. The applicant is not responsible for any additional right-of-way dedication along 19th Ave fronting the development property.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC 19.1408.2.

- iii. MMC 19.1408.3 establishes that sidewalks shall be provided on the public street frontage of all development.

The construction of sidewalks along the proposed development property abutting 19th Ave is included in the street frontage requirements. The applicant will pay a fee in lieu of construction for the required improvements.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC 19.1408.3.

- iv. MMC 19.1408.4 establishes standards for bicycle facilities.

The portion of 19th Ave fronting the proposed development is classified as a bike route in the Milwaukie Transportation System Plan. The required street improvements include the construction of a shared bike facility. The applicant will pay a fee in lieu of construction for the required bike facility improvements.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC 19.1408.4.

- v. MMC 19.1408.5 establishes standards for pedestrian and bicycle paths.

The proposed development property is surrounded by single family residences and the Willamette River with no mid-block connectivity. As a result, a pedestrian/bicycle path is not required for the proposed development.

The Planning Commission finds that the proposed development is consistent with MMC 19.1408.5.

- vi. MMC 19.1408.6 establishes standards for transit facilities.

The portion of 19th Ave fronting the proposed development is not classified as a transit route in the Milwaukie Transportation System Plan. As a result, transit facility improvements are not required for the proposed development.

The Planning Commission finds that the proposed development is consistent with MMC 19.1408.6.

As conditioned, the Planning Commission finds that the proposed development is consistent with all applicable standards of MMC 19.1408.

The Planning Commission finds that, as conditioned, the proposed development is consistent with all applicable standards of MMC 19.1400.

- 15. The City's Public Works Standards require erosion control measures to be installed prior to earth-disturbing activities. A condition has been established to ensure that this standard is met.
- 16. MMC 12.24 requires clear vision at street and driveway intersections. As conditioned, the Planning Commission finds that the proposed development will be consistent with the clear vision standards of MMC 12.24.
- 17. The application was forwarded to the following City departments and related entities for review and comment on May 7, 2010: City of Milwaukie Building and Engineering Departments, City Attorney's office, Clackamas County Fire District #1, Island Station Neighborhood District Association, Metro, Oregon Department of Transportation (ODOT), Oregon Parks and Recreation Department, Division of State Lands, Oregon Department of Fish and Wildlife, and State Marine Board.

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

- **Tom Larsen, City Building Official:** No comments at this time.
- **Douglas Baer, State Marine Board:** No comments.
- **Gail Curtis, Senior Planner with ODOT:** ODOT considers the Willamette River as a transportation corridor and would want to weigh in only if a trail was proposed in conjunction with the application.
- **Charles Bird, chair of the Land Use Committee for the Island Station NDA:** No problem with a narrow 19th Ave. There appears to be enough property for the duplex. Double-check the flood elevation. Recommend separating the two sides of the proposed single-opening (but two-stall) garage. Unclear whether the project is in compliance with the Habitat Conservation Area requirements.
- **Miranda Bateschell, Metro:** The proposal looks fine, given the [resource] classification of the area and the proposed mitigation efforts. Metro has no formal comments.
- **Brad Albert, City Engineering Department:** Various comments related primarily to MMC Title 17 Land Division and MMC 19.1400 Public Facility Improvements.
- **Kathy Schutt, Oregon Parks and Recreation Department:** No comments.
- **Mike Boumann, Clackamas County Fire District #1:** All portions of any new construction must be located within 150 ft of approved Fire District apparatus access roads. A fire hydrant must be located within 600 ft of all portions of any new construction.

ATTACHMENT 2

Recommended Conditions of Approval

1. The final plat application must be submitted within six months of preliminary replat approval, in accordance with Milwaukie Municipal Code (MMC) Subsection 17.24.040. The applicant shall obtain approval of the final plat prior to the expiration of this preliminary replat approval.
2. The final plat application shall be submitted in accordance with MMC 17.24 and shall include the items listed on the City of Milwaukie Final Plat Checklist. The following specific items are also required as part of the application:
 - A. A written narrative describing all changes made to the final plat that are not related to the conditions of approval.
 - B. A final plat that substantially conforms to the revised plans stamped received by the Planning Department on May 7, 2010, and May 10, 2010, and approved by this action, except as modified by these conditions of approval. The final plat document shall include the following:
 - i. A plat note indicating that the partition is subject to the requirements of City of Milwaukie Applications WG-10-01, WQR-10-01, VR-10-01, and R-10-01.
 - ii. The existing sanitary sewer easement on the west side of Parcels 1 and 2 shall be shown on the final plat.
3. Prior to issuance of any building permits for Parcel 2 the following shall be resolved:
 - A. Record the final plat with Clackamas County. Provide a copy of the recorded plat to the Planning Department.
 - B. All plans submitted for building permits for Parcel 2 shall be substantially similar to those submitted as part of the final land use application (stamped received on May 7, 2010, or May 10, 2010, as appropriate). However, provide a revised site plan that shows a minimum front yard setback of 11 ft for the new dwelling on Parcel 2.
 - C. 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. In the event the storm management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.
 - D. Obtain a right-of-way permit for construction of the required 4-ft pavement widening along the Parcel 2 frontage on 19th Ave.
 - E. Pay the fee-in-lieu of construction costs for the required travel lane, curb, planter strip, and pedestrian pathway. The Engineering Director has calculated the fee at \$6,098.30 for the required improvements.
 - F. Provide an erosion control plan and obtain an erosion control permit.
 - G. Provide a construction management plan that shows the following:
 - i. Location of site access (ingress and egress) that construction equipment will use.

- ii. Equipment and material staging and stockpile areas.
 - iii. Measures to protect trees and other vegetation located within the Habitat Conservation Area (HCA) but outside of the approved disturbance area. Trees in the HCA shall not be used as anchors to stabilize construction equipment.
 - H. Provide a revised landscaping plan showing the required mitigation plantings related to disturbance of the water quality resource area for construction of the sewer lateral connection. The landscaping plan shall also show that all required mitigation plantings will be installed on Parcel 2 itself. Plantings installed in the public right-of-way may not be counted toward the required mitigation for disturbance of the water quality resource area or HCA on Parcel 2. All mitigation plantings shall be non-nuisance plants from the Milwaukie Native Plants List.
4. Prior to final inspection for any building permit for Parcel 2 the following shall be resolved:
- A. Restore the water quality resource area disturbed by construction of the sewer lateral in accordance with MMC Table 19.322.9.E. Specifically, the disturbed area shall be vegetated with appropriate plants from the Milwaukie Native Plants List.
 - B. Construct the required 4 ft of pavement widening along the Parcel 2 frontage on 19th Ave.
 - C. Reconstruct the existing south driveway approach onto 19th Ave to meet all guidelines of the Americans with Disabilities Act (ADA) prior to final inspection. The driveway approach apron shall be between 9 ft and 20 ft in width and at least 7.5 ft from the side property line.
 - D. Remove all signs, structures, or vegetation greater than 3 ft high and located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed development.
 - E. If any part of a geothermal HVAC system encroaches onto Parcel 1, provide a copy of a recorded easement agreement for the encroachment.
5. Demonstrate that substantial construction of the new residence on Parcel 2 has been completed within 18 months of this approval. For purposes of this approval, "substantial construction" means construction of the building sufficient to meet occupancy standards, even if a final inspection has not been completed. A final inspection will not be approved until all conditions have been met.

RECEIVED

May 13, 2010

MAY 13 2010

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

CITY OF MILWAUKIE
PLANNING DEPARTMENT

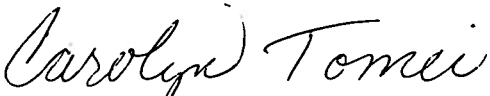
Submittal Amendments – 11907 SE 19th Ave.

Dear Mr. Kelter,

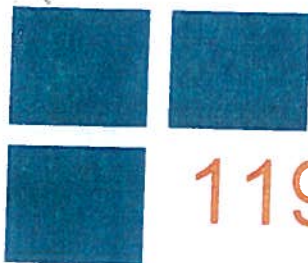
1. We request that the time limit for Conditional Use Approval be extended an additional year beyond the usual 6 months, due to the complex nature of the project.
2. Tree protection during construction: All trees to be preserved will be marked and protected by fencing if in close proximity to construction work. For the 2 large locusts located immediately west of the new house, fencing will be erected as far from the trees as possible, to minimize root disturbance. Until excavation occurs, we cannot know where major roots are located. The 7 foot front yard will allow us more than 8 feet between concrete foundations and the trees. A front yard of 11 feet would reduce this distance to approximately 4 feet, which we believe would cause too much root damage.
3. Building footprint: The design of the house has evolved through many different concepts and variations. This is a very challenging site, what with it being in a flood hazard area and several environmental zones. Four important goals have led to a very compact, efficient floor plan. Goal one: Stay as far as possible, both vertically and horizontally, from the 100-year flood area. Goal two: Stay as far as possible from the Water Quality Resource Area buffer zone to minimize disturbance and to allow for the possibility of a geothermal heat pump system, which is very energy-efficient, but which requires excavation over a large area for underground pipes. Goal three: Keep as much space as possible between the existing house and the new house. This will maintain a view corridor between 19th Ave. and the river. Goal four: Design the house with as compact an envelope as possible for energy efficiency reasons. The primarily square floor plan, with a recess for the required parking, achieves these goals. In the interest of saving space, the two brother owners suggested sharing the entry and stair, rather than a typical duplex arrangement of 2 entries and 2 stairs. They also share the garage and mechanical /shop/ storage room below the garage. We have squeezed the footprint as much as we can.
4. Some project environmental impacts: By keeping the building footprint as small as possible, we are able to keep the vegetated area at a high 74.9%. We will be removing approximately 1,300 square feet of asphalt driveway, while the new driveway, parking area, and street widening total 1,190 square feet. We will be removing approximately

1,900 square feet of ivy. More than 3,300 square feet of native ground cover and shrubs will be planted, along with 10 new native trees. All the large trees on-site and in the street right-of-way will be preserved. We believe that this site will be environmentally improved by the creation of the new home.

Sincerely,


Carolyn Tomei


Gary Michael



11907 SE 19th Avenue

City of Milwaukie, Oregon

SUPPLEMENTAL NARRATIVE:

Willamette Greenway (WG) Permit, Conditional Use
Permit (CU)

Water Quality Resource (WQR)

Title 13 Habitat Conservation Area (HCA), Replat

OWNER/APPLICANT:

Gary Michael and Carolyn Tomei
11907 SE 19th Avenue
Milwaukie, OR 97222

APPLICANT'S REPRESENTATIVE:

Kenneth L. Sandblast, AICP
Planning Resources, Inc.
17690 Boones Ferry Rd
Lake Oswego, OR 97035
Tel: 503-496-4960
Fax: 503-496-4961

Submitted: May 5, 2010

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MAY 07 2010

**CITY OF MILWAUKIE
PLANNING DEPARTMENT**



PlanningResources, Inc.

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SUPPLEMENTAL FINDINGS

The following sections of the Milwaukie Municipal Code are being further addressed by this application due to existing conditions present both on-site and within SE 19th Avenue right-of-way adjacent to the site. Based upon discussions with City engineering staff, the applicant proposes: (i) widening of the existing asphalt by a total of four feet along the SE 19th Avenue frontage of the duplex lot being created by the replat and (ii) a frontage improvement fee-in-lieu amount of \$6,098.30.

A. CHAPTER 19.1400 Public Facility Improvements

19.1402.1 General

19.1403 Review Process

APPLICANT'S RESPONSE:

Chapter 19.14 applies to applications for new construction or a change or intensification of use that results in a new dwelling unit. This application involves construction of a dwelling unit and thus the applicable provisions of Chapter 19.14 are addressed below.

19.1403 Review Process

19.1403.2 Approval Criteria

APPLICANT'S RESPONSE:

A preapplication conference was held on September 17, 2009. Pursuant to Code Section 19.1403.2, a Non-TRF Land Use Application applies because the type of proposed development in this application does not trigger a Traffic Impact Study.

19.1403.3 Approval Criteria

For all proposed development that is subject to Chapter 19.1400 per Section 19.1402, the required development permit and/or land use application shall demonstrate compliance with the following approval criteria at the time of submission.

A. Procedures, Requirements, and Standards

Development and related public facility improvements shall comply with procedures, requirements, and standards of Chapter 19.1400 and the Public Works Standards.

APPLICANT'S RESPONSE:

All applicable sections of 19.1400 are addressed herein. Upon approval of this application, the applicant shall submit required public facility plans as a condition of approval. The applicant will demonstrate compliance with public facility plans during engineering and building permit review.

B. Transportation Facility Improvements

Development shall provide transportation improvements and mitigation at the time of development in rough proportion to the potential impacts of the development per Section 19.1405 Rough Proportionality, except as allowed by Section 19.1406 Fee in Lieu of Construction.

APPLICANT'S RESPONSE:

Based upon discussions with City Engineering to date regarding this proposed new home, this application will be required to improve the SE 19th Avenue right-of-way with an additional four

feet of asphalt pavement along the 70 feet of site frontage for Parcel 2. The applicant will demonstrate compliance with transportation and street frontage plans during engineering and building permit review.

C. Safety and Functionality Standards

The City will not issue any development permits unless the proposed development complies with the City's basic safety and functionality standards, the purpose of which is to ensure that development does not occur in areas where the surrounding public facilities are inadequate. Upon submission of a development permit application, an applicant shall demonstrate that the development property has or will have all of the following:

1. Adequate street drainage, as determined by the Engineering Director.
2. Safe access and clear vision at intersections, as determined by the Engineering Director.
3. Adequate public utilities, as determined by the Engineering Director.
4. Access onto a public street with the minimum paved widths as stated in Subsection 19.1403.3.C.5 below.
5. Adequate frontage improvements as follows:
 - a. For local streets, a minimum paved width of 16 feet along the site's frontage.
 - b. For nonlocal streets, a minimum paved width of 20 feet along the site's frontage.
 - c. For all streets, a minimum horizontal right-of-way clearance of 20 feet along the site's frontage.
6. Compliance with Level of Service D for all intersections impacted by the development, except those on Oregon Highway 99E that shall be subject to the following:
 - a. Level of Service F for the first hour of the morning or evening 2-hour peak period.
 - b. Level of Service E for the second hour of the morning or evening 2-hour peak period.

APPLICANT'S RESPONSE:

Upon approval of this application, the applicant shall submit required public facility plans as a condition of approval. The applicant will demonstrate compliance with public facility plans during engineering and building permit review.

MMC 19.1403.3.C.5 requires a minimum paved width of 16 feet along the site's frontage. The existing paved width along the frontage of the proposed duplex lot is 12 feet. This application will be required to add 4 feet of pavement to the existing pavement in SE 19th Avenue along the frontage of the duplex lot to meet the minimum requirement. This section is met.

19.1404 Transportation Impact Evaluation

APPLICANT'S RESPONSE:

The proposed development does not require a Traffic Impact Study as determined by the City Engineer. This section is met.

19.1406 Fee in Lieu of Construction

APPLICANT'S RESPONSE:

The applicant proposes a fee-in-lieu of construction amount (totaling \$6,098.30) based on the proposed one-way street cross section presented at the Island Station NDA meeting in December 2009. This proposed fee-in-lieu is due to the duplex lot's mid-block location.

19.1408.2 Street Design Standards

19.1408.3 Sidewalks

19.1408.4 Bicycle Facility Requirements

APPLICANT'S RESPONSE:

The proposed development is required to construct street improvements along the duplex lot SE 19th Avenue frontage. SE 19th Avenue is a bike boulevard in the City of Milwaukie Transportation System Plan. The City has designed a one-way cross section for SE 19th Avenue along the frontage of the duplex lot which will be the basis of the required street improvements. The applicant proposes a fee in lieu of construction for the required duplex lot frontage improvements due to the mid-block location of the duplex lot satisfying the provisions of these standards and requirements.

19.1408.5 Pedestrian and Bicycle Paths

19.1408.6 Transit Requirements

APPLICANT'S RESPONSE:

The subject site is not located on a City of Milwaukie Transportation System Plan designated transit route. The development proposed through this land use application does not trigger the requirements of either of these subsections.

19.1409 Public Utility Requirements

APPLICANT'S RESPONSE:

The development proposed through this application involves construction of duplex structure which requires connections of a sanitary service lateral and a water meter service. The following public utilities are available and adequately sized to serve the proposal as follows:

Water: A public water line is located in SE 19th Avenue public right-of-way which will serve the proposed home via a new water meter service connection.

Sanitary Sewer: A public sanitary sewer line is currently located through the property within an easement and will serve the proposed home via a service lateral connection.

Storm Drainage: As depicted on the site plan, an on-site storm swale is proposed to be located on the west of the proposed home.

Based upon the current size of existing public utilities, specifically sanitary sewer and water, no capacity issues are anticipated to serve the one additional home proposed in this application with services laterals, and no utility upsizing is proposed.

CHAPTER 19.500 Off Street Parking and Loading

19.503.3 Minimum Spaces Required

APPLICANT'S RESPONSE:

This section requires two off street spaces per unit, of which one space must be covered. As illustrated on the submitted plan set, the proposal meets this standard by providing both a driveway on-site and including a garage in the design of the single-family attached dwelling. The applicant recognizes that the current site plan does not confirm to all current requirements for off-street parking, but ensures that all required off-street parking spaces will meet the standards in place at the time of submittal of the building permit for the single-family attached dwelling.

B. CHAPTER 19.700 Variances

19.701 Variances

APPLICANT'S RESPONSE:

The applicant is requesting a variance to MCC 19.602.1 which requires yard areas to be at least 2/3 of the height of the principal structure. In this case, the applicant is required to have an 11 foot front yard setback. The building height is 16.5 feet, as illustration on the plan set. The applicant is requesting a front setback of 7 feet which is a larger setback than the minimum setback allowed under City regulations permitting averaging of adjacent front yard setbacks. The applicant is aware that pursuant to this section, the Planning Director may apply conditions of approval to an approved variance.

19.702 Circumstances for Granting Variances

A variance may be granted only when the Planning Commission or Planning Director finds all of the following criteria are satisfied.

19.702.1 Criteria for Granting Variances

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

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

C. That adverse effects upon other properties that may be the result of this variance shall be mitigated to the extent feasible. (Ord. 1849 (part), 1999)

APPLICANT'S RESPONSE:

The property in question has unusual conditions that the applicant has no control, that being located on the Willamette River. Development along the Willamette River is held to a higher standard that development not along the river and is subject to the Willamette Greenway Overlay. In this case, the conditional use requirement requires the proposed structure to have yard areas to be at least 2/3 of the height of the proposed principal structure, which is 16.5 feet. In this case, the applicant is required to have an 11 foot front yard setback. The applicant is requesting 7 feet. Therefore Subsection 19.702.1.A is met.

The applicant wishes to develop a duplex on the property in an environmentally responsible manner. As such, the applicant has located the structure as far from the river as possible, preserving major trees and remaining out of the Water Quality Resource Area as practicable, and making as much space as possible for a storm water rain garden and an energy-conserving geothermal heat pump heating system. With the 7 foot front yard, the house will be substantially farther from the street than the existing house or the Hamilton garage. In addition, the 22 feet width of the garage will be 18 feet from the property line and 54 feet from the widened street. As presented by this evidence, the applicant has demonstrated that environmental concerns are a driving force in the proposed development. Therefore Subsection 19.702.1.B and C are met.

The proposed variance is the minimum that would allow the applicant to use the property in a way as others could who do not have the requirement that a front yard be 2/3rds the height of the proposed structure. The applicant has reviewed options and alternatives. If required to locate the house further away from the street and meet the 11 foot setback, then the home will need to be placed closer to the river. This would cause a negative effects environmentally, as it

would be closer to the Water Quality Resource Area and likely cause the loss of two large existing trees. Locating the structure as proposed allows the applicant to preserve large open space areas and allow for a proposed storm water rain garden and geothermal heating system. Any disturbance areas will be revegetated.

The proposed variance will not be detrimental to neighboring owners. The variance applies to the front yard setback only. The proposed setback is on average with other structures in the area. Substantial justice would be afforded to the applicant and the environment by allowing the proposed structure to be located closer to the street. There is no other practical use of the property other than residential uses.

Therefore Subsection 19.702.1.B and C are met.

19.704 Procedure

APPLICANT'S RESPONSE:

The applicant has provided the addressed the required sections for the above variance. The applicant understands the review process for the proposed variance.

19.706 - 709 Exception Procedures

APPLICANT'S RESPONSE:

The applicant is not requesting an exception and therefore these sections do not apply.

C. 19.322 Water Quality Resource Regulations

19.322.1 Purpose, General Policies, and Declarations

19.322.9 Application Requirements

E. An assessment of the existing condition of the Water Quality Resource Area in accordance with Table 19.322.9.E.

Table 19.322.9.E Water Quality Resource Area Requirements	
Existing Condition of Water Quality Resource Area	Requirements Applicable to Portions of the Water Quality Resource Area Disturbed During Development or Land Disturbance
Good Existing Corridor: <i>Combination of trees, shrubs, and groundcover are 80% present, and there is more than 50% tree canopy coverage in the vegetated corridor.</i>	<i>Submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including: sediments, temperature and nutrients, sediment control, temperature control</i> <i>Or addressing any other condition that may have caused the Protected Water Feature to be listed on DEQ's 303 (d) list.</i> <i>Inventory and remove debris and noxious materials.</i>
Marginal Existing Vegetated Corridor:	<i>Vegetated disturbed and bare areas with nonnuisance plantings from the Milwaukie Native Plant List.</i>

Combination of trees, shrubs, and groundcover are 80% present, and 25—50% canopy coverage in the vegetated corridor.	Inventory and remove debris and noxious materials. Revegetate with native species using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site. Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site. Restore and mitigate according to approved plan using nonnuisance plantings from the Milwaukie Native Plant List. Inventory and remove debris and noxious materials.
Table 19.322.9.E CONTINUED Water Quality Resource Area Requirements	
Existing Condition of Water Quality Resource Area	Requirements Applicable to Portions of the Water Quality Resource Area Disturbed During Development or Land Disturbance
Degraded Existing Vegetated Corridor: Less vegetation and canopy coverage than Marginal Vegetated Corridors, and/or greater than 10% surface coverage of any nonnative species.	Vegetate disturbed and bare areas with appropriate plants from the Milwaukie Native Plant List. Remove nonnative species and revegetate with nonnuisance plantings from the Milwaukie Native Plant List. Plant and seed to provide 100% surface coverage. Restore and mitigate according to approved plan using nonnuisance plantings from the Milwaukie Native Plant List. Inventory and remove debris and noxious materials.

APPLICANT'S RESPONSE:

The existing corridor on the subject site is comprised of the bank of the Willamette River and lawn area typical of residential development, including open lawn and a few trees. Given this existing residential scale landscape, the corridor can be classified as marginal canopy coverage. As illustrated on the attached plan, the largest trees are located along the top of

bank. As depicted on the submitted site plan and building plan exhibits, the applicant proposes to retain these trees and avoid the majority of the canopy area for both the sewer line and geothermal system.

F. An inventory of vegetation, including percentage ground and canopy coverage.

APPLICANT'S RESPONSE:

The site plan shows existing trees located in the WQRA. Existing canopy coverage is shown on the Habitat Conservation Area Map provided by city staff. On the duplex lot, there is less than 25% tree canopy in the WQRA, including buffer area, compromised mainly of two locust trees.

G. Alternatives analysis demonstrating that:

1. *No practicable alternatives to the requested development exist that will not disturb the Water Quality Resource Area; and*

APPLICANT'S RESPONSE:

The applicant is proposing minimal development – a sanitary sewer lateral connection - within the buffer area of the Water Quality Resource Area and not within the resource area, as depicted on the submitted site plan for the location of the proposed sewer lateral. A foot wide trench will occur for the sanitary sewer lateral line for approximately 12 feet in length within the WQRA buffer area. No other gravity sewer lines alternatives are available to serve the site.

2. *Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use; and*

APPLICANT'S RESPONSE:

The applicant is proposing limited development in the buffer area of the Water Quality Resource Area and not within the resources area. The trenching associated with connecting a new sanitary lateral is temporary and upon connection, the trenching area will be replanted to match existing lawn in this area of the site. This trench is the minimum necessary to connect a sanitary sewer lateral to the existing public sanitary line located on the site.

3. *The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 19.322.9 E; and*

APPLICANT'S RESPONSE:

The applicant proposes to stay away from major roots of large trees, and house foundations. The disturbance will be restored to an equal or better condition, with replanting to match the existing residential lawn area.

4. *An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.*

APPLICANT'S RESPONSE:

The applicant has chosen the sanitary sewer lateral connection, as proposed, based on desires to conserve environmental functions of the site. This connection is not located within the WQRA resource area and is located to minimize impacts to existing vegetation and resources by being placed within the existing residential lawn area on the duplex lot.

I. A Water Quality Resource Area mitigation plan that contains the following information:

1. A description of adverse impacts that will be caused as a result of development;

APPLICANT'S RESPONSE:

Trenching will occur for a 1 foot wide trench approximately 12 lineal feet through existing yard for a sanitary sewer lateral connection serving the new duplex. This trenching will occur in the WQRA buffer area only. Impacts will be temporary from the construction the sewer line and the trench area replanted with grass to match the existing residential lawn.

2. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.322.9.E;

APPLICANT'S RESPONSE:

As previously stated, no impacts will occur to the WQRA resource area; only within the buffer.

3. A list of all responsible parties including, but not limited to, the owner, applicant, contractor, or other persons responsible for work on the development site;

APPLICANT'S RESPONSE:

The property owner will be the responsible party to work on the development site.

4. A map showing where the specific mitigation activities will occur;

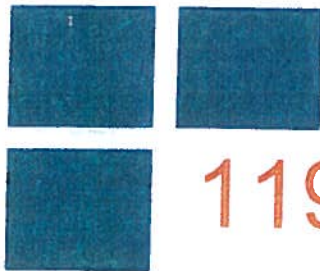
APPLICANT'S RESPONSE:

Mitigation will be restoration of the trench area with grass to match the existing residential lawn in this area of the duplex lot.

5. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting, and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.

APPLICANT'S RESPONSE:

The applicant anticipates replanting the yard to match the existing grass upon completion of the sewer line installation.



11907 SE 19th Avenue

City of Milwaukie, Oregon

Willamette Greenway (WG) Permit,
Conditional Use Permit (CU)
Water Quality Resource (WQR)
Title 13 Habitat Conservation Area (HCA),
Replat

OWNER/APPLICANT:

Gary Michael and Carolyn Tomei
11907 SE 19th Avenue
Milwaukie, OR 97222

APPLICANT'S REPRESENTATIVE:

Kenneth L. Sandblast, AICP
Planning Resources, Inc.
17690 Boones Ferry Rd
Lake Oswego, OR 97035
Tel: 503-496-4960
Fax: 503-496-4961

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MAY 07 2010

CITY OF MILWAUKIE
PLANNING DEPARTMENT

March 16, 2010
Resubmittal: April 22, 2010



PlanningResourcesinc.

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SUBJECT SITE DESCRIPTION

Political Boundaries

City	Milwaukie
County	Clackamas Co.
Metro Council District	District 2 Carlotta Collette carlotta.collette@oregonmetro.gov
Voting Precinct	51

Planning Information

Census Tract	212.00
Neighborhood	ISLAND STATION
Urban Growth Boundary	Inside
Zip Code	97222

Zoning

Local Designation	R5
Generalized Classification	SFR

Environmental Findings

Flood Plain (FEMA 100 yr.)	Present
Watershed Basin	Lower Willamette
Watershed Subbasin	Johnson Creek

Special Service Districts

Fire Protection District	Clackamas County Fire Protection District #1
Park District	North Clackamas Park Dist #1
School District	NORTH CLACKAMAS No. 12
Sewer District	Not in a sewer district
Water District	Not in a water district

Tax Assessment Details

Tax Lot Number	11E35DA02700
Mult. Co. Account No.	19606
Tax Lot Size	37,228 sq. ft
Site Address	11907 SE 19TH AVE MILWAUKIE

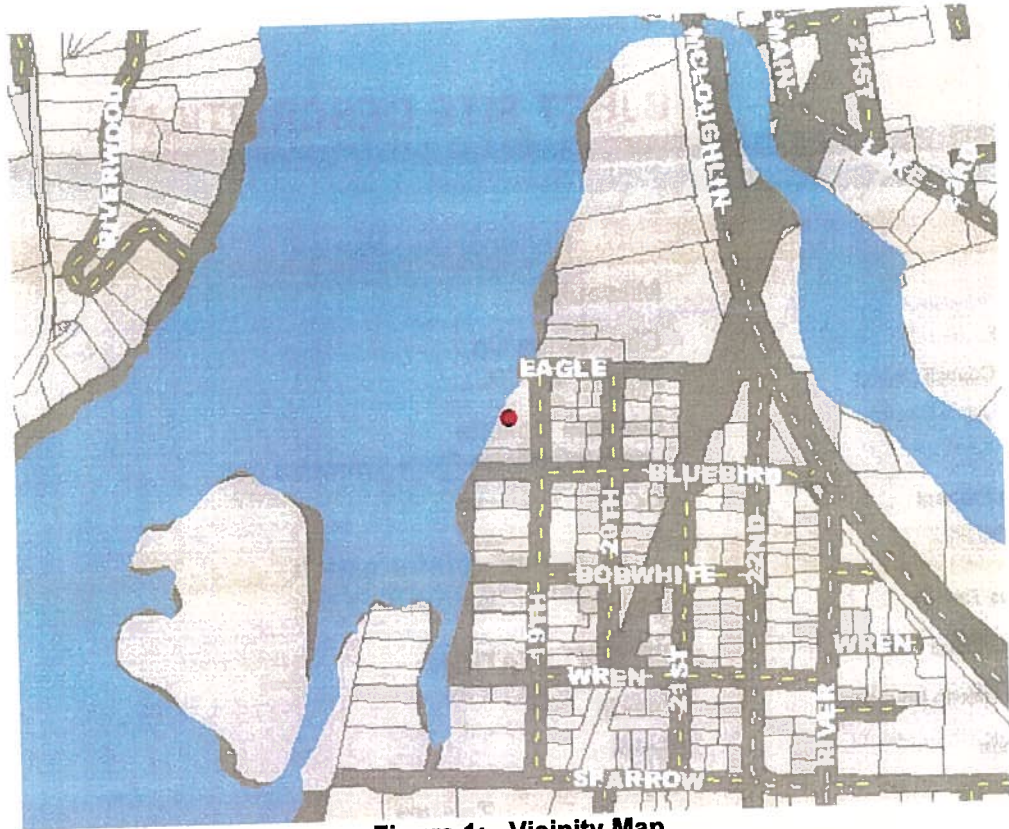


Figure 1: Vicinity Map



Figure 2: 2008 Aerial Photograph

PROJECT DESCRIPTION

Proposal:

The applicant is requesting approval of the following land use applications:

- Willamette Greenway Permit to allow construction of a new single family attached dwelling
- Replat of Robertson Block 31, Lots 1 through 5 into Parcel 1 and Parcel 2 of a partition plat.
- Metro's Habitat Conservation Area/Title 13 Compliance
- Water Quality Resource Review - construction of a new single family attached dwelling
- Flood Hazard Permit Review - construction of a new single family attached dwelling

Existing Conditions:

The subject site is zoned R5 and is located on the Willamette River. The site currently contains one single family home. The remainder of the site contains landscaping typical of a single family residence along with scattered firs, deciduous trees, and blackberries located along the river bank.

The subject site slopes towards the Willamette River. The existing home fronts on the west side of SE 19th Avenue, a local street. Adjacent to the site SE 19th Avenue has a right-of-way width of 60 feet and an existing paved width of 12 feet.

Surrounding Area:

The site and immediate area to the south are zoned R5 – Medium Density. Single-family residences on a variety of lot sizes occupy surrounding properties.

APPROVAL CRITERIA

APPROVAL CRITERIA:

The following sections of the City of City of Milwaukie Municipal Code are applicable to this application:

Title 19 -- Zoning

- 19.300 – Use Zones
- 19.400 – Supplementary Regulations
- 19.500 – Off Street Parking and Loading
- 19.600 – Conditional Uses
- 19.700 -- Variances
- 19.1400 – Transportation Planning, Design Standards

Title 17 – Land Division

Title 18 – Flood Hazard

Title 13 of the Metro Functional Plan

FINDINGS

The approval criteria for the above referenced land use applications are listed in the Milwaukie Municipal Code and is identified in blue below. Following each approval criteria is a finding demonstrating compliance with each.

1. CHAPTER 19 -- ZONING

A. Chapter 19.300 – Use Zones

CHAPTER 19.303 Residential Zone R.5

Section 19.303.1 Outright Permitted Uses

APPLICANT'S RESPONSE:

This application proposes a single-family attached dwelling consistent with this section.

Section 19.303.2 Conditional Uses

APPLICANT'S RESPONSE:

None of the uses listed in this section are proposed through this application. The Conditional Use requested in this application involves the Willamette Greenway zone and is addressed herein below.

Section 19.303.3 Standards – Lot sizes, Setbacks, Parking and Loading, Lot Coverage, Vegetation, Densities, Transportation Requirements

In an R-5 Zone the following standards shall apply:

A. Lot size. Lot area shall be at least 5,000 square feet. For single-family attached dwellings the lot area shall be an average of at least 5,000 square feet per dwelling unit. Lot width shall be at least 50 feet. For interior single-family attached dwellings the lot width shall be at least 30 feet. Lot depth shall be at least 80 feet.

APPLICANT'S RESPONSE:

As illustrated on the attached plan set, Parcel 1 is 21,613 square feet and contains the existing single family home; Parcel 2 is 11,744 square feet and proposed to contain a 2 dwelling unit duplex structure which requires a minimum 10,000 square feet in lot area. Both Parcel 1 and Parcel 2 exceed minimum lot area requirements. This section is met.

B. Front yard. A front yard shall be at least 20 feet.

APPLICANT'S RESPONSE:

As illustrated on the attached plan set, no front yard setback changes are proposed to the existing home. The proposed front yard for the duplex is nine (9) feet. Code Section 19.401.2.B.1 provides that the front yard setback can be the average of adjacent front setbacks within 100 feet of Parcel 2. The existing home on Parcel 1 has a 0 foot front setback and the existing home adjacent to the south of Parcel 2 has a 5 foot front setback. As depicted on the submitted site plans, the proposed building location on Parcel 2 has a minimum front setback of 9 feet which exceeds the average of the two adjacent existing setbacks. This section is met.

C. Side yard. A side yard shall be at least 5 feet, and there shall be 1 additional foot of side yard for each 3 feet of height over 2 stories or 25 feet, whichever is less, except on corner lots a side yard shall be at least 15 feet on the side abutting the street. For interior, single-family attached dwellings side yards are not required.

APPLICANT'S RESPONSE:

As illustrated on the attached plan set, the existing home will have a new side yard of approximately 25.95 feet, adjacent to the replatted lot line. The proposed duplex will have setbacks of 11 feet to the north and 11 feet to the south, which is two-thirds of the proposed building height.

D. Rear yard. A rear yard shall be at least 20 feet.

APPLICANT'S RESPONSE:

As illustrated on the attached plan set, the rear yard of the existing home will not change and exceeds the 20 foot requirement. The proposed duplex will have a rear yard setback of approximately 120 feet, measured to the water's edge of the Willamette River. The existing house is approximately 75 feet to the waters edge.

E. (Repealed by Ord. 1893)

F. Off-street parking and loading. As specified in Chapter 19.500.

APPLICANT'S RESPONSE:

Off street parking and loading is discussed herein in Section B.

G. Height restriction. Maximum height of a structure shall be 2.5 stories or 35 feet, whichever is less.

APPLICANT'S RESPONSE:

As illustrated on the attached plan set, the proposed structure is designed as two-and-half story structure and is 16.5 feet in height measured from the finished grade to the mean height of the roof of the proposed structure. No changes are proposed to the existing structure.

H. Lot coverage. Maximum area that may be covered by the dwelling structure and accessory buildings shall not exceed 35% of the total area of the lot.

APPLICANT'S RESPONSE:

As illustrated on the attached plan set, the lot coverage of the existing home will not change. The proposed structure will have a lot coverage of approximately 21.2%, consistent with this section.

I. Minimum vegetation. Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, etc., will be 25% of the total area of the lot.

APPLICANT'S RESPONSE:

Approximately 74.9% of the lot area will not be developed and therefore the applicant can easily meet the 25% vegetation requirement.

J. Transition area. A transition area shall be maintained according to Subsection 19.403.7.

APPLICANT'S RESPONSE:

No multi family, commercial or industrial projects are proposed, making this section not applicable to the request.

K. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 feet, except as provided in the Land Division Ordinance. The lots for interior single-family attached units shall abut a public street for at least 20 feet.

APPLICANT'S RESPONSE:

As illustrated on the attached plan set, Parcel 1 containing the existing home has 180 feet of frontage, after the replat. Parcel 2 containing the proposed home will have 70 feet of street frontage, consistent with this section.

L. Minimum and maximum density. Development densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to Subsection 19.1011.3 Minor Quasi-Judicial Review, shall be at least 7.0 and not more than 8.7 dwelling units per net acre.

APPLICANT'S RESPONSE:

Section D of this narrative provides a request for a variance to maximum density standards. In this case, the density requirement is 0. The proposed replat totaling two lots therefore exceeds the maximum density. It should be noted that the proposed replat exceeds the minimum lot requirement area requirements of the R5 zone which are 5,000 square feet of lot area for each dwelling unit. Parcel 1 contains one dwelling unit, the existing residence, and is 21,613 square feet in area. Parcel 2 contains two dwelling units, the proposed duplex, and is 11,744 square feet in area which exceeds the required minimum 10,000 square foot lot area. Further, based upon the total site area of 33,357 square feet and a minimum R-5 zone of 5,000 square feet per unit, the total of 3 units proposed in this application is less than one-half the allowed density in R-5.

M. Transportation requirements and standards. As specified in Chapter 19.1400. (Ord. 2003 § 2, 2009; Ord. 1977 § 3, 2008; Ord. 1893 (part), 2001; Ord. 1854 (part), 1999)

APPLICANT'S RESPONSE:

The subject site meets the applicable Transportation requirements are discussed herein.

CHAPTER 19.304 Site and Building Design Provisions

19.403.10 Design Standards for Single-Family Dwellings

APPLICANT'S RESPONSE:

As depicted on the submitted plans, the proposed building design for Parcel 2 meets 10 of the 14 building design standards listed in this section. Consistency with this section will be determined at the time of building permit review.

CHAPTER 19.320 Willamette Greenway Zone WG

19.320.3 Limitations on Use

APPLICANT'S RESPONSE:

The proposed single family attached dwelling is required to be processed as a conditional use. Also refer to the findings in Chapter 19.600, Conditional Uses.

19.320.6 Criteria

The following shall be taken into account in the consideration of a conditional use:

A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;

APPLICANT'S RESPONSE:

The subject property contains a single family residence and is zoned R-5 for residential development. Directly south of the site is a single family dwelling. Therefore, based on the well established residences in the immediate area, it can be found that the area has been committed to an urban use, consistent with OAR 660-015-005, Subsection K..

B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;

APPLICANT'S RESPONSE:

This area of the Willamette River has historically been residential. The existing home was constructed in 1916. The home adjacent to the south at 11921 SW 19th Avenue was constructed in 1938. There is a significant historic home across 19th Avenue. This demonstrates that the area was historically committed to residential uses and not recreational in nature and therefore the proposed replat and attached single family residential unit are compatible. In addition, the site planning of the proposed residence took into consideration protection of the scenic and natural qualities of the river by locating the structure as close to the street as possible.

The only change that will occur to the lot containing the existing home is removal of approximately 45 lineal feet of the existing driveway. It is anticipated that the driveway area proposed for removal will be replanted with vegetation to match the existing residential landscaping and vegetation.

C. Protection of views both toward and away from the river;

APPLICANT'S RESPONSE:

As previously stated, site planning of the proposed residence took into consideration protection of the scenic and natural qualities of the river by locating the structure as close to the street as possible. Existing large trees on the site east and west of the existing house will be retained which will maintain the existing vegetation and views from both SE 19th street and from the Willamette River. A large locust and two large maples will screen the new structure from SE 19th Avenue and four large locust trees will screen the new structure from the river.

The future house will meet all setbacks and height standards, including the Willamette Greenway standards that require increase side setbacks to insure view corridors, which as proposed will be 37 feet in width. Impacts viewing from the river are minimal. No impacts will occur to vegetation along the river. Large open spaces will remain as a result of the existing and proposed structures being located as close to the street as possible.

D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;

APPLICANT'S RESPONSE:

Existing large trees on the site east and west of the existing house will be retained. The new house is proposed to be located along SE 19th Avenue which maximizes the open space and retention of existing on-site landscaping along the Willamette River.

E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;

APPLICANT'S RESPONSE:

The subject property is privately owned and therefore does not have public access to the river.

F. Emphasis on water-oriented and recreational uses;

APPLICANT'S RESPONSE:

As previously stated, this area has historically been committed to residential uses. Therefore the area is not appropriate to change for water oriented or recreational uses.

G. Maintain or increase views between the Willamette River and downtown;

APPLICANT'S RESPONSE:

This section is not applicable given that the property is not located in downtown Milwaukie.

H. Protection of the natural environment according to regulations in the Natural Resource overlay Zone;

APPLICANT'S RESPONSE:

Environmental protections are ensured by implementation of the WQA and HCA overlay standards. As depicted on the submitted Landscape and Stormwater plan, all impacts will be mitigated with the proposed tree and shrub landscape plantings in accordance with the applicable standards.

I. Advice and recommendations of the Design and Landmark Committee, as appropriate;

APPLICANT'S RESPONSE:

This is a directive to staff and therefore not applicable.

J. Conformance to applicable Comprehensive Plan policies;

APPLICANT'S RESPONSE:

Given the subject site's location along the Willamette River as well as the existing zoning designation of R-5, this application focused its review of applicable City Comprehensive Plan policies in Chapter 3 – Environmental and Natural Resources and Chapter 4 – Land Use.

The subject site is over three-quarters of an acre in area and zoned for medium density development. Applicable Chapter 3 objectives and policies direct protection of floodplains and natural hazards area through the Natural Hazard Area zoning overlay and applicable Chapter 4 objectives and policies direct new residential development to protect the character of existing residential neighborhoods in Milwaukie and minimize impacts in environmentally constrained areas. This application achieves the inherent balance required when applying Chapters 3 and 4 to the subject site by proposing only one additional single family attached house, when more density is an available alternative, and by locating this house outside of Water Quality Resource Area on this site associated with the Willamette River. Further, the property owners have specifically designed the house to comply with underlying zoning standards and complement not only the existing house on the site, but also be of a scale and style compatible with the homes in the surrounding area.

K. The request is consistent with applicable plans and programs of the Division of State Lands;

APPLICANT'S RESPONSE:

The plans and programs of the Division of State Lands are implemented through the Milwaukie zoning code and Metro Title 13. This narrative includes findings demonstrating consistency with the Milwaukie code and Metro Title 13. Therefore it can be found that the application is consistent with the applicable plans and programs of the Division of State Lands.

- L. A vegetation buffer plan meeting the conditions of Subsections 19.320.8.A through C.*

APPLICANT'S RESPONSE:

All site development associated with this application will occur east of the existing sanitary sewer line which is located approximately 30 feet east of the required 25-foot Willamette Greenway, a minimum 30 feet from the buffer edge and therefore no impact to the WG buffer is proposed.

The applicant is investigating using a geothermal heating system which will require digging and pipe laying in the yard area, north and west of the proposed house and east of the existing sanitary sewer line, in the general area depicted on the submitted site plan. The geothermal area will not occur within the Willamette River Greenway boundary or buffer area.

19.320.7 Setbacks

On a case-by-case basis, uses that are not water-dependent or water-related shall be evaluated according to criteria of Subsection 19.320.6 above so that they are directed away from the river. Existing and proposed uses that are water-dependent and water-oriented may be permitted near or at the water's edge subject to review of criteria in Subsection 19.320.6 above.

APPLICANT'S RESPONSE:

The proposed home was located as far from the river as practicable, with the goal of ensuring safety and preservation of aesthetic values and the environment. The closest point of the home is located approximately 120 feet from the ordinary high water line.

19.320.8 Vegetation Buffer Requirements

A. A buffer strip of native vegetation shall be identified along the river, which shall include the land area between the river and a location 25 feet upland from the ordinary high water line. This area shall be preserved, enhanced, or reestablished, except for development otherwise allowed in this title, and subject to the requirements of Subsection 19.320.8.B below.

B. Prior to development (e.g., removal of substantial amounts of vegetation or alteration of natural site characteristics) within the buffer, a vegetation buffer plan for the buffer area shall be submitted for review and approval. The plan shall address the following areas and is subject to the following requirements:

1. Riverbank Stabilization

The plan shall identify areas of riverbank erosion, and provide for stabilization. Bioengineering methods for erosion control shall be used when possible. When other forms of bank stabilization are used, pocket plantings or other means shall be used to provide vegetative cover.

2. Scenic View Protection (Screening)

The plan shall identify the impact of the removal or disturbance of vegetation on scenic views from the river, public parks, public trails, and designed public overlooks.

3. Retain Existing Native Vegetation and Large Trees

The plan shall provide for the retention of existing large trees and existing native vegetation, including small trees, ground covers, and shrubs, within the vegetation buffer area. Removal of native vegetation and large trees is allowed pursuant to the following standards:

- a. Large trees that are diseased, dead, or in danger of falling down may be removed if there is a clear public safety hazard or potential for property damage.*
- b. Grading or tree removal is allowed in conjunction with establishing a permitted use. Only the area necessary to accommodate the permitted use shall be altered.*

c. *Tree and vegetation removal may be allowed to create one view window from the primary residential structure to the river when suitable views cannot be achieved through pruning or other methods. The width of a view window may not exceed 100 feet or 50% of lineal waterfront footage, whichever is lesser. The applicant must clearly demonstrate the need for removal of trees and vegetation for this purpose.*

4. *Restore Native Vegetation*

The plan shall provide for restoring lands within the buffer area which have been cleared of vegetation during construction with native vegetation.

5. *Enhance Vegetation Buffer Area*

The plan may provide for enhancing lands within the buffer area. Regular pruning and maintenance of native vegetation shall be allowed. Vegetation that is not native, except large trees, may be removed. New plant materials in the buffer strip shall be native vegetation.

6. *Security that the Plan will be Carried Out*

The approved vegetation buffer shall be established, or secured, prior to the issuance of any permit for development.

C. *The vegetation buffer requirements shall not preclude ordinary pruning and maintenance of vegetation in the buffer strip.*

APPLICANT'S RESPONSE:

As depicted on the submitted site plan, there is no development proposed through this application that will be impacting the required 25 foot Willamette Greenway ("WG") vegetated buffer area on the subject site.

The applicant is investigating using an underground geothermal heating system which would require digging and laying pipe in the existing landscaped yard area, north and west of the proposed house which is located outside the WG buffer area.

As depicted on the submitted Landscape and Stormwater plan, the application proposes to plant ten trees and twenty one shrubs, pursuant to discussions with City staff, as mitigation associated with siting the proposed single family attached house on the subject site.

CHAPTER 19.322 Water Quality Resource Regulations

19.322.7 Activities Permitted Under Minor Quasi-Judicial Review

APPLICANT'S RESPONSE:

New construction falls under the following classification listed in this section.

"A. *Any activity allowed in the base zone, other than those listed in Subsections 19.322.4.A through C*"

Therefore minor quasi-judicial review is required and is requested by the applicant.

19.322.9 Application Requirements

APPLICANT'S RESPONSE:

Boundaries of the existing Water Quality Resources Areas ("WQRA") areas designated upon the subject site are depicted on the submitted site plan. Also depicted is a 50 foot wide WQRA buffer area measured from surveyed existing top of bank along the Willamette River.

19.322.10 Development Standards

Applications for development or land disturbance on properties that contain Water Quality Resource Areas shall demonstrate compliance with the following standards:
A. The Water Quality Resource Area shall be restored and maintained in accordance with the mitigation plan and the specifications in Table 19.322.9.E.

APPLICANT'S RESPONSE:

This application proposes no development with designated WQRA areas on the subject site. As depicted on the submitted site plan, an underground geothermal heating system will be located west and north of the proposed house that will not or encroach into the 50 foot WQRA buffer. A new sanitary sewer lateral will be constructed connecting to the existing sanitary line to the proposed home which will have an impact to the buffer area during construction of the lateral. Buffer impacts associated with the sanitary lateral will be temporary during construction only and will be mitigated for through the proposed on-site tree and shrub plantings.

The site plan illustrates how the WQRA will be allocated after the proposed replat. The existing home will remain in its current location with no impact to the existing WQRA boundary proposed. The proposed home will be located outside the WQRA on Parcel 2 where only a small portion of the mapped WQRA boundary exists in the northwest corner of Parcel 2 along the river. This boundary will not change. Any future land divisions or construction will require water quality resource review.

B. To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Quality Resource Area.

APPLICANT'S RESPONSE:

As depicted on the submitted site plan, this application proposes no development with designated WQRA areas on the subject site which will be marked during construction as required by future building permit.

C. Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.

APPLICANT'S RESPONSE:

As depicted on the submitted site plan, this application proposes no development with designated WQRA areas on the subject site. There will be a temporary impact to the WQRA buffer for construction of a sanitary lateral to connect the proposed home to the existing sanitary line located through the site. Impacts for this sanitary lateral connection will be mitigated for through the proposed on-site tree and shrub plantings.

D. Prior to construction, the Water Quality Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as may be allowed by this chapter. Such markings shall be maintained until construction is complete.

APPLICANT'S RESPONSE:

Designated WQRA areas on the subject site which will be marked during construction as required through future building permit.

E. Stormwater Pretreatment Facilities

APPLICANT'S RESPONSE:

A stormwater swale is proposed to be provided to collect, detain and treated the rooftop and driveway surface water generated by the single family attached dwelling being constructed on

the site. This bio-swale will be located downslope, west of the proposed house location, with size and design finalized according to City standards through future building permit.

F. Additions, Alterations, Rehabilitation, and Replacement of Lawful Structures

APPLICANT'S RESPONSE:

This application does not involve the existing structures located on the subject site.

G. Off-site Mitigation

APPLICANT'S RESPONSE:

No off-site mitigation is proposed through this application.

H. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to the adjacent Water Quality Resource Area.

APPLICANT'S RESPONSE:

The applicant is aware of this requirement and will demonstrate consistency at the time of building permit review.

I. Where practicable, the types, sizes and intensities of lights must be placed so that they do not shine directly into the natural resource locations.

APPLICANT'S RESPONSE:

The applicant is aware of this requirement. Please reference the submitted building design plans describing lighting locations and design. Consistency with this standard will be required at the time of future building permit review.

J. Where proposed, development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to reduce impacts on the natural resource while allowing for the enjoyment of the resource.

APPLICANT'S RESPONSE:

The applicant is not proposing any of the above facilities making this section not applicable to the request.

K. Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved, so as to provide a transition between the proposed development and the natural resource, provide opportunity for food, water, and cover for animals located within the water quality resource.

APPLICANT'S RESPONSE:

As depicted on the submitted site plan, an underground geothermal heating system will be located west and north of the proposed house outside of the WQRA buffer. A new sanitary sewer lateral will be constructed connecting to the existing sanitary line through the site which will have a temporary impact to the WQRA buffer during construction. No existing trees are proposed for removal associated with either of these site improvements.

L. Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed predevelopment flows.

APPLICANT'S RESPONSE:

Natural drainage courses will not be altered as a result of placing the proposed structure on the subject property. A stormwater swale is proposed to be provided west of the new house to collect, detain and treated the rooftop and driveway surface water generated by the single family attached dwelling being constructed on the site.

M. Road crossings of major natural drainage courses will be minimized as much as possible.

APPLICANT'S RESPONSE:

No road crossings are proposed making this section not applicable to the request.

N. The construction phase of the development must be done in such a manner to safeguard the resource portions of the site that have not been approved for development.

APPLICANT'S RESPONSE:

No phasing is proposed making this section not applicable.

CHAPTER 19.1400 Public Facility Improvements

19.1402.1 General

19.1403 Review Process

APPLICANT'S RESPONSE:

This section applies to replats that increase the number of lots. This application involves replatting a total of five existing lots of record into a total of two lots of record. As addressed here below, due to environmental regulations the maximum density calculations for this property are zero.

A preapplication conference was held on September 17, 2009. Pursuant to Code Section 19.1403.2, a Non-TRF Land Use Application applies because the type of proposed development does not trigger a Traffic Impact Study.

19.1403.3 Approval Criteria

For all proposed development that is subject to Chapter 19.1400 per Section 19.1402, the required development permit and/or land use application shall demonstrate compliance with the following approval criteria at the time of submission.

A. Procedures, Requirements, and Standards

Development and related public facility improvements shall comply with procedures, requirements, and standards of Chapter 19.1400 and the Public Works Standards.

APPLICANT'S RESPONSE:

Upon approval of this application, the applicant shall submit required public facility plans as a condition of approval. The applicant will demonstrate compliance with public facility plans during engineering and building permit review.

B. Transportation Facility Improvements

Development shall provide transportation improvements and mitigation at the time of development in rough proportion to the potential impacts of the development per Section 19.1405 Rough Proportionality, except as allowed by Section 19.1406 Fee in Lieu of Construction.

APPLICANT'S RESPONSE:

Based upon discussions with City Engineering to date regarding this proposed new home, this application will be required to improve the SE 19th Avenue right-of-way with an additional four feet of asphalt pavement along the 70 feet of site frontage for Parcel 2. The applicant will

demonstrate compliance with transportation and street frontage plans during engineering and building permit review.

C. Safety and Functionality Standards

The City will not issue any development permits unless the proposed development complies with the City's basic safety and functionality standards, the purpose of which is to ensure that development does not occur in areas where the surrounding public facilities are inadequate. Upon submission of a development permit application, an applicant shall demonstrate that the development property has or will have all of the following:

1. *Adequate street drainage, as determined by the Engineering Director.*
2. *Safe access and clear vision at intersections, as determined by the Engineering Director.*
3. *Adequate public utilities, as determined by the Engineering Director.*
4. *Access onto a public street with the minimum paved widths as stated in Subsection 19.1403.3.C.5 below.*
5. *Adequate frontage improvements as follows:*
 - a. *For local streets, a minimum paved width of 16 feet along the site's frontage.*
 - b. *For nonlocal streets, a minimum paved width of 20 feet along the site's frontage.*
 - c. *For all streets, a minimum horizontal right-of-way clearance of 20 feet along the site's frontage.*
6. *Compliance with Level of Service D for all intersections impacted by the development, except those on Oregon Highway 99E that shall be subject to the following:*
 - a. *Level of Service F for the first hour of the morning or evening 2-hour peak period.*
 - b. *Level of Service E for the second hour of the morning or evening 2-hour peak period.*

APPLICANT'S RESPONSE:

Upon approval of this application, the applicant shall submit required public facility plans as a condition of approval. The applicant will demonstrate compliance with public facility plans during engineering and building permit review.

19.1408 Transportation Improvements

APPLICANT'S RESPONSE:

No new streets are proposed making section 19.1408.1 and .2 not applicable. Based upon discussions with City Engineering to date regarding this proposed new home, this application will not be required to construct sidewalks, bicycle paths or pedestrian pathways along the site frontage. The subject site is not located on a transit street, making section 19.1408.6 not applicable.

19.1409 Public Utility Requirements

APPLICANT'S RESPONSE:

The following public utilities are available to serve the proposal:

Water: A public water line is located in SE 19th Avenue public right-of-way which will serve the proposed home via a new water meter service connection.

Sanitary Sewer: A public sanitary sewer line is located through the property and as described here above will serve the proposed home via a service lateral connection.

Storm Drainage: As depicted on the site plan, an on-site storm swale is proposed to be located on the west of the proposed home.

Based upon the current size of existing public utilities, specifically sanitary sewer and water, no capacity issues are anticipated to serve the one additional home proposed in this application with services laterals.

B. Chapter 19.500 – Off Street Parking

CHAPTER 19.500 Off Street Parking and Loading

19.503.3 Minimum Spaces Required

APPLICANT'S RESPONSE:

This section requires two off street spaces per unit, of which one space must be covered. As illustrated on the submitted plan set, the proposal meets this standard by providing both a driveway on-site and including a garage in the design of the single-family attached dwelling.

C. Chapter 19.600 – Conditional Uses

CHAPTER 19.600 Conditional Uses

19.601.2 Review Criteria

Applicants for conditional use shall provide evidence that all requirements of this title relative to the proposed use are satisfied, and demonstrate that the proposed use also satisfies the following criteria:

A. The use meets the requirements of a conditional use in the zone currently applied to the site.

APPLICANT'S RESPONSE:

Pursuant to Code Section 19.320.5, all uses in the WG zone are permitted subject to the provisions of this chapter. This section is met.

B. The use meets the standards for the underlying zone.

APPLICANT'S RESPONSE:

The proposed single family attached dwelling unit meets the standards of the R5 zone as outlined in Section 1 above. The only exception is a variance to the maximum density requirements which is discussed below.

As depicted on the submitted plans, the proposed building has been designed and located on Parcel 2 to comply with section 19.602.1 which requires side yard widths be equal to 2/3rds the height of the proposed structure. I

C. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use.

APPLICANT'S RESPONSE:

Given the subject site's location along the Willamette River as well as the existing zoning designation of R-5, this application focused its review of applicable City Comprehensive Plan policies in Chapter 3 – Environmental and Natural Resources and Chapter 4 – Land Use.

The subject site is over three-quarters of an acre in area and zoned for medium density development. Applicable Chapter 3 objectives and policies direct protection of floodplains and natural hazards area through the Natural Hazard Area zoning overlay and applicable Chapter 4 objectives and policies direct new residential development to protect the character of existing residential neighborhoods in Milwaukie and minimize impacts in environmentally constrained areas. This application achieves the inherent balance required when applying Chapters 3 and 4 to the subject site by proposing only one additional single family attached house, when more density is an available alternative, and by locating this house outside of Water Quality Resource Area associated with the Willamette River. Further, the property owners have specifically designed the house to comply with underlying zoning standards and complement not only the existing house on the site, but also be of a scale and style compatible with the homes in the surrounding area.

D. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features.

APPLICANT'S RESPONSE:

The subject site is a large site, approximately 37,225 square feet in size. The site is a triangular shape, with 250 lineal feet of frontage along SE 19th Avenue. All required public facilities including water and sewer are available to serve the site. The site contains one single family residence and large area of lawn area. All development is proposed to occur away from the natural features located along the river bank. The applicant is clustering the new single family attached dwelling at the southeast corner of the site along the street frontage, away from the river, and has designed an reduced building footprint all in an effort to minimize impact to the natural resources provided by the Willamette River. This section is met.

E. The proposed use is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use.

APPLICANT'S RESPONSE:

The proposed single family attached dwelling is timely considering that public facilities are available to serve the proposal. The subject property is zoned R5 which permits single-family attached dwellings to be constructed. In addition, a policy direction of infill development has been established by the City, Metro, Trimet and the State of Oregon to fully utilize existing public infrastructure. This application proposes a permitted use in satisfaction of established infill policy.

F. The proposed use complies with the transportation requirements and standards of Chapter 19.1400.

APPLICANT'S RESPONSE:

In accordance with the pre-application notes, the existing right of way of SE 19th Avenue abutting the subject site is 60 feet in width. Subsequent to the pre-application meeting a December 17, 2009 City letter was provided to the applicant that confirms a pedestrian facility is opposed by a large majority of area residents and that the City will not require this application to construct these facilities. Based on the size of the proposal, the Engineering Director has determined that a traffic impact study is not required.

D. Chapter 19.700 – Variances

CHAPTER 19.700 Variances

19.702.1 Criteria for Granting Variances

Staff has indicated that the proposed property is subject to the minimum and maximum density standards of the R-5 zones. Density for the subject site is calculated as follows:

Single Family Attached Dwelling minimum required average lot area per unit = 5,000 s.f.

Total dwelling units proposed = 2

Total minimum required Lot Area = 10,000 s.f.

Gross Site Area of Parcel 1: = 21,613 sq. ft

Gross Site Area of Parcel 2 : = 11,744 s.f.

“Net Area” (as per City definition) = 0 s.f.

Definition subtracts areas in designated Goal 5 areas on the site including Metro Title 3 and Title 13 designated areas.

Thus, minimum and maximum density for the site is 0 and siting the single family attached dwelling on Parcel 2 exceeds maximum density. Therefore, a variance is required. Findings are provided below.

It should be noted that the proposed replat exceeds the minimum lot requirement area requirements of the R5 zone which are 5,000 square feet of lot area for each dwelling unit. Parcel 1 contains one dwelling unit, the existing residence, and is 21,613 square feet in area. Parcel 2 contains two dwelling units, the proposed duplex, and is 11,744 square feet in area which exceeds the required minimum 10,000 square foot lot area.

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

APPLICANT'S RESPONSE:

The subject property has a few unusual conditions that apply to which the applicant has no control. The subject property is located in the Willamette Greenway and Water Quality Areas. In order to calculate new acreage, physical characteristics (slopes, floodplain, Willamette River, required buffer area) must be removed. In this case, the numerous physical conditions and designated resource area boundaries remove significant lot area from the calculation and therefore a hardship is placed upon the applicant..

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

APPLICANT'S RESPONSE:

The requested variance is the minimum requested. The applicant is proposing to retain the existing house and site one new single family attached unit on the property. The overall design of the proposed home vertically attached as opposed to horizontally attached. The goal of this design is not only keeping the building footprint to the smallest size practicable, but also to have the character of a single family residences in the surrounding area. Other properties in the area that do not front on the Willamette River would be able to develop without having the same limitations as the applicant.

C. That adverse effects upon other properties that may be the result of this variance shall be mitigated to the extent feasible. (Ord. 1849 (part), 1999)

APPLICANT'S RESPONSE:

No adverse impacts to adjacent properties are anticipated to occur. Required setbacks will be met. No impacts to light, air or noise are expected from the proposal. Any mitigation that is required for tree removal will occur consistent with code requirements. This section is met.

2. TITLE 17 – LAND DIVISIONS

TITLE 17.12 Application Procedure and Approval Criteria

17.12.030 Approval Criteria for Replat

A. Approval Criteria

The approval authority may approve, approve with conditions, or deny a lot consolidation, property line adjustment, and/or replat based on the following approval criteria. The applicant for a lot consolidation, property line adjustment, or replat shall demonstrate the following:

- 1. Compliance with this title and Title 19 of this code.*
- 2. The boundary change will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.*
- 3. Boundary changes shall not reduce residential density below minimum density requirements of the zoning district in which the property is located.*

(Ord. 1907 (Attach. 1), 2002)

APPLICANT'S RESPONSE:

Compliance with this title and Title 19 is demonstrated throughout this narrative. The proposed replat of five (5) legal lots of record into a total of two (2) parcels allows for retention of the existing house and siting of one additional home. The replat itself does not create the need for a variance to density requirements. Rather, the environmental constraints on the subject site create the need. As discussed above, the calculation of net area subtracts designated Goal 5 areas on the including Metro Title 3 and Title 13 designated areas.

Thus, minimum and maximum density for the site is 0 and siting the proposed single family attached dwelling on Parcel 2 exceeds maximum density. Therefore, a variance is required. Findings are provided below.

It should be noted that the proposed replat exceeds the minimum lot requirement area requirements of the R5 zone which are 5,000 square feet of lot area for each dwelling unit. Parcel 1 contains one dwelling unit, the existing residence, and is 21,613 square feet in area. Parcel 2 contains two dwelling units, the proposed duplex, and is 11,744 square feet in area which exceeds the required minimum 10,000 square foot lot area. This section is met.

TITLE 17.16 Application Requirements and Procedures

17.16.060 Preliminary Plat for Subdivision or Partition

APPLICANT'S RESPONSE:

The required submittal items listed in this section are provided in this application, including a signed application, required fees, checklists, etc.

17.20 Preliminary Plat

APPLICANT'S RESPONSE:

As illustrated on the attached plan set, the proposed preliminary plat has been designed in accordance with this section. This section is met.

17.28.020 Public Facility Improvements

APPLICANT'S RESPONSE:

All required public facilities including water and sewer are available to serve the site. City staff has determined that 4 additional feet of asphalt pavement will be required along the 70 feet of Parcel frontage on SE 19th Avenue

17.28.030 Easements

APPLICANT'S RESPONSE:

As depicted on the submitted site plan, the new house will have direct driveway access onto SE 19th Avenue and there is an existing sanitary sewer line through the western portion of the subject site. No new public access or public utility easements are proposed through this application

17.28.040 General Lot Design

APPLICANT'S RESPONSE:

Lot dimensions comply with the R5 zone as discussed in this narrative. No double or reverse frontage lots are proposed.

3. TITLE 18 – FLOOD HAZARD

18.04 Flood Hazard Areas

18.04.100 Development Permit Required

APPLICANT'S RESPONSE:

Consistency with flood hazard requirements will be demonstrated at the time of building permit review. As demonstrated on the building design plans submitted with this application, the single family attached dwelling is designed to be located entirely above the 100-year flood elevation. As depicted on submitted plans, the lowest finished floor elevation is 40.0 feet which is 4 feet above the base flood elevation of 36.0 feet.

18.04.150 General Standards

APPLICANT'S RESPONSE:

Consistency with flood hazard requirements will be demonstrated at the time of building permit review. As demonstrated on the building design plans submitted with this application, the single family attached dwelling is designed to be located entirely above the 100-year flood elevation.

18.04.160 Specific Standards

APPLICANT'S RESPONSE:

Consistency with flood hazard requirements will be demonstrated at the time of building permit review. As demonstrated on the building design plans submitted with this application, the single family attached dwelling is designed to be located entirely above the 100-year flood elevation.

4. METRO TITLE 13 COMPLIANCE

On May 29, 2009 the City of Milwaukie Planning Director issued an interpretation defining 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. In this matter, it is found that both the city's Chapter 19.322 Water Quality Resources and Title 13, areas within the Metro Habitat Conservation Areas apply. To follow are the applicable sections from Title 13.

Section 5. Construction Management Plans

The items required in this section including construction egress and access areas locations, equipment and material staging and stockpile areas, erosion control plans, and tree protection requirements are typically required at the time of building permit review. Therefore the applicant will submit the required information at that time, demonstrating consistency.

Section 6. Development Standards

As depicted on the submitted site plan, there is no development proposed through this application that will be impacting the required 25 foot Willamette Greenway ("WG") vegetated buffer area or designated Water Quality Resources Areas ("WQRA") on the subject site. A Metro Habitat Inventory is provided, showing the HCA area. The preliminary plan and survey show the existing trees on the site.

This application proposes to construct one new single family attached house on the subject site located outside the Willamette Greenway vegetated buffer areas and WQRA resource areas, as well as above the base flood elevation.

The applicant proposes to locate development on Parcel 2 as close to SE 19th Avenue as possible to minimize development in the HCA area.

According to Table 1, the disturbance area limits for SFR in a moderate HCA designated is 65% of the lot area, up to a maximum of 6,000 square feet. As illustrated on the attached plan, the proposed building envelope totals less than 3,000 square feet. Even if the sanitary sewer lateral is added to the building envelope total, the disturbance area will still be under the maximum 6,000 square feet.

Protection of habitat during site development will be demonstrated with a construction management plan, submitted at the time of building permit review.

The application proposes to plant ten trees and twenty one shrubs, pursuant to discussions with City staff, as mitigation associated with siting the proposed single family attached house on the subject site.

Since the application is technically not a partition pursuant to ORS, the standards pertaining to partitions and subdivisions do not apply.

The applicant is not requesting an HCA verification as it covers the majority of the site.

CONCLUSION

In conclusion this application involves a replat of existing platted lots of record to retain the existing home and construct one new single family attached dwelling on the subject site. The property owners have specifically designed and located the new house upon their property outside of designated resources areas to the maximum extent practicable, designed the house to comply with all floodplain standards and propose to retain almost all existing trees. As addressed herein above, this application complies with applicable City of Milwaukie zoning standards and respectfully requests approval.

HOME

CALENDAR

PLACES AND ACTIVITIES

GARBAGE AND RECYCLING

SUSTAINABLE LIVING

PLANNING AND CONSERVATION

PLANNING AND POLICY NEWS

MAKING THE GREATEST PLACE

LAND AND DEVELOPMENT

TRANSPORTATION

NATURAL AREAS, PARKS AND TRAILS

MANAGING GARBAGE AND RECYCLING

PLANNING LIBRARY

MAPS AND DATA

GRANTS

JOBS AT METRO

VOLUNTEER

DOING BUSINESS

NEWS

ABOUT METRO

Print-friendly version

Send feedback to Metro

Metro

503-797-1700

503-797-1804 TDD

503-797-1797 fax

Habitat Tool

PLANNING AND CONSERVATION > NATURAL AREAS, PARKS AND TRAILS > PROTECTING HABITAT AND WATER > HABITAT INVENTORY > HABITAT TOOL

Enter an address and find out if that property is in the habitat inventory. View the data used to develop the inventory, inventory areas and recommended protection levels. Then print the report.

11907 SE 19TH AV, MILWAUKIE

[NEW SEARCH]

In December 2004 the Metro Council approved a habitat protection concept that integrates urban development priorities and habitat values (first map). This decision was based on the results of economic, social, environmental and energy impacts analysis.

In August 2002, the council approved the habitat inventory with habitat quality rankings (second map).

Metro's flood, slope, vegetation and forest data, gathered through 2004, were used to develop the habitat inventory and determine habitat values. Metro staff mapped specific landscape features, such as the location of trees, shrubs, wetlands, flood areas and steep slopes, and then applied scientific criteria to identify and rank habitat areas. The data are presented below on aerial photos, taken in 2003, to illustrate the correlation between the data and landscape features.

Streamside habitat areas, floodplains and wetlands are the most valuable, vulnerable and, in some cases, well-protected habitats in Metro's inventory. To protect water quality and ecological benefits, the council recommends the mandatory use of habitat-friendly development practices in these areas.

Council's recommendation on habitat protection



- Allow development
- Low habitat conservation area
- Moderate habitat conservation area
- High habitat conservation area
- Parks and open spaces
- Streams and rivers
- Not affected by recommendation

Inventory of regionally significant habitat

- Class 1 riparian, highest-value
- Class 2 riparian, medium-value
- Class 3 riparian, lower-value
- Class A wildlife, highest-value
- Class B wildlife, medium-value
- Class C wildlife, lower-value
- Impact areas
- Parks and open spaces
- Streams and rivers

- HOME
- CALENDAR
- PLACES AND ACTIVITIES
- GARBAGE AND RECYCLING
- SUSTAINABLE LIVING
- PLANNING AND CONSERVATION
- PLANNING AND POLICY NEWS
- MAKING THE GREATEST PLACE
- LAND AND DEVELOPMENT
- TRANSPORTATION
- NATURAL AREAS, PARKS AND TRAILS
- MANAGING GARBAGE AND RECYCLING
- PLANNING LIBRARY

MAPS AND DATA

GRANTS

JOBS AT METRO

VOLUNTEER

DOING BUSINESS

NEWS

ABOUT METRO

Print-friendly version

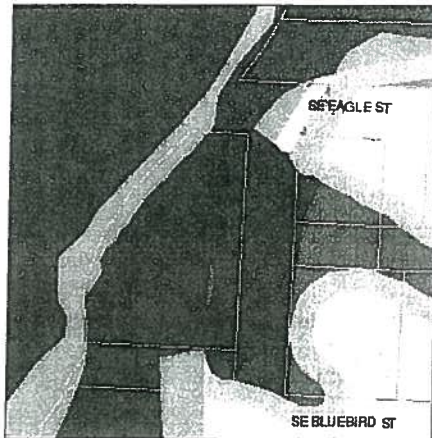
Send feedback to Metro

Metro

503-797-1700

503-797-1804 TDD

503-797-1797 fax



Not included in inventory

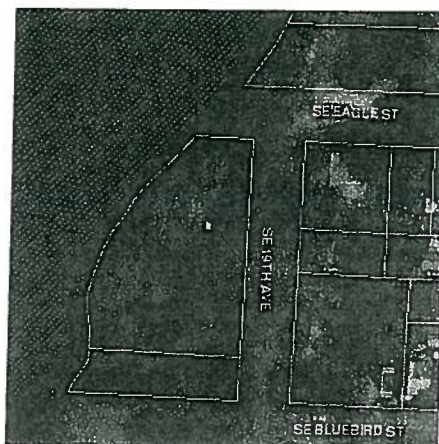
Forest canopy and vegetation



- Forests
- Shrubs
- Other vegetation
- Outside aerial photo coverage
- Streams

Trees, shrubs and other tall vegetation provide shade that helps keep riparian areas cool and moist. When water gets too warm, salmon and other aquatic species have problems growing and reproducing, and may die. Plants next to streams and wetlands are a source of organic material such as leaves and branches that provide food for fish and wildlife.

Streams, wetlands and open water



- Streams
- Wetlands
- Open water and rivers
- Outside aerial photo coverage

Streams, open water and wetlands provide some of the most valuable habitat for fish and wildlife. Adjacent trees and other vegetation provide cover and nesting or roosting sites as well as migrating pathways for hundreds of species. Adjacent vegetation helps maintain streams and wetlands.

Flood areas

- 1996 flood inundation and 100-year floodplain
- Outside aerial photo coverage
- Streams

HOME

CALENDAR

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RECYCLING

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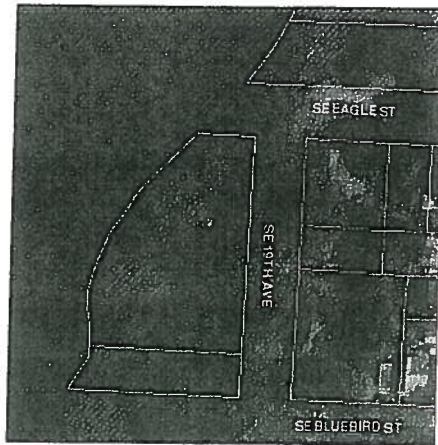
Send feedback to Metro

Metro

503-797-1700

503-797-1804 TDD

503-797-1797 fax



Floodplains store water and help keep streams flowing during dry periods. Healthy vegetation in floodplains and along streams acts like a sponge to help soak up water and slow its flow during storms.

ACQUIRING NATURAL AREAS

RESTORATION

PROTECTING HABITAT AND
WATER

HABITAT INVENTORY

HABITAT TOOL

TUALATIN BASIN PLAN

HABITAT PROTECTION MODEL
ORDINANCE

STATE OF THE WATERSHEDS
REPORT

NATURE IN NEIGHBORHOODS
CAPITAL GRANTS

RESTORATION AND
ENHANCEMENT GRANTS

PROJECTS IN YOUR COMMUNITY

PLANNING FUTURE PARKS

REGIONAL TRAILS AND
GREENWAYS

THE INTERTWINE

Steep slopes



Steep slopes

Outside aerial photo coverage

Streams

Vegetation on slopes anchors soil and helps keep sediments and pollution out of the water. Erosion of stream banks and hill slopes can be detrimental to aquatic life as well as to people and their property.

Create a custom, print-friendly report for 11907 SE 19TH AV, MILWAUKIE. The report will include background on the habitat protection program, all six maps and legends, and information about inventory revisions.

A note about accuracy of information

Metro continually gathers and processes the most accurate and up-to-date information available. These maps were updated in September 2004 and reflect revisions suggested by residents and local governments.

HOME | PLACES AND ACTIVITIES | GARBAGE AND RECYCLING | SUSTAINABLE LIVING |
PLANNING AND CONSERVATION | MAPS AND DATA | GRANTS | JOBS AT METRO | VOLUNTEER |
DOING BUSINESS | NEWS | ABOUT METRO |

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Contact feedback@oregonmetro.gov with questions regarding this site.



SHEET:
1/1

Willamette River

approx. top of bank

sewer

Lot area = 11,744 s.f.
Building footprint = 2,488 s.f. (21.2%)
Building and impervious areas = 2,950 s.f.
Vegetated area = 8,794 s.f. (74.9%)

Lot area = 21,613 s.f. ±
Building footprint = 3,620 s.f. (16.7%)
Building and impervious areas = 5,020 s.f.
Vegetated area = 15,240 s.f. (73.1%)

exist. trees

exist. driveway removed
(1,300 s.f.)

exist. trees

proposed duplex
(2 1/2 stories)

(4 parking spaces)

11907
(constructed in 1916)
(2 1/2 stories)

(4 exist. parking spaces)

garage

driveway
to remain

11921

exist. trees
new pavement

N

S. E. 19th Ave.

REPLAT PLAN - EXHIBIT 2

1" = 20'

60' ROW

180'

71'

26'

11'

11'

13'

5'

70'

7'

new pavement

exist. trees

exist. trees

S.E. Eagle

S.E. Bluebird

EXISTING CONDITIONS
from 19th Ave.



PHOTO A

EXISTING CONDITIONS
from top of river bank



PHOTO C

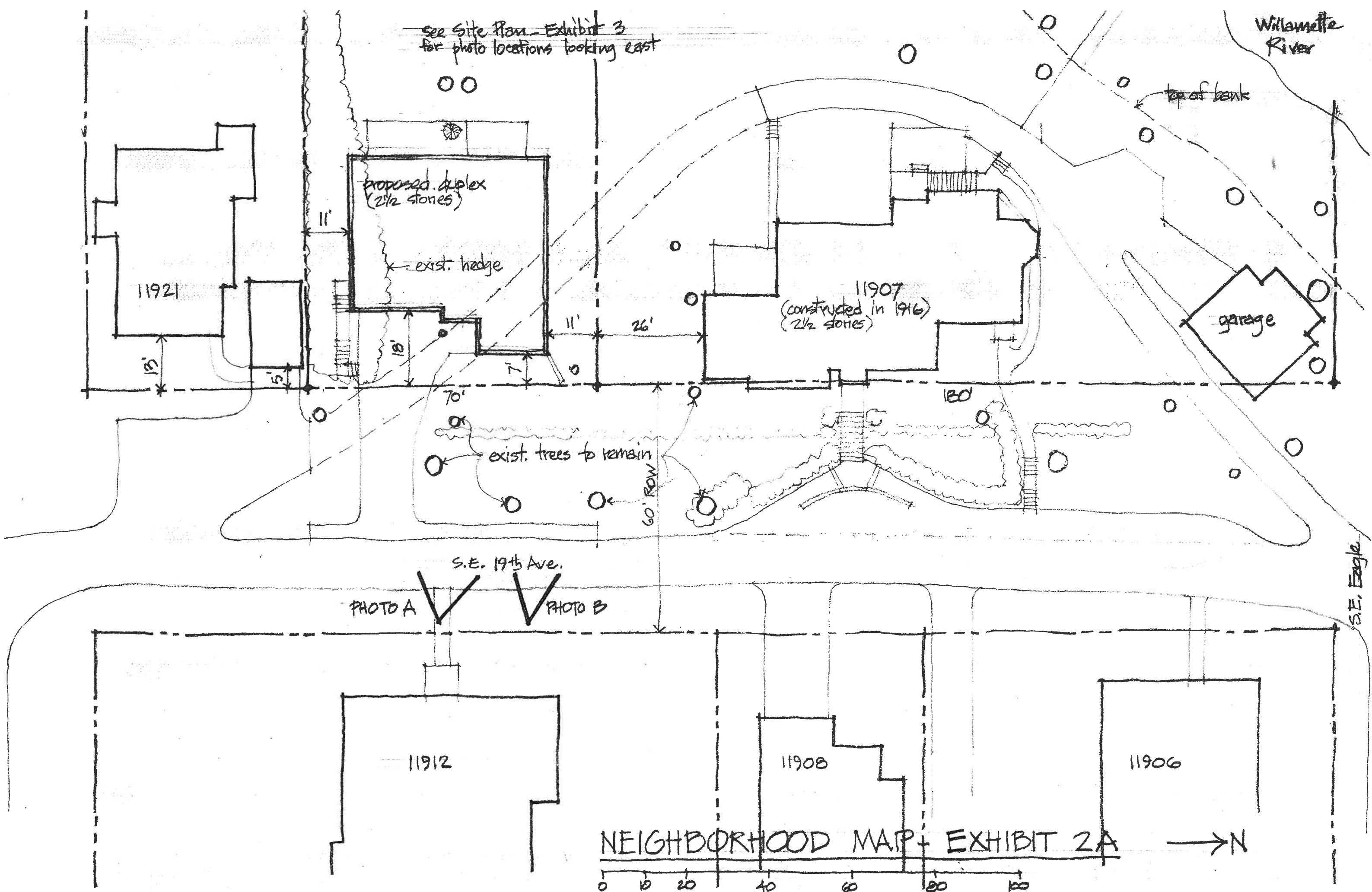


PHOTO B



PHOTO D

S.E. Bluebird



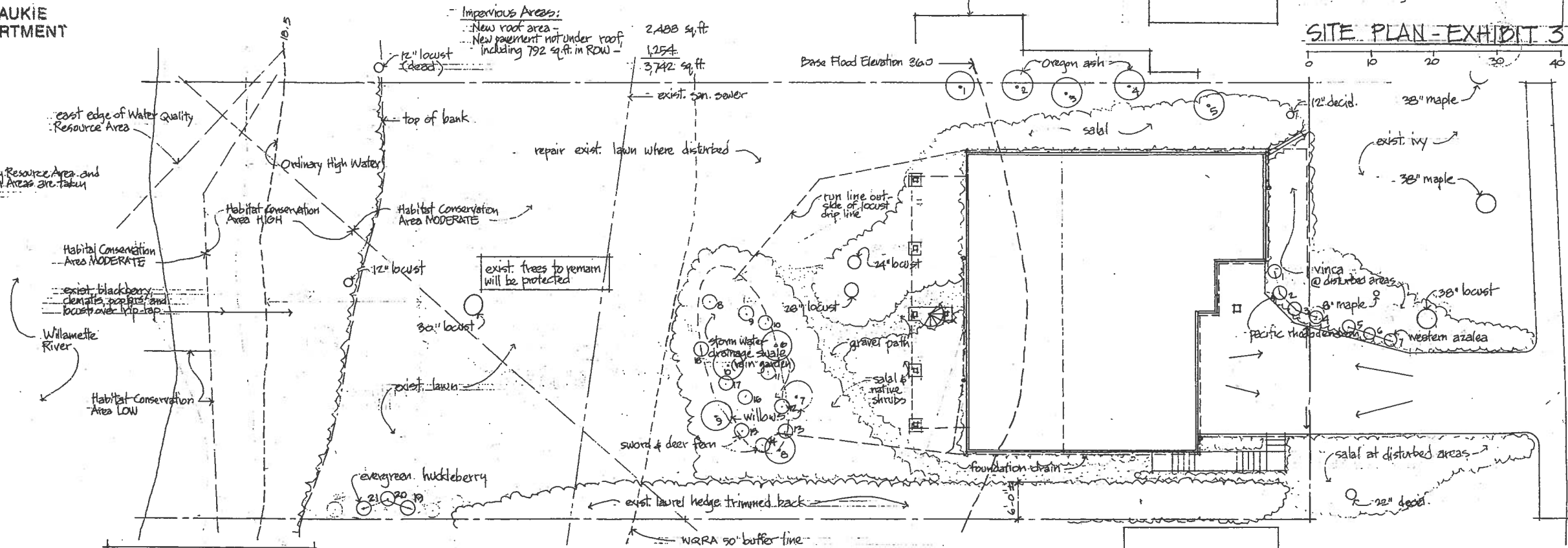
Lot is 11,744 sq. ft. to Ordinary High Water Line.
House Footprint = 2,488 sq. ft.
Lot Coverage = 21.2%

revisions
RECEIVED

MAY 10 2010

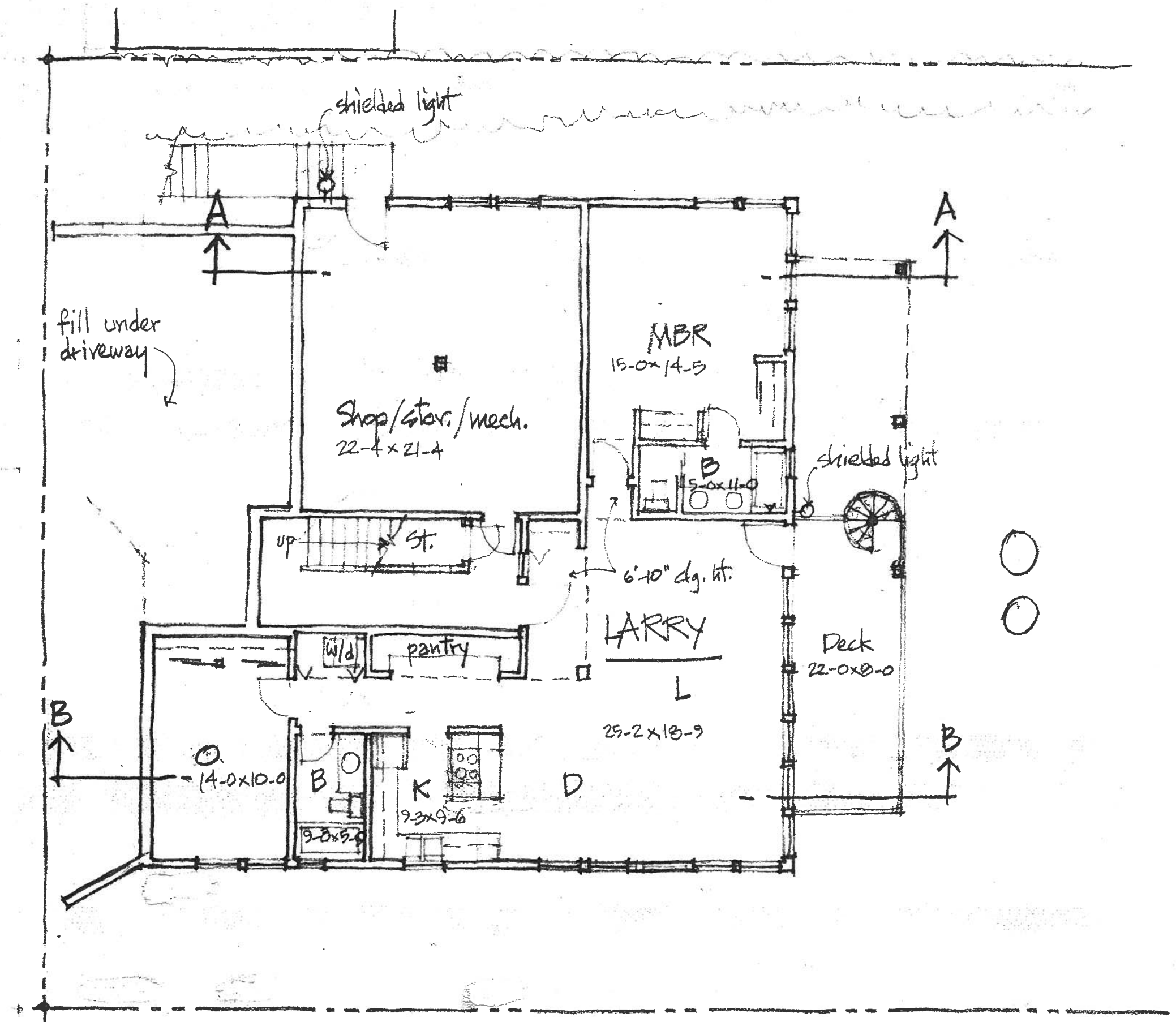
**CITY OF MILWAUKIE
PLANNING DEPARTMENT**

Note: Water Quality Resource Area and Habitat Conservation Areas are taken from City maps.



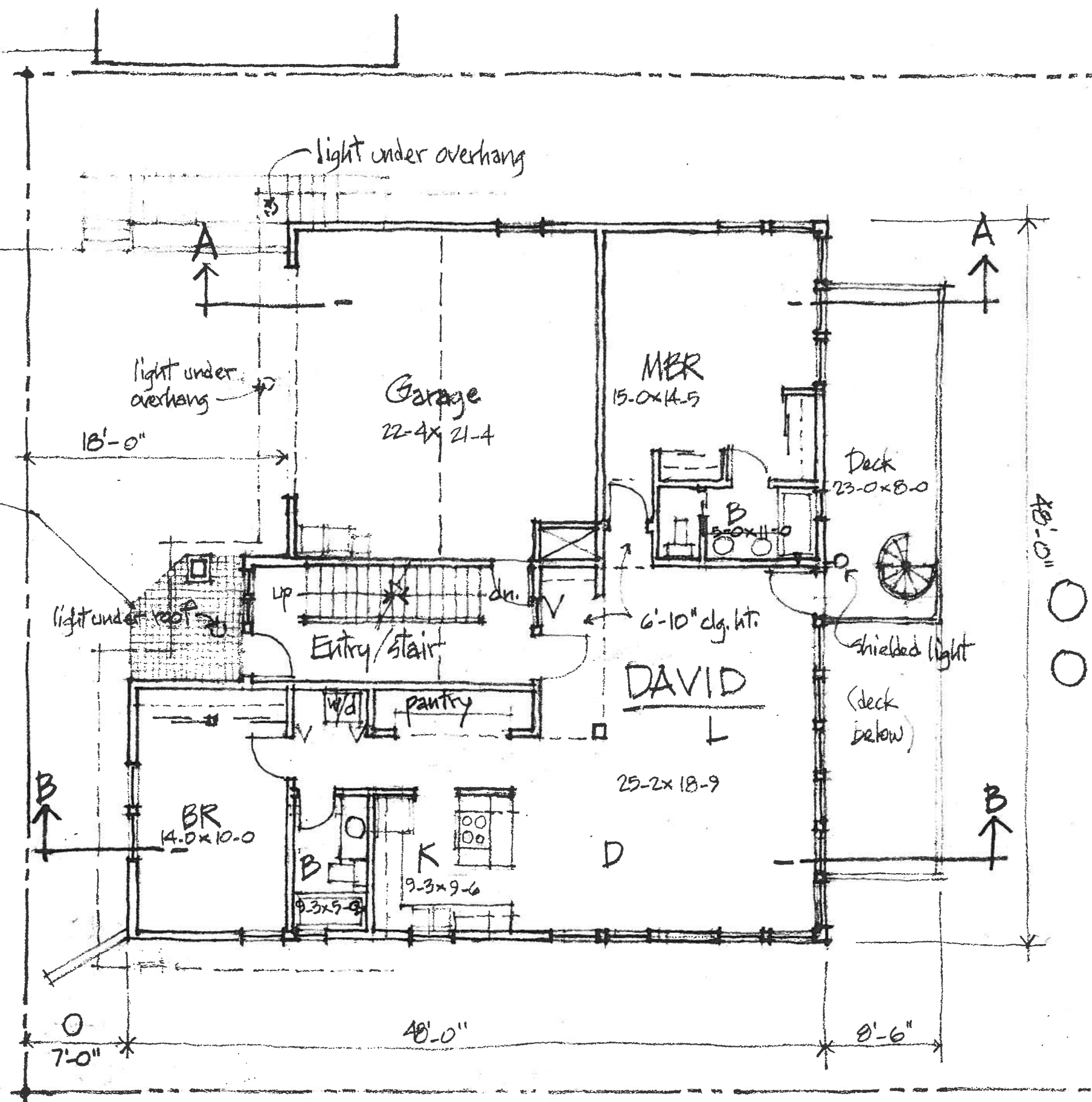
LANDSCAPE & STORM WATER PLAN - EXHIBIT 4

SITE PLAN - EXHIBIT 3

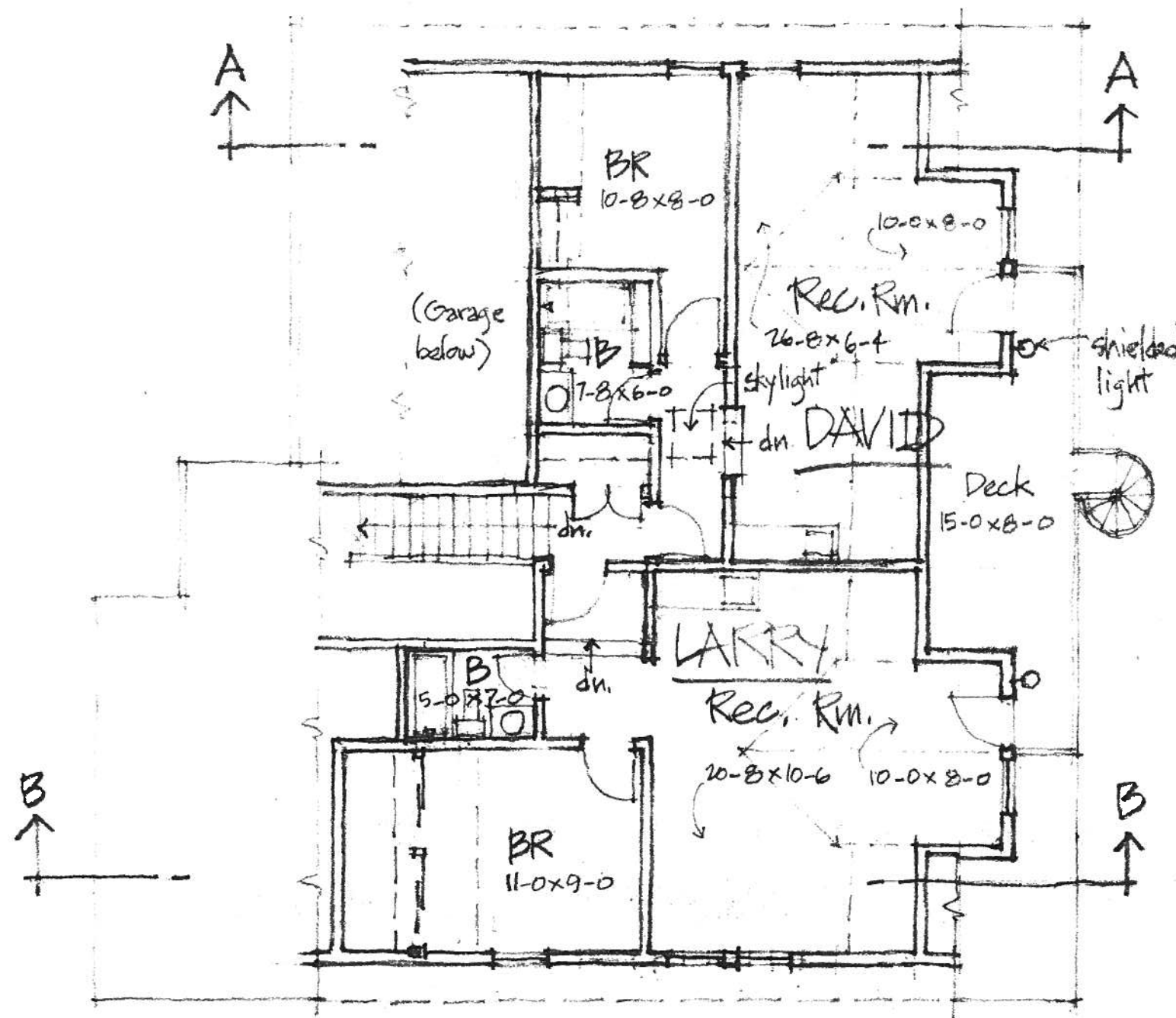


FIRST FLOOR
1/8" = 1'-0"



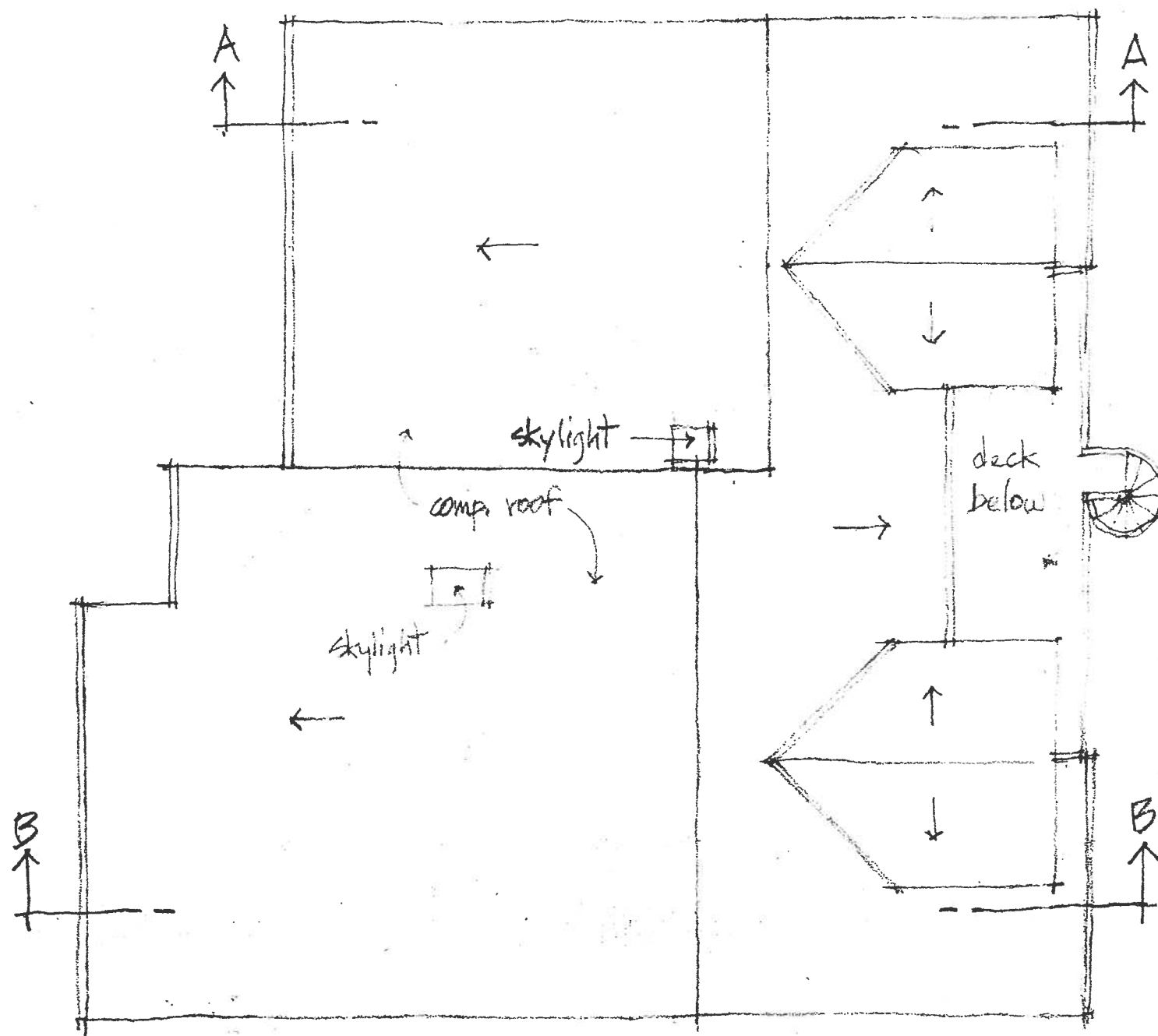


SECOND FLOOR
1/8" = 1'-0"



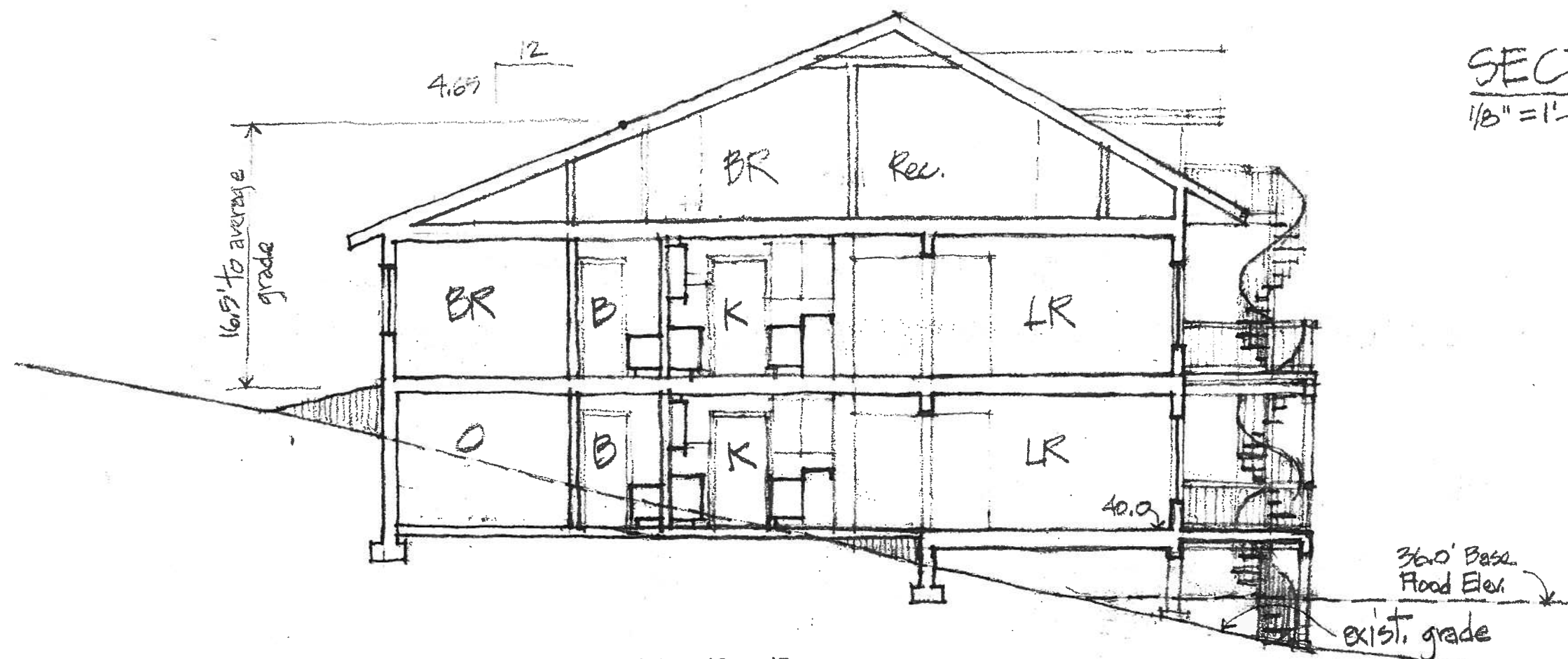
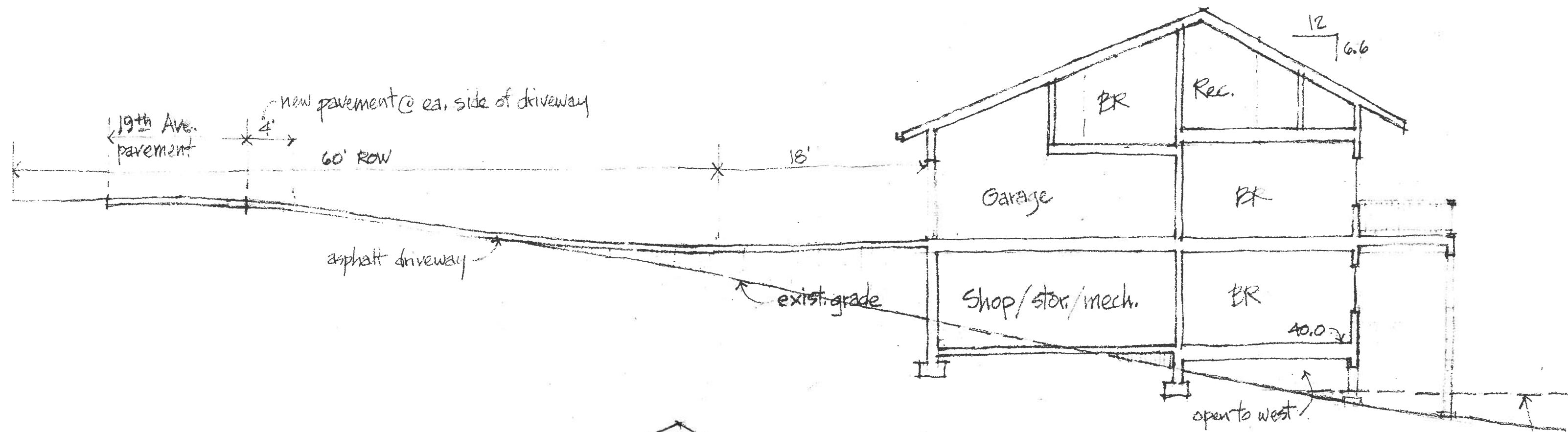
THIRD FLOOR
 $\frac{1}{8}'' = 1'-0''$

↓
 N



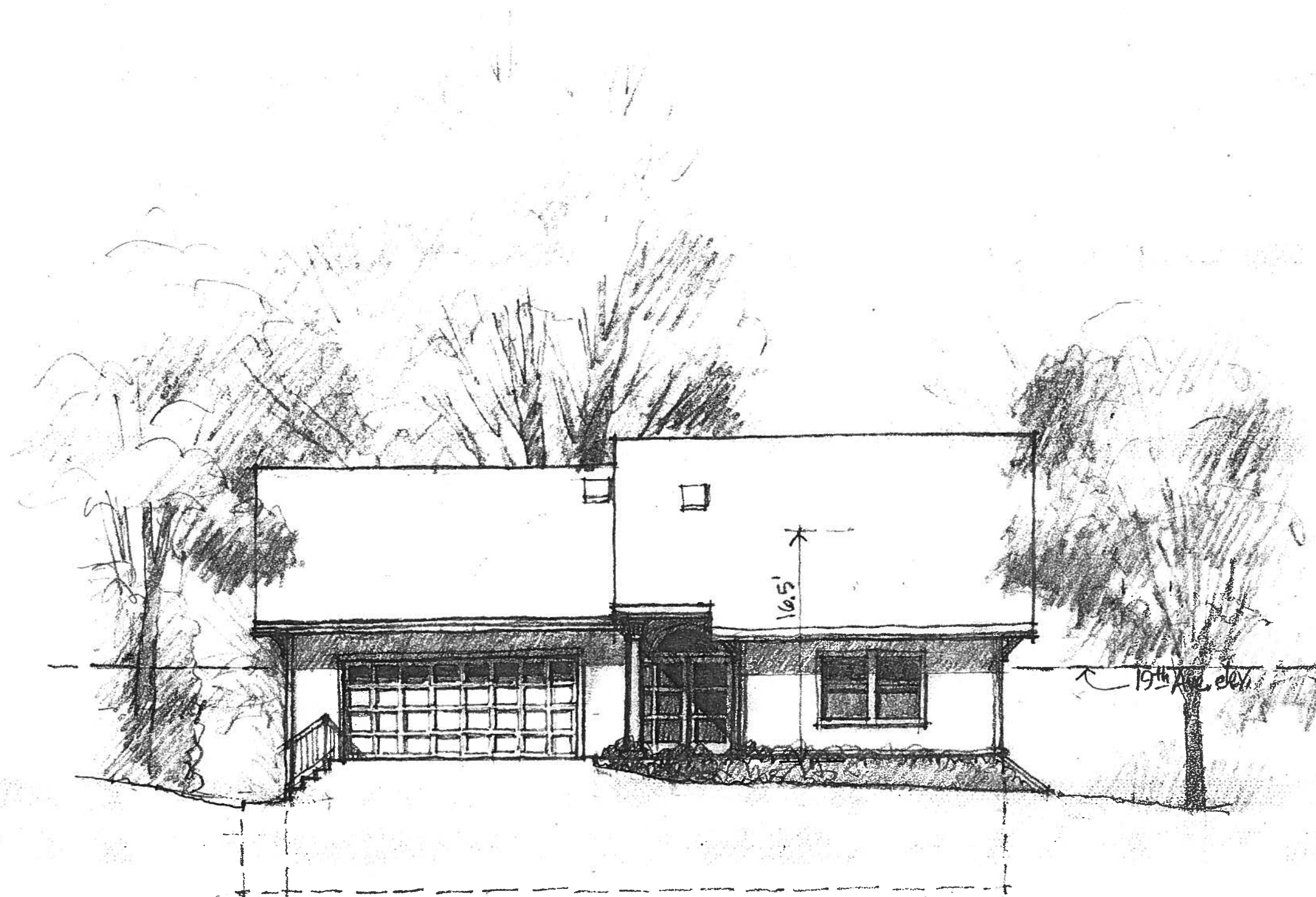
ROOF PLAN
 $\frac{1}{8}'' = 1'-0''$





Notes:

- Cut - 79 cu. yds. under house, above flood plain.
- Fill - 98 cu. yds. under house and driveway, all above flood plain.
- Storm water drainage small cut and fill to exactly balance.
- Exterior lighting for safety and security will be under roof overhangs and decks and be shielded from neighbors. Residential type fixtures. See Second Floor Plan.



Note: two 38" maple trees & 38" burst
east of house not shown
for clarity.

EAST ELEVATION

$\frac{1}{8}'' = 1'-0''$

Exterior materials and colors:
Walls - lap siding, 7" exposure, medium green-gray color
Windows - vinyl, white
Roof - composition, mixture of gray-green slate color
Trim - white



exist. hedge
and trees

11921

12'

PROPOSED

EAST ELEVATION

from paved street level

elev. 55.0 at center of street pavement

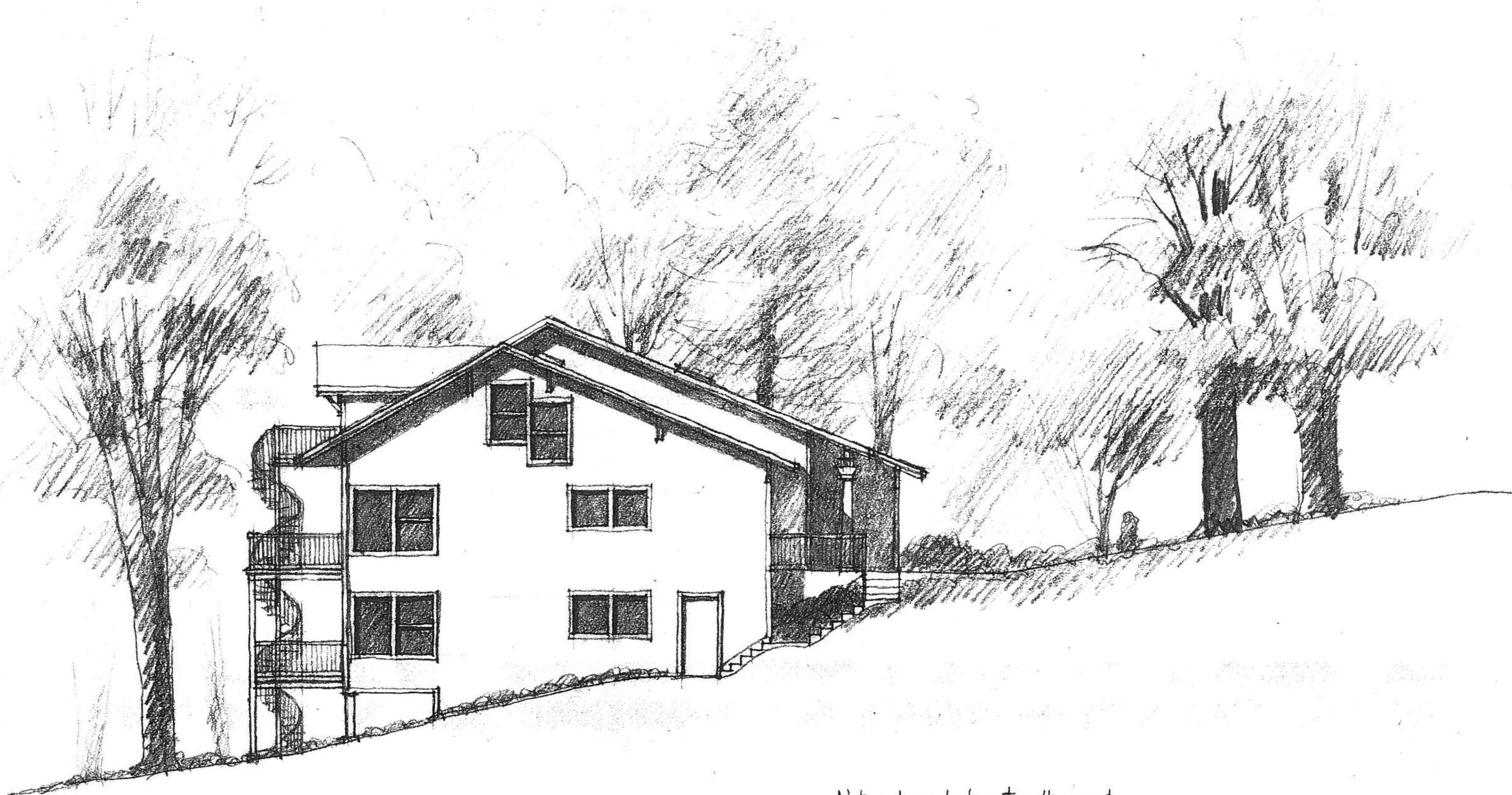
Second Floor

river view

37'

First Floor

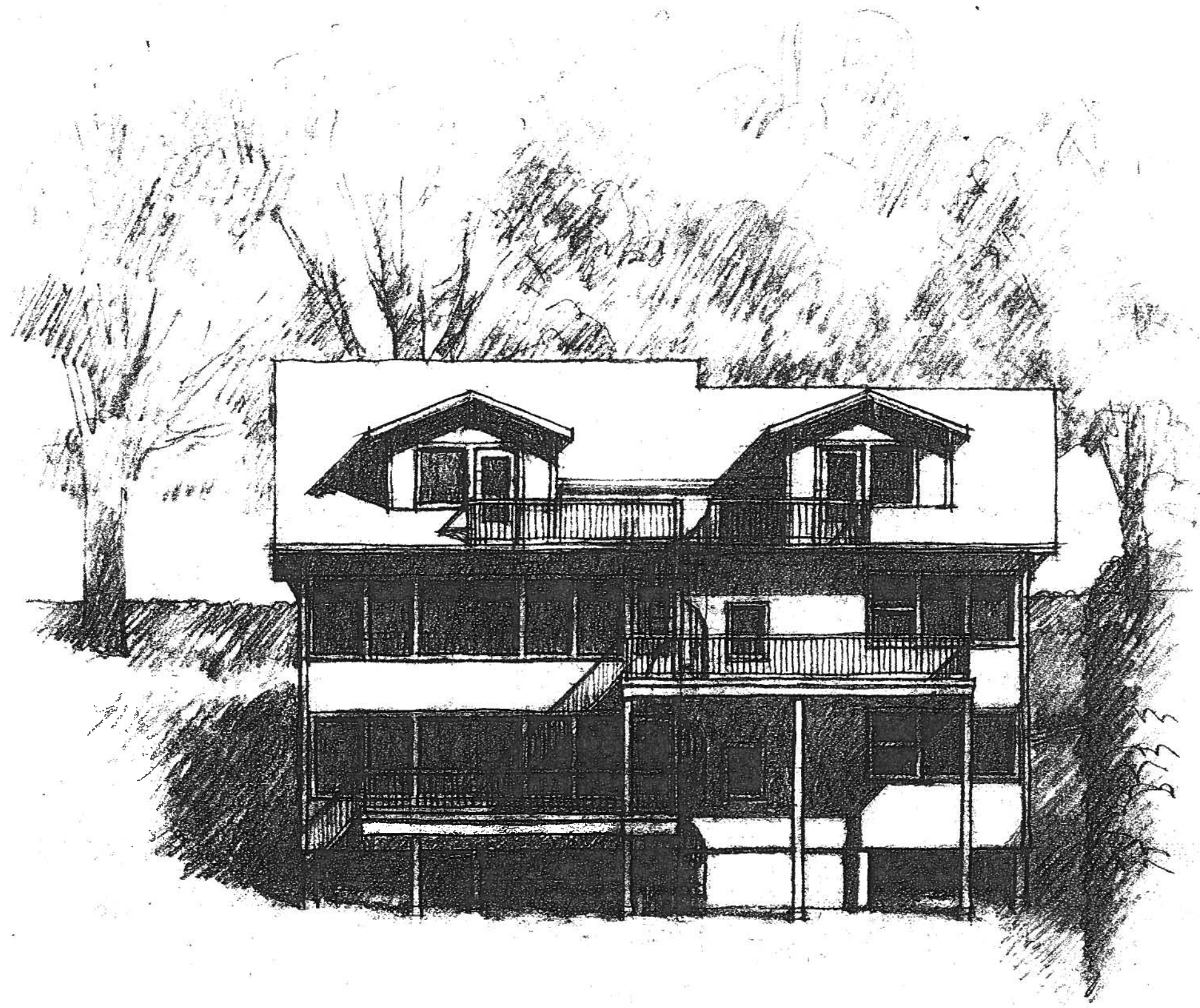
11907



SOUTH ELEVATION

$\frac{1}{8}'' = 1'-0''$

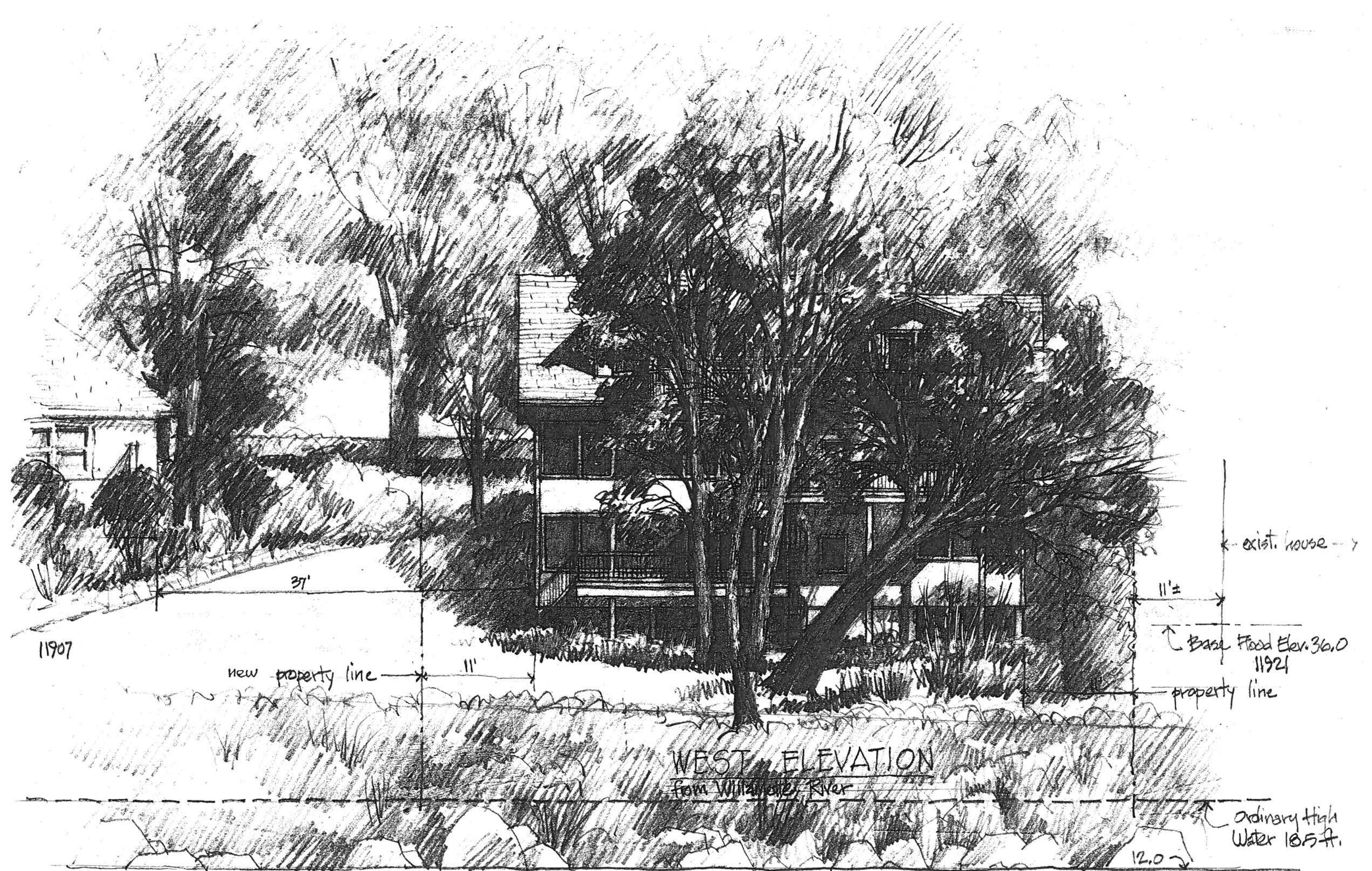
Note: large hedge at south property
line not shown for clarity.



Note: Four large beech
trees west of house not
shown for clarity.

WEST ELEVATION

1/8" = 1'-0"



37'

11907

new property line

11'

← exist. house →

11'±

Base Flood Elev. 36.0
11921

property line

WEST ELEVATION
from Williams River

Ordinary High
Water 18.5 ft.

12.0



NORTH ELEVATION
 $\frac{1}{8}'' = 1'-0''$



October 2, 2009

Carolyn Tomei and Gary Michael
11907 SE 19th Ave
Milwaukie, OR 97222

Re: Preapplication Report

Dear Carolyn and Gary,

Enclosed is the Preapplication Report Summary from your meeting with the City on September 17, 2009, concerning your proposal for action on property located at 11907 SE 19th Ave.

If you have any questions concerning the content of this report, please contact the appropriate City staff.

Sincerely,

Blanca Marston
Administrative Specialist II
City of Milwaukie - Community Development

Enclosure

cc: File



To: Carolyn Tomei and Gary Michael, Applicant
From: Susan P. Shanks, Senior Planner
Site: 11907 SE 19th Avenue
Proposal: 2-lot Partition in R5 zone; Residential (including ADU) Development on New Lot
Subject: List of Land Use Applications for Partition (MLP) and Development

If partition and development proposals processed concurrently:

Concurrent MLP & Development Applications:

1. MLP (Minor Land Partition)
2. WQR (Water Quality Resource Review)
3. WG (Willamette Greenway Review)
4. HCA (Habitat Conservation Area Review)
5. ADU/CU (Accessory Dwelling Unit (Type 1 ADU) or Conditional Use (Type 2 ADU))
6. VR (Variance)

If partition and development proposals processed separately:

MLP Applications:

1. MLP
2. WQR
3. WG
4. VR
5. HCA

Development Applications:

1. ADU/CU
2. (WG)
3. (HCA)
4. (VR)

CITY OF MILWAUKIE**PreApp Project ID #: 09-010PA****PRE-APPLICATION CONFERENCE REPORT****This report is provided as a follow-up to a meeting that was held on 9/17/2009 at 10:00 AM****Applicant Name:** GARY MICHAEL & CAROLYN TOMEI**Company:****Applicant 'Role':** Owner**Address Line 1:** 11907 SE 19TH AVE**Address Line 2:****City, State Zip:** MILWAUKIE OR 97222**Project Name:****Description:****ProjectAddress:** 11907 SE 19TH AVE**Zone:** R5 zone. See MMC Section 19.303 for details.**Occupancy Group:****ConstructionType:****Use:** Proposed use is single-family attached residential with two accessory dwelling units.**Occupant Load:****AppsPresent:** Gary Michael & Carolyn Tomei**Staff Attendance:** Katie Mangle, Gary Parkin, Susan Shanks & Brad Albert**BUILDING ISSUES****ADA:****Structural:****Mechanical:****Plumbing:****Plumb Site Utilities:****Electrical:****Notes:** All work shall conform to the Oregon Residential Specialty Code and related documents. The two dwelling units require a one-hour separation

Please note all drawings must be individually rolled. If the drawings are small enough to fold they must be individually folded.

FIRE MARSHAL ISSUES

Fire Sprinklers:

Fire Alarms:

Fire Hydrants:

Turn Arounds:

Addressing:

Fire Protection:

Fire Access:

Hazardous Mat.:

Fire Marshal Notes:

PUBLIC WORKS ISSUES

Water: The water System Development Charge (SDC) is based on the size of water meter serving the property. The corresponding water SDC will be assessed with installation of a water meter. Water SDC credit will be provided based on the size of any existing water meter serving the property removed from service. The water SDC will be assessed and collected at the time the building permits are issued.

Sewer: Currently, the wastewater System Development Charge (SDC) is \$893.00 per connection unit. The wastewater SDC is assessed using a plumbing fixture count from Table 7-3 of the Uniform Plumbing Code. The wastewater SDC connection units are calculated by dividing the fixture count of new plumbing fixtures by sixteen. The wastewater SDC will be assessed and collected at the time the building permits are issued.

Storm: Submission of a storm water management plan by a qualified professional engineer is required as part of the proposed development. The plan shall conform to Section 2 - Stormwater Design Standards of the City of Milwaukie Pubic Works Standards.
The storm water management plan shall demonstrate that the post-development runoff does not exceed the pre-development, including any existing storm water management facilities serving the development property. Also, the plan shall demonstrate compliance with water quality standards. The City of Milwaukie has adopted the City of Portland 2008 Stormwater Management Manual for design of water quality facilities.
All new impervious surfaces, including replacement of impervious surface with new impervious surfaces, are subject to the water quality standards. See City of Milwaukie Public Works Standards for design and construction standards and detailed drawings.

The storm SDC is based on the amount of new impervious surface constructed at the site. One storm SDC unit is the equivalent of 2,706 square feet of impervious surface. The storm SDC is currently \$1138.37 per unit. The storm SDC will be assessed and collected at the time the building permits are issued.

Street: The proposed development fronts the west side of SE 19th Ave., a local street. The fronting portion of SE 19th Ave has a right-of-way width of 60 feet and an existing paved width of 12 feet.

Frontage: Chapter 19.1400 of the Milwaukie Municipal Code, hereafter referred to as "Code", applies to partitions, subdivisions, and new construction.

Transportation Facility Requirements, Code Section 19.1408, states that all rights-of-way, streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public right-of-way and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner.

The proposed development will not require a separate Transportation Facilities Review (TFR) application. All new streets proposed as part of the development shall be improved to the standards of Code Chapter 19.1400 and Code Table 19.1408.2.

STREET IMPROVEMENTS

All necessary street improvements will be determined after the Island Station neighborhood meeting. The engineering department will follow up with the applicant in the form of an addendum to the pre-application notes two weeks after the meeting.

Right of Way: Right-of-way shall be dedicated in accordance with Code Chapter 19.1400 and Code Table 19.1408.2. The existing right-of-way width of SE 19th Avenue fronting the proposed development is 60 feet in width. According to required cross section of SE 19th Avenue abutting the development property, the required right-of-way width is 50 feet to accommodate the street cross section. The applicant is not responsible for any additional dedication fronting the proposed development property.

Driveways: Code Section 12.16.040 states that access to private property shall be permitted with the use of driveway curb cuts and driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA). Driveway approaches shall be improved to meet the requirements of Code Chapter 12.16.040.

Erosion Control: Per Code Section 16.28.020(C), an erosion control permit is required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which results in the disturbance or exposure of soils exceeding five hundred square feet.

Code Section 16.28.020(E) states that an erosion control permit is required prior to issuance of building permits or approval of construction plans. Also, Section 16.28.020(B) states that an erosion control plan that meets the requirements of Section 16.28.030 is required prior to any approval of an erosion control permit.

Traffic Impact Study: Code Section 19.1404.1(A) states that the Engineering Director will determine whether a transportation impact analysis is required. The development application will not require a Transportation Facilities Review (TFR) and therefore a transportation impact analysis is also not required.

PW Notes: TRANSPORTATION SDC
The Transportation SDC is based on the increase in trips generated per the Trip Generation Handbook from the Institute of Transportation Engineers. The SDC for transportation is \$1611.30 per trip generated. Credit is applied to any demolished structures and is based upon the existing use of the structures. The Transportation SDC is assessed and collected at the time the building permits are issued.

PARKS AND RECREATION SDC

The parks & recreation System Development Charge (SDC) is triggered when application for a building permit is received. Currently, the parks and recreation SDC for each Nonresidential building is \$60.00

per employee. The number of employees will be calculated according to the type of business and building square footage. Credit is applied to any demolished structures and is based upon the existing use of the structures. The parks and recreation SDC will be assessed and collected at the time the building permits are issued.

PLANNING ISSUES

Setbacks:

The property located at 11907 SE 19th Avenue is zoned R5. The setbacks for this zone are as follows: front yard shall be at least 20 feet, side yards shall be at least 5 feet (with one additional foot of side yard for every 3 feet of height over 2 stories or 25 feet, whichever is less), and rear yard shall be at least 20 feet. There is an exception to the front yard standard in residential zones. Milwaukie Municipal Code (MMC) 19.401.2.B states that "the required front yard need not exceed the average depth of the two abutting front yards within 100 feet of the proposed structure" or that "the required front yard need not exceed the average depth of the abutting front yard within 100 feet of the proposed structure and the required front yard depth." Cornices, eaves, canopies, sunshades, gutters, steps, unroofed landings, and flues may project up to 24 inches into a required side yard and up to 36 inches into a required front or rear yard.

The proposed development property is also located in the Willamette Greenway overlay zone. All outright allowed development in this zone is subject to the City's conditional use provisions in MMC Chapter 19.600. Conditional uses in residential zones are subject to additional yard width standards. MMC Section 19.602.1 states that "yard width shall be equal to two-thirds the height of the principle structure." It also states that additional yard requirements may be imposed. Since conditional uses require Planning Commission review and approval, any additional yard width requirement would be imposed at the time of land use approval.

In general, all new development must conform to all current yard width standards. Existing development must either meet current yard width standards or must not go further out of conformance with respect to these standards. In this case, the existing home must meet either the R5 or conditional use yard width requirement, whichever is greater, on the south side of the home where the new lot line is proposed. The existing home may continue to be nonconforming with respect to other yard width requirements as long as the proposal does not involve changing any other lot lines or the exterior dimensions of the existing home.

Landscape:

For the newly created lot that will contain the existing home, the minimum vegetation and lot coverage standards of the R5 zone must be demonstrated at the time of land use application submittal. For the newly created vacant lot, the minimum vegetation and lot coverage standards of the R5 zone must be demonstrated at the time of land use application submittal and met at the time building permit submittal. The R5 zone requires that 25% of the total area of the lot be left or planted in trees, grass, shrubs, planting beds, etc. The maximum lot area that can be covered by structures is 35%. Primary structures, accessory structures (such as sheds and detached garages), and decks or patios over 18" in height are all counted toward lot coverage.

In addition to the minimum vegetation coverage required by the R5 zone, the City's interim regulations that implement Metro Title 13 policy also apply to this property. Metro Title 13 seeks to: (1) conserve, protect, and restore a continuous ecologically viable stream and river corridor system in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape, and (2) control and prevent water pollution for the protection of public health and safety and to maintain and improve water quality throughout the region. Metro Title 13 guidelines and regulations apply to mapped Habitat Conservation Areas (HCA). A map showing the location of HCAs on the proposed development

property was provided at the pre-application conference. Metro Title 13 allows development in mapped HCAs. It does, however, limit the amount of development in these areas and, depending upon the impacts of the proposed development, may require mitigation in the form of tree, shrub, and/or ground cover plantings.

Parking:

If existing required parking is removed or separated from the existing home as a result of the land division, it must be replaced. Replacement doesn't have to occur at the time of land use application submittal, but the land use application submittal must demonstrate how this would be accomplished prior to the final recording of the land division with the County. For the newly created vacant lot, the off-street parking standards must be demonstrated at the time of land use application submittal and met at the time building permit submittal.

Per MMC Table 19.503.9.A, the minimum number of off-street parking spaces for a single-family dwelling is 2 parking spaces per dwelling unit, one of which must be covered. One additional off-street parking space is required for each accessory dwelling unit (ADU) proposed. Parking spaces in the right-of-way may not be counted toward meeting the off-street parking requirements of MMC Chapter 19.500. The required dimensions for a residential off-street parking space are 9' x 20'. Additional parking standards can be found in MMC Subsection 19.503.21. If the applicant proposes to vary a parking standard, a Variance application must be submitted with the land division application that addresses all variance criteria contained in MMC Section 19.702.

Transportation Review:

Engineering will provide more detailed information in their comments on possible street dedications and improvements. If the applicant proposes to vary a transportation design element, a Variance application must be submitted with the land division application that addresses all variance criteria contained in MMC Section 19.702.

Application Procedures:

A list of required and potential land use applications was provided at the time of the pre-application conference and is attached to this report for your convenience. All applicable code sections were also provided at the pre-application conference. The Planning Department implements the interim regulations associated with Metro Title 13 and MMC Titles 17 and 19, with the exception of Chapter 19.1400. The Engineering Department implements Titles 12 and 18 and Chapter 19.1400. Each application must address all applicable approval criteria and development standards. Please check with the appropriate department if you have questions about which code sections are applicable to the land division and development proposal.

Land use application submission materials are listed below for your convenience. Please refer to the handouts distributed at the pre-application conference for more detailed information.

1. All applicable land use applications forms with signatures of property owners.
2. All applicable land use application fees.
3. Completed and signed "Submission Requirements" and "Site Plan Checklist and Procedures" forms. Completed and signed "Preliminary Plat Checklist and Procedures" for the Property Boundary Change application.
4. 5 copies of an existing conditions and a proposed conditions site plan, both to scale. These two site plans can be combined onto one site plan. Once the application is deemed complete, additional copies will be requested for distribution to City departments, applicable governmental agencies, and the neighborhood district association for review.
5. Elevation drawings and/or photo simulations showing existing and proposed building height and massing that demonstrate the impact on views to and from the river.
6. Detailed narrative describing compliance with all applicable code sections and design standards.

A land division that results in three or fewer lots is a minor land partition. A partition is normally a Type II Administrative Review, which is a Planning Department staff decision. However, since the

proposed development property contains a mapped water quality resource area and is within the Willamette Greenway zone, the proposal to divide this property requires minor quasi-judicial review by the Planning Commission. The Planning Commission hears land use applications on the second and fourth Tuesdays of every month, and completed applications need to be submitted to the Planning Department no later than 45 days prior to the target Planning Commission hearing. In general, staff recommends that applications be submitted one to two weeks before the 45-day deadline in order to ensure that there is time to make the applications complete if they are initially deemed incomplete. Once the Planning Commission renders a decision, there is a fifteen calendar-day appeal period. Building permits will be accepted for review only after the appeal period for all land use decisions has expired.

The land division process is a two-step process. The first step, as described above, is a limited land use decision involving review of the preliminary plat. Once the preliminary plat is approved, a final plat needs to be submitted and approved by the City and recorded with the County. Final plat approval criteria and submission requirements can be found in Section 17.12.050, Section 17.16.070, and Chapter 17.24.

Natural Resource Review: The property is completely within the City's Willamette Greenway (WG) overlay zone and Metro's Habitat Conservation Area (HCA). The property's westernmost property line also contains a mapped Water Quality Resource (WQR) area, i.e. the Willamette River. The proposed land division triggers the submission of a WG, HCA, and WQR application. If the proposed land division and development are not processed concurrently, the proposed development may also trigger the submission of a WG and HCA application.

Lot Geography: There are no unusual lot geometry issues. However, the property sits below street level and slopes downward toward the Willamette River.

Planning Notes: Use Exception Application for Duplex and ADU Proposal:
By definition, accessory dwelling units are not allowed as part of single-family detached (i.e. duplex) developments. The Planning Director has determined that the applicant could request an exception from this definition through the submission of a Use Exception application pursuant to MMC Section 19.705. A Use Exception application requires minor quasi-judicial review by the Planning Commission. Approval of these types of applications is discretionary and requires that the applicant demonstrate how the proposal meets the five approval criteria. As discussed at the pre-application conference, a potential argument for such a request relates to the size of the lot (i.e. large enough to accommodate a duplex and possibly a flag lot), the existing physical and regulatory constraints (i.e. in the floodplain and WG zone with mapped HCA and WQR areas), and how the proposal seeks to minimize impacts to the existing natural resources areas by clustering the development on one lot and keeping the development footprint to a modest size. While it is true that a 5000-square-foot lot in the R5 zone would be allowed to build a primary and accessory dwelling unit and duplexes are allowed outright in the R5 zone, bear in mind that all development that is allowed outright in the R5 zone is a conditional use in the Willamette Greenway zone, and, therefore, not allowed outright by definition.

Building Height Measurement:

The definition for building height allows height to be measured either from street grade at the centerline or from finished grade at the front of the building. The Planning Director has reviewed past decisions and considered future development proposals and has determined that the most consistent and equitable approach to measuring building height on those properties that slope either upwards or downwards from the street is to measure building height from the finished grade at the front of the building. This approach is not overly restrictive when applied to development on uphill-sloped properties or overly permissive when applied to development on downhill-sloped properties. In addition to meeting the height requirement as measured in feet, the proposed development must demonstrate how it would not exceed the 2-1/2 story standard of the R5 zone.

Variance to Maximum Density Standard:

Pursuant to MMC Subsection 19.303.3.L, the proposed development property is subject to the minimum and maximum density standards of the R5 zone. Density standards are based on net acreage. The definition for net acre is as follows: "An area measuring 43,560 square feet excluding the following: rights-of-way; floodplains; protected water features; natural resource areas protected under statewide planning Goal 5; slopes in excess of 25 percent; and publicly owned land designated for park, open space, and resource protection." After excluding the above-listed areas from the property's acreage, the property's net acreage is 0. Consequently, the minimum and maximum densities for this property are both 0, which means that adding even a single new dwelling unit would exceed the maximum density standard for this property.

Floodplain, Willamette Greenway, and Habitat Conservation Area regulations do not outright prohibit new development. However, an argument would still need to be made to allow for new development on this property given that the development proposal to add additional dwelling units would exceed the maximum density standard of the R5 zone. Since the development, as proposed, could not meet this standard, a Variance application must be submitted with the land division application that requests a variance from the maximum density standard. The Variance application should address all variance criteria contained in MMC Section 19.702.

ADDITIONAL NOTES AND ISSUES**County Health Notes:****Other Notes:**

This is only preliminary preapplication conference information based on the applicant's proposal and does not cover all possible development scenarios. Other requirements may be added after an applicant submits land use applications or building permits. City policies and code requirements are subject to change. If you have any questions, please contact the City staff that attended the conference (listed on Page 1). Contact numbers for these staff are City staff listed at the end of the report.

Sincerely,

City of Milwaukie Development Review Team

BUILDING DEPARTMENT

**Tom Larsen - Building Official - 503-786-7611
Bonnie Lanz - Permit Specialist - 503-786-7613**

ENGINEERING DEPARTMENT

**Gary Parkin - Engineering Director - 503-786-7601
Brad Albert - Civil Engineer - 503-786-7609
Zach Weigel - Civil Engineer - 503-786-7610
Jason Rice - Associate Engineer - 503-786-7605
Brenda Schleining - Associate Engineer - 503-786-7602**

COMMUNITY DEVELOPMENT DEPARTMENT

**Jeanne Garst - Administrative Supervisor - 503-786-7655
Marcia Hamley - Admin Specialist - 503-786-7656
Blanca Marston - Admin Specialist - 503-786-7600
Alicia Stoutenburg - Admin Specialist - 503-786-7600**

PLANNING DEPARTMENT

**Katie Mangle - Planning Director - 503-786-7652
Susan P. Shanks - Senior Planner - 503-786-7653
Brett Kelter - Associate Planner - 503-786-7657
Ryan Marquardt - Associate Planner - 503-786-7658
Li Alligood - Assistant Planner - 503-786-7627**

CLACKAMAS FIRE DISTRICT

Doug Whiteley - Lieutenant Deputy Fire Marshal - 503-742-2692

From: CURTIS Gail E [Gail.E.CURTIS@odot.state.or.us]

Sent: Tuesday, May 18, 2010 12:12 PM

To: Kelter, Brett

Subject: RE: electronic referral for WG-10-01 (City of Milwaukie)

My main point was do you need the state to weigh-in relative to the Willamette Greenway? Is there a trail designated relative to the application? We consider it a transportation corridor. I suspect the answer is you have enough local code provisions in place that provide direction. Even if we weighed in we would be relying on your local code. I don't believe you need our assistance. Is that correct? If you did, I would simply write a letter to the file to lay out your provisions. I prefer you do that.

*Gail Curtis, Senior Planner, AICP, ODOT Region 1 123 NW Flanders Street Portland OR 97209-4012
Phone: 503-731-8206 FAX: 503-731-8259 gail.e.curtis@odot.state.or.us <http://www.oregon.gov/ODOT/>*

From: Kelter, Brett [mailto:KelterB@ci.milwaukie.or.us]

Sent: Tuesday, May 18, 2010 10:50 AM

To: CURTIS Gail E

Subject: RE: electronic referral for WG-10-01 (City of Milwaukie)

Gail,

Thanks for the messages yesterday. I didn't check the time-stamp on your voicemail in relation to your email note below. Would you like to touch base briefly about this application or do you feel you understand enough about it to stick with your note below? If you'd like a quick check-in on it, just let me know when's a good time to catch you by phone. Thanks!

-Brett Kelter

Associate Planner

City of Milwaukie

From: CURTIS Gail E [mailto:Gail.E.CURTIS@odot.state.or.us]

Sent: Monday, May 17, 2010 11:09 AM

To: Kelter, Brett

Subject: RE: electronic referral for WG-10-01 (City of Milwaukie)

We will not be reviewing this since it does not affect any of our facilities. thanks

*Gail Curtis, Senior Planner, AICP, ODOT Region 1 123 NW Flanders Street Portland OR 97209-4012
Phone: 503-731-8206 FAX: 503-731-8259 gail.e.curtis@odot.state.or.us <http://www.oregon.gov/ODOT/>*

From: Kelter, Brett [mailto:KelterB@ci.milwaukie.or.us]

Sent: Monday, May 10, 2010 12:06 PM

To: bateschellm@metro.dst.or.us; CURTIS Gail E

Subject: electronic referral for WG-10-01 (City of Milwaukie)

Miranda and Gail,

I'm following up electronically on the application referral for WG-10-01 that went out to you in the mail last Friday (5/07/10). I wanted to send you an electronic copy of the application for your convenience.

In checking the notification requirements in the Public Facility Improvements section of Milwaukie's Municipal Code (MMC 19.1407), I don't believe that either Metro or ODOT technically needs notification of this application at this time. We will be sending notice of the hearing date to ODOT via certified mail as required later in the process. As for Metro, although the subject property is very close to the Kellogg sewage treatment plant and the small bike/ped path that runs just behind the plant, I don't believe that path is considered a regional multi-use trail ---- but I thought I'd send the materials so you could have a look in case I'm wrong.

The application file is a large PDF, so let me know if you have any trouble downloading it. And do let me know if you have any questions. Thank you.

Brett Kelter, Associate Planner

Phone Meeting
LAND USE DISTRICT REVIEW COMMITTEE MEETING MINUTES
Island Station Neighborhood District
Date: 2010May24

To: Brett Kelter, Milwaukie Planning Staff sent by email

Members Present:

Charles Bird, Chair

Gary Michael – by phone recused himself as he is one of the applicants

Molly Hanthorne – Resigned

Jim Mishler – met by phone

Beth Regal, Liason - 503-653-6611

- I. CALL TO ORDER - Members poled by phone
- II. INTRODUCTIONS
- II. CONSENT AGENDA

Applicants: Carolyn Tomei and Gary Michael, residents in the current home.

Location: 11907 SE 19th 11097 SE 19th requesting variances and allowance to subdivide and construct a duplex on the divided lot.

Overlays: City of Milwaukie, Island Station Neighborhood, Willamette River Shoreline, Water Quality Resource Area. Title 13 Habitat Conservation Area.

Findings -

- III. REPORTS – Application Referral from the Planning Dept.
- IV. DISCUSSION

- No problem with narrow 19th
- There is enough property for the duplex.
- Double check the flood level at this location.
- Only one garage for a duplex recommend considering putting in a separation between the two sides.
- Compliance with the habitat conservation area requirements is not clear.
- The heating system is believed to be a heat pump which uses the earth as a heat sink and not tapping into hot rock strata below the site. This term geothermal was viewed as misleading perhaps another term such as geo-source heat pump could be used.

- V. MATTERS FROM THE COMMITTEE – none
- VI. INFORMATON SHARING - none
- VII. FUTURE MEETING DATE/AGENDA ITEMS - none
- VIII. ADJOURN

Charles Bird, Chair

CC. Alicia Hamilton, Secretary ISNA, + kelterb@ci.milwaukie.or.us

From: Miranda Bateschell [Miranda.Bateschell@oregonmetro.gov]
 Sent: Monday, May 24, 2010 4:10 PM
 To: Kelter, Brett
 Subject: RE: additional materials for WG-10-01 (City of Milwaukie)

Brett,

I just wanted to let you know that I have reviewed the material and given the classification for this area and the mitigation efforts, it looks fine. We have no formal comment. Thanks again for getting me the supplemental information so quickly.

Miranda

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

From: Kelter, Brett [mailto:KelterB@ci.milwaukie.or.us]
 Sent: Thursday, May 20, 2010 8:29 AM
 To: Miranda Bateschell
 Subject: RE: additional materials for WG-10-01 (City of Milwaukie)

Thanks for the note, Miranda. The additional materials are attached in PDF format. Please let me know if you have any problems viewing the documents or any other questions.

-Brett Kelter
 Associate Planner
 City of Milwaukie

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

From: Miranda Bateschell [mailto:Miranda.Bateschell@oregonmetro.gov]
 Sent: Thursday, May 20, 2010 8:26 AM
 To: Kelter, Brett
 Subject: RE: additional materials for WG-10-01 (City of Milwaukie)

Can you please send me the materials?

Thanks, Miranda

From: Kelter, Brett [KelterB@ci.milwaukie.or.us]
 Sent: Thursday, May 13, 2010 4:40 PM
 To: kathy.schutt@state.or.us; anita.huffman@state.or.us; douglas.baer@state.or.us; tami.hubert@dsl.state.or.us; Miranda Bateschell; gail.e.curtis@odot.state.or.us; Albert, Brad; Mangle, Katie; Whitely, Doug; Bill Monahan; Asher, Kenny; Ragel, Beth; mjh12014@hotmail.com; charlesbird@juno.com
 Subject: additional materials for WG-10-01 (City of Milwaukie)

Greetings,

This week we have received a couple of additional pieces of information from the applicant on file # WG-10-01 (11907 SE 19th Ave -- proposal to replat property within the Willamette Greenway overlay and build a duplex). The new information includes the following:

1. Revised plan sheet showing Exhibit 3 (Site Plan with photo locations) and Exhibit 4 (Landscape and Stormwater Plan) --- The applicant modified Exhibit 4 to show that only three trees on the property are proposed for removal; the fourth tree being removed is in the public right-of-way and does not trigger the same mitigation requirements. This distinction affects the number of new trees and shrubs required as mitigation.

2. Additional narrative material including the following:

a) Request for extension of Conditional Use approval, should the application be approved. The normal deadline for substantial construction on Conditional Use projects is 6 months, but the Planning Commission is allowed to extend the deadline. Staff recommended that the applicant submit the extension request at this time.

b) Information on proposed tree protection measures, particularly for the two large locust trees located just west of the proposed duplex.

c) Further explanation of rationale for the variance request to reduce the front yard setback, in particular why the applicant has chosen the specific house plan for the proposed duplex and why it is preferable not to reduce the footprint further.

d) Additional description of the environmental impacts and benefits of the project.

If you feel that any of this information might be relevant to your review and comment on the application, we can make it available to you via regular or electronic mail. Please let me know as soon as possible.

The deadline for referral comments is Monday, May 24.

Thank you.

Brett Kelter, Associate Planner
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206
(503) 786-7657 (phone)
(503) 774-8236 (fax)
E-mail: kelterb@ci.milwaukie.or.us

MEMORANDUM

TO: Community Development Department
THROUGH: Gary Parkin, Director of Engineering
FROM: Brad Albert, Civil Engineer
RE: Willamette Greenway – 11907 SE 19th Ave
 WG-10-01, WQR-10-01, VR-10-01, and R-10-01
DATE: May 26, 2010

Construction of a new duplex on Parcel 2.

1. MMC Chapter 17.28 – Design Standards

The Planning Commission finds that the following complies with applicable criteria of MMC Chapter 17.28

- A. MMC Chapter 17.28.030 requires easements for sewers, water mains, electric lines, or other public utilities shall be dedicated to the City wherever necessary.

The proposed development property has an underground sanitary sewer mainline that runs along the west side of the property. The applicant shows the existing 10 foot easement for the mainline on the site plan. The applicant must show the sanitary sewer easement on the final plat for Parcel 1 and Parcel 2.

The Planning Commission finds that the requirements of MMC Section 17.28.030 have been met for the proposed development.

2. MMC Chapter 19.1400 – Public Facility Improvements

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

- A. MMC Chapter 19.1400 applies to partitions, subdivisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicant proposes to replat the existing parcel into two new parcels. The new parcels will consist of Parcel 1 which retains the existing single family residence and Parcel 2 which is the site of the proposed duplex. The new construction of the duplex on Parcel 2 is projected to slightly increase vehicle trips to the site.

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

- B. MMC Section 19.1403 requires for minimum safety and functionality standards to be met before a development permit will be issued.

The proposed Parcel 2 does not have adequate paved width along the site's frontage on SE 19th Ave. The existing paved width on SE 19th Ave is 12 feet. The minimum paved width along the site's frontage that is allowed is 16 feet. The applicant is required to pave an additional 4 feet in width along the Parcel 2 frontage on SE 19th Ave.

The Planning Commission finds that the requirements of MMC Section 19.1403 have been met for the proposed development.

- C. MMC Section 19.1404 requires submission of a transportation impact study documenting the development impacts on the surrounding transportation system.

The proposed development will not trigger a significant increase in trip generation and therefore does not require a transportation impact study.

The Planning Commission finds that the requirements of MMC Section 19.1404 have been met for proposed development.

- D. MMC Section 19.1404.4 requires that transportation impacts of the proposed development be mitigated.

The proposed development does not trigger mitigation of impacts beyond the required frontage improvements. The impacts are minimal and the surrounding transportation system will continue to operate at the level of service previous to the proposed development.

The Planning Commission finds that the requirements of MMC Section 19.1404.4 have been met for the proposed development.

- E. MMC Section 19.1406 establishes specific criteria for accepting a fee in lieu of construction of required transportation facility improvements.

The applicant has proposed to pay a fee in lieu of construction of the required transportation facility improvements triggered by the construction of a new duplex on Parcel 2. The Engineering Director accepts the fee in lieu of construction on the basis that the required improvements may present a safety hazard because Parcel 2 is mid block and the required improvements are not feasible to construct. The applicant must pay the fee in lieu of construction for the required frontage improvements prior to a development permit being issued.

The Planning Commission finds that the requirements of MMC Section 19.1406 have been met for the proposed development.

- F. MMC Section 19.1408.1 requires all development shall comply with access management, clear vision, street design, connectivity, and intersection design and spacing standards.

The proposed Parcel 2 currently has a driveway access fronting SE 19th Ave that is currently nonconforming to ADA standards.

The applicant shall reconstruct the driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) on SE 19th Ave.

The driveway approach apron shall be between 9 feet and 20 feet in width and least 7.5 feet from the side property line.

The applicant shall remove all signs, structures, or vegetation in excess of three feet in height from “vision clearance areas” at intersections of streets, driveways, and alleys.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC Section 19.1408.1.

- G. MMC Section 19.1408.2 establishes standards for street design and improvement.

The applicant is responsible for street improvements along the Parcel 2 frontage adjacent to SE 19th Ave. The street improvement includes construction of a 12-foot wide paved one way street, standard curb and gutter on both sides, minimum 3-foot wide planter strip, and minimum 8-foot wide setback sidewalk to accommodate pedestrians and bikes. The street improvements are a modified cross section based on the useable right-of-way that exists along SE 19th Ave. The applicant has proposed a fee in lieu of construction for the required street improvements. The Engineering Director accepts the fee in lieu of construction on the basis that the required improvements may present a safety hazard because Parcel 2 is mid block and the required improvements are not feasible to construct.

The existing right-of-way width of SE 19th Ave fronting the proposed development is 60 feet. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of SE 19th Ave a local street. According to Table 19.1408.2 Street Design Standards, the required right-of-way width for a local street is between 20 feet and 68 feet depending on the required street improvements. The required right-of-way needed for the required street improvements is 25 feet. The applicant is not responsible for any additional right-of-way dedication along SE 19th Ave fronting the development property.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC Section 19.1408.2.

- H. MMC Section 19.1408.3 establishes sidewalks shall be provided on the public street frontage of all development.

The construction of sidewalks along the proposed development property abutting SE 19th Ave is included in the street frontage requirements. The applicant will pay a fee in lieu of construction for the required improvements.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC Section 19.1408.3.

- I. MMC Section 19.1408.4 establishes standards for bicycle facilities.

The portion of SE 19th Ave fronting the proposed development is classified as a bike route in the Milwaukie Transportation System Plan. The

required street improvements include the construction of a shared bike facility. The applicant will pay a fee in lieu of construction for the required bike facility improvements.

The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC Section 19.1408.4.

- J. MMC Section 19.1408.5 establishes standards for pedestrian and bicycle paths.

The proposed development property is surrounded by single family residences and the Willamette River with no mid-block connectivity. As a result, a pedestrian/bicycle path is not required for the proposed development.

The Planning Commission finds that the proposed development is consistent with MMC Section 19.1408.5.

- K. MMC Section 19.1408.6 establishes standards for transit facilities.

The portion of SE 19th Ave fronting the proposed development is not classified as a transit route in the Milwaukie Transportation System Plan. As a result, transit facility improvements are not required for the proposed development.

The Planning Commission finds that the proposed development is consistent with MMC Section 19.1408.6.

Recommended Conditions of Approval

1. Prior to approval of the final plat the following shall be resolved:
 - A. The existing sanitary sewer easement on the west side of the proposed development property shall be shown on the final plat for Parcel 1 and Parcel 2.
2. Prior to issuance of any building permit, the following shall be resolved:
 - A. 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. In the event the storm management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.
 - B. Obtain a right-of-way permit for construction of the required 4 foot pavement widening along the site's frontage on SE 19th Ave.
 - C. Pay the fee-in-lieu of construction costs for the required travel lane, curb, planter strip, and pedestrian pathway. The Engineering Director has calculated the fee at \$6,098.30 for the required improvements.
 - D. Provide an erosion control plan and obtain an erosion control permit.

3. Prior to final inspection of any building permit, the following shall be resolved:
 - A. Construct the required 4 feet of pavement widening along the site's frontage on SE 19th Ave.
 - B. Reconstruct the existing south driveway approach onto SE 19th Ave to meet all guidelines of the Americans with Disabilities Act (ADA) prior to final inspection. The driveway approach apron shall be between 9 feet and 20 feet in width and least 7.5 feet from the side property line.
 - C. Remove all signs, structures, or vegetation in excess of three feet in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed development.

Clackamas County Fire District #1

Fire Prevention Office



E-mail Memorandum

To: **Brett Kelter**, Associate Planner, City of Milwaukie Planning Dept

From: **Mike Boumann**, Fire Inspector, Clackamas County Fire District #1

Date: **6/15/2010**

Re: **11097 SE 19th Ave. , Duplex, File # WG-10-01**

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

COMMENTS:

FD Apparatus Access

- 1) All portions of new construction to be within 150' of approved apparatus access roads.

Water Supply

- 1) Fire hydrant to be located within 600' of all portions of new construction.

ATTACHMENT 6

Exhibits List

The following documents are part of the official record for this application (WG-10-01, with WQR-10-01, VR-10-01, R-10-01).

- A. Application Forms: *(received March 17, 2010, unless otherwise noted)*
 - 1. Willamette Greenway application form
 - 2. Water Quality Resource Review application form
 - 3. Variance application form
 - 4. Property Boundary Change (Replat) application form
 - 5. Habitat Conservation Area application form
 - 6. Submissions Requirements Checklist
 - 7. Preliminary Plat Checklist and Procedures *(received April 23, 2010)*

- B. Applicant's Statement: *(received May 7, 2010, unless otherwise noted)*
 - 1. Submittal Amendments *(received May 13, 2010)*
 - 2. Supplemental Narrative
 - 3. Project Narrative
 - 4. Habitat Inventory from Metro

- C. Plans & Drawings: *(received May 7, 2010, unless otherwise noted)*
 - 1. Exhibit 1 – Site Plan
 - 2. Exhibit 2 – Reparat Plan
 - 3. Photo Sheet, Existing Conditions
 - 4. Exhibit 2A – Neighborhood Map
 - 5. Exhibit 3 – Site Plan showing photo locations *(revision received May 10, 2010)*;
Exhibit 4 – Landscape and Stormwater (on same sheet as Exhibit 3, *revision received May 10, 2010*)
 - 6. House Plans (for proposed duplex)
 - a) First Floor
 - b) Second Floor
 - c) Third Floor
 - d) Roof Plan
 - e) Side Views, Sections A-A and B-B
 - 7. Elevation Drawings (for proposed duplex)
 - a) East Elevation (no vegetation)
 - b) East Elevation (including vegetation)
 - c) South Elevation
 - d) West Elevation (no vegetation)
 - e) West Elevation (including vegetation)
 - f) North Elevation

- D. Notification information:
 - 1. Referral form
 - 2. Notice posted at the site
 - 3. Notice mailed to properties within 300' radius
 - 4. Mailing list

E. Agency Responses:

1. Tom Larsen, City Building Official – No comments.
2. Douglas Baer, State Marine Board – No comments.
3. Gail Curtis, Oregon Department of Transportation – No concerns unless trails are proposed.
4. Charles Bird, Land Use Committee for Island Station NDA – Comments on 19th Ave, lot area, flood elevation, garage, Habitat Conservation Area requirements.
5. Miranda Bateschell, Metro – No comments.
6. Brad Albert, City Engineering Department – Comments incorporated into findings related to sewer easement and public facility improvements.
7. Kathy Schutt, Oregon Parks and Recreation Department – No comments.
8. Mike Boumann, Clackamas County Fire District #1 – Comments on new construction meeting applicable fire safety standards.

F. Comments Received:

1. *(none as of 6/15/10)*

G. Other:

1. Memo from Planning Director on Interim Implementation of Metro Title 13, including Model Ordinance (May 29, 2009)

H. Materials Received at the Hearing:

1. Staff Presentation *(to be added after hearing)*
2. *(to be determined)*

I. Staff Report:

1. Report
2. Recommended Findings
3. Recommended Conditions of Approval