

CITY OF MILWAUKIE  
PLANNING COMMISSION MINUTES  
TUESDAY, NOVEMBER 13, 2001

**COMMISSIONERS PRESENT**

Tracy Cook, Chair  
Judith Borden, Vice Chair  
Donald Hammang  
Howard Steward

**STAFF PRESENT**

John Gessner,  
Interim Planning Dir.  
Ken Kent,  
Associate Planner  
Shirley Richardson,  
Hearings Reporter

**COMMISSIONERS ABSENT**

Barbara Cartmill  
Mike Miller  
Rosemary Crites

1.0 CALL TO ORDER

The meeting was called to order at 6:30 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 PLANNING COMMISSION MINUTES -- September 25 & October 9, 2001

**Donald Hammang** moved to approve the minutes of September 25, 2001, as presented. **Howard Steward** seconded the motion. MOTION CARRIED 4-0.  
Ayes: Borden, Hammang, Steward, Cook; Nays: None.

**Donald Hammang** moved to approve the minutes of September 25, 2001, as presented. **Howard Steward** seconded the motion. MOTION CARRIED 3-0 with one abstention. Judith Borden was not present at that meeting.  
Ayes: Hammang, Steward, Cook; Nays: None.

4.0 INFORMATION ITEMS

- 4.1 City Council Work Session Minutes
- 4.2 City Council Minutes

5.0 PUBLIC COMMENT -- None.

6.0 PUBLIC HEARINGS

- 6.1 Applicant: Gary Haight and Karen Weliky  
Owner: Same  
Location: 2636 SE Harrison  
Proposal: Add 356 square feet additional office space to an existing 3,469 square foot office building. The property is located in a Natural Resource Overlay Zone. The proposal includes a request for a variance to allow the rear setback to be reduced from a minimum of 15 feet to 10 feet.  
File Numbers: CU-01-01/NR-01-05/VR01-04/TPR-01-07  
NDA: Historic Milwaukie

**Chair Cook** opened the public hearing on Conditional Use CU-01-01, Natural Resource Review NR-01-05, Variance Request VR-01-04 and Transportation Planning Review TPR-01-07 to allow a 356 sq.ft. addition to an existing dental office building. The criteria to be addressed are found in Sections: 306 - Residential Zone R-2; Section 322 - Natural Resource Overlay Zone; Section 600 - Conditional Use; 700 - Variance, Exceptions, and Home Improvement Exceptions; Section 500 - Off Street Parking and Loading; Section 1011.3 - Minor Quasi-Judicial Review; and Section 1400 - Transportation Planning, Design Standards and Procedures.

**Chair Cook** asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. She asked if any member of the Planning Commission visited the site; four hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

**Ken Kent** reviewed the staff report with the Commission. This is a proposal by Karen Weliky and Gary Haight to allow a 356 sq.ft. building addition to an existing dental office building located in a Natural Resource Area, and a setback variance and a conditional use at 2636 SE Harrison. The Applicant has responded to the criteria for expanding a conditional use. Staff believes that the applicant has demonstrated they have met the approval criteria for conditional use expansion.

The natural resource feature is a pond that is part of Spring Creek Drainage and is located on the west side of the building on this site. The applicant, in their proposal, has shown that the proposed addition is located outside the natural

resource feature and has demonstrated that the project meets approval criteria for the natural resource zone.

The applicant is requesting a 5-foot reduction in the rear 15-foot required rear setback in order to construct this addition 10-feet from the rear property line. The existing building is located 10-feet from the rear property line. The proposed addition will also be 10-feet. In reviewing the record, it was not clear at the time the property line was established whether there were any other determinations. The building existed prior to the property line going into place when this rear lot was created. Staff has determined that a variance is needed in order to build in less than a 15-foot setback. The Applicant has provided their response to the approval criteria and staff believes that they have demonstrated compliance with the variance criteria.

Parking requirements for the proposed addition would increase the requirements by one additional space. The applicant has provided that amount on the site. In addition, the applicant shares a parking agreement with the adjacent site for access to additional spaces.

The Transportation Plan Review standards identified were bicycle parking spaces and the widening of the driveway approach on Harrison Street. The proposed conditions of approval will require that these improvements be taken care of as part of this application.

Staff feels that the applicant has demonstrated that the proposal meets the approval criteria and recommends the Planning Commission approve the request.

QUESTIONS FROM THE COMMISSIONERS -- None.

CORRESPONDENCE RECEIVED -- None.

#### APPLICANT'S PRESENTATION

Speaking: Karen Weliky, 2636 SE Harrison, Milwaukie

**Ms. Weliky** stated that she is one of the dentists at this office. Initially, they just wanted to add a corner to their office building for handicapped access and to expand a treatment observatory to accommodate handicapped patients.

The office has been here 25 years. The practice was purchased ten years ago and their portion of the building was purchased two years ago. While renting they inquired about a handicapped access, but the owner was not interested. Now that they own it, they would like to install the access. There are quite a few patients that are elderly who have trouble with steps and several patients in wheelchairs.

Currently, they have to drag their equipment down to the handicapped patients who cannot make the steps.

The criteria for making the ramp were to have a dignified entrance and to minimally disrupt the natural beauty of the office. The ramp in no way interferes with the natural resource area; it is away from the creek. The drainage will connect to existing drainage and drained away from the creek. The conditional use was already granted for this building.

**Ms. Weliky** pointed out the location of the addition. It does not encroach on the existing 10-foot setback.

The bike rack was a part of their original plans and they are willing to accommodate that condition of approval.

QUESTIONS FROM THE COMMISSIONERS -- None.

There is no audience in the room, therefore, Chair Cook did not invite testimony in favor, questions or comments, or testimony in opposition to the application.

ADDITIONAL COMMENTS FROM STAFF -- None.

APPLICANT'S CLOSING COMMENTS -- None.

DELIBERATION AMONG THE COMMISSIONERS

**Chair Cook** closed the public testimony portion of the hearing and opened the meeting to discussion among the commissioners.

**Judith Borden** moved to approve applications NR-01-01, CU-01-01, VR-01-04 and TPR-01-07 with recommended Findings and Conditions of Approval, thereby authorizing a 356 sq.ft. addition to an existing dental office building. **Donald Hammang** seconded the motion. MOTION CARRIED 4-0.

Ayes: Borden, Hammang, Steward, Cook; Nays: None.

**Ms. Weliky** expressed concern that she had to purchase three expensive permits and go through a lot of time in completing this process for such a small addition. It was very frustrating to her; she almost shelved it. She suggested that there could be some sort of simpler process for small applications; possibly having someone with authority to make decisions without going through the expense and staff time.

7.0 WORKSESSION ITEMS -- None.

8.0 DISCUSSION ITEMS

8.1 Process for Small Applications

**Howard Steward** asked if there was any latitude that the Commission has to minimize the process for small applications such as the one before the Commission tonight? Is it possible for these types of applications be reviewed and approved by staff? **Judith Borden** explained that because this application had a variance and natural resource and transportation review, it has to come before the Planning Commission for review and decision. It is unfortunate that this application has so few square feet and so many rules and regulations. Administrative Review is given to some cases, but this one required Planning Commission approval.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS / UPDATES

10.1 Matters from the Planning Director

Interim Planning Director **John Gessner** explained that Alice Rouyer would be serving in the capacity of Community Development Director and he, in turn, will be serving in the capacity of Interim Planning Director for the next couple of months.

Wittke Re-zone **John Gessner** reported that City Council has reversed the Planning Commission's recommendation on the Wittke Rezoning and it was approved. **Ken Kent** stated that this Wittke recommendation was taken before the Council on November 6, 2001. The Council denied the application unanimously. Their findings were that they wanted to maintain the R-10 opportunities and maintain the compatibility of the surrounding area. The applicant can appeal to LUBA if they want to challenge Council's decision. Copies of City Council's decision will be given to the Commissioners when they are available.

Planning Commission Chair Election **John Gessner** reported that Tracy Cook asked that election of Planning Commission Chair be put on the agenda at a future meeting. Tracy has filled the position beyond her term.

South Corridor Update **John Gessner** reported that Michelle Gregory is the person working on the revised Draft Environmental Impact Statement for the Light Rail South Corridor. Michelle and staff have been meeting with South Corridor folks looking at specific plans on the impact of various alternatives. Tri-

CITY OF MILWAUKIE PLANNING COMMISSION

Minutes of November 13, 2001

Page 6

Met has contacted the city in an effort to help fund the purchase of the Southgate site with the interim use being a park-n-ride. The theater would be demolished and replaced with parking spaces and other improvement. The long-term disposition of this site will depend on what happens with the South Corridor Study and when/if a system is placed in this area.

Metro's Title III Deadlines      **John Gessner** reported that he, Mayor Bernard, and Alice Rouyer met with Metro to request an extension of Title III deadlines. Milwaukie is looking at a spring adoption for the erosion control and flood management provisions that were approved last summer. Staff is hoping to adopt Phase II, the water quality buffers, in September. Input from stakeholders, private property owners, and others will be compiled to flush out issues to use as a basis for a set of regulations for Commission review.

Design and Landmark Commission Report      **Ken Kent** reported that at the November 6<sup>th</sup> City Council meeting, there was a status report from the Design and Landmark Commission. Discussed at that meeting were draft design guidelines that have been developed and the design review process that was presented to the Commission. Council has given the go-ahead to move on with the guideline package presented and the design review code to establish design review in the downtown. There will be a public hearing before the Planning Commission in February 2002 to recommend the code changes for the design review process and a recommendation on the design guidelines drafted. City Council will consider final adoption in March 2002.

- 11.0 NEXT MEETING -- November 27, 2001
- 11.1 Draft Cell Tower Regulations
- 11.2 Draft Title 3 Erosion Control and Flood Management Regulations
- 11.3 Revisions to Maximum Building Setback

**Donald Hammang** moved to adjourn the meeting of November 13, 2001. **Judith Borden** seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 7:30 p.m.

  
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Tracy Cook, Chair

  
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Shirley Richardson, Hearings Reporter

# AGENDA

## MILWAUKIE PLANNING COMMISSION

**MILWAUKIE CITY HALL, 10722 SE MAIN STREET  
TUESDAY, November 13, 2001  
6:30 PM**

		ACTION REQUIRED
<b>1.0</b>	<b>Call to Order</b>	
<b>2.0</b>	<b>Procedural Questions</b>	
<b>3.0</b>	<b>Planning Commission Minutes</b>	<b>Motion Needed</b>
3.1	September 25, 2001	
3.2	October 9, 2001	
<b>4.0</b>	<b>Information Items</b>	
4.1	City Council Minutes (upon approval by Council) – to PC members only	<b>Information Only</b>
4.2	City Council Worksession Minutes (upon approval by Council) – to PC members only City	
<b>5.0</b>	<b>Public Comment</b> This is an opportunity for the public to comment on any item not on the agenda	
<b>6.0</b>	<b>Public Hearings</b>	
6.1	Type of Hearing: Minor Quasi Judicial Applicant: Gary Haight and Karen Weliky Owner: Same Location: 2636 SE Harrison Proposal: Add 356 square feet additional office space to an existing 3,469 square foot office building. The property is located in a Natural Resource Overlay Zone. The proposal includes a request for a variance to allow the rear setback to be reduced from a minimum of 15 feet to 10 feet.  File Numbers: CU-01-01/NR-01-05/VR-01-04/TPR-01-07 NDA: Historic Milwaukie <span style="float: right;">Staff Person: Ken Kent</span>	<b>Discussion and Motion Needed</b>
<b>7.0</b>	<b>Worksession Items - None</b>	
<b>8.0</b>	<b>Discussion Items</b> This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	<b>Review and Decision</b>
<b>9.0</b>	<b>Old Business</b>	
<b>10.0</b>	<b>Other Business/Updates</b>	
10.1	Matters from the Planning Director	<b>Information Only</b>
10.2	Design and Landmark Commission Report	<b>Review and Comment</b>
<b>11.0</b>	<b>Next Meeting:</b> November 27, 2001	
11.1	Draft Cell Tower Regulations	
11.2	Draft Title 3 Erosion Control & Flood Management Regulations	
11.3	Revisions to Maximum Building Setback	
	The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	

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**THE MILWAUKIE PLANNING COMMISSION WELCOMES YOUR INTEREST IN THESE AGENDA ITEMS. FEEL FREE TO COME AND GO AS YOU PLEASE.**

## Milwaukie Planning Commission Statement

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

### Public Hearing Procedure

1. **STAFF REPORT.** EACH HEARING STARTS WITH A BRIEF REVIEW OF THE STAFF REPORT BY STAFF. THE REPORT LISTS THE CRITERIA FOR THE LAND USE ACTION BEING CONSIDERED, AS WELL AS A RECOMMENDED DECISION WITH REASONS FOR THAT RECOMMENDATION.
2. **CORRESPONDENCE.** THE STAFF REPORT IS FOLLOWED BY ANY VERBAL OR WRITTEN CORRESPONDENCE WHICH HAS BEEN RECEIVED SINCE THE COMMISSION WAS PRESENTED WITH ITS PACKETS.
3. **APPLICANT'S PRESENTATION.** WE WILL THEN HAVE THE APPLICANT MAKE A PRESENTATION, FOLLOWED BY:
4. **PUBLIC TESTIMONY IN SUPPORT.** TESTIMONY FROM THOSE IN FAVOR OF THE APPLICATION.
5. **COMMENTS OR QUESTIONS.** COMMENTS OR QUESTIONS FROM INTERESTED PERSONS WHO ARE NEITHER IN FAVOR NOR OPPOSED TO THE APPLICATION.
6. **PUBLIC TESTIMONY IN OPPOSITION.** WE WILL THEN TAKE TESTIMONY FROM THOSE IN OPPOSITION TO THE APPLICATION.
7. **QUESTIONS FROM COMMISSIONERS.** WHEN YOU TESTIFY, WE WILL ASK YOU TO COME TO THE FRONT PODIUM AND GIVE YOUR NAME AND ADDRESS FOR THE RECORDED MINUTES. PLEASE REMAIN AT THE PODIUM UNTIL THE CHAIR PERSON HAS ASKED IF THERE ARE ANY QUESTIONS FOR YOU FROM THE COMMISSIONERS.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** AFTER ALL TESTIMONY, WE WILL TAKE REBUTTAL TESTIMONY FROM THE APPLICANT.
9. **CLOSING OF PUBLIC HEARING.** THE CHAIR PERSON WILL CLOSE THE PUBLIC PORTION OF THE HEARING. WE WILL THEN ENTER INTO DELIBERATION AMONG THE PLANNING COMMISSIONERS. FROM THIS POINT IN THE HEARING WE WILL NOT RECEIVE ANY ADDITIONAL TESTIMONY FROM THE AUDIENCE, BUT WE MAY ASK QUESTIONS OF ANYONE WHO HAS TESTIFIED.
10. **COMMISSION DISCUSSION/ACTION.** IT IS OUR INTENTION TO MAKE A DECISION THIS EVENING ON EACH ISSUE BEFORE US. DECISIONS OF THE PLANNING COMMISSION MAY BE APPEALED TO THE CITY COUNCIL. IF YOU DESIRE TO APPEAL A DECISION, PLEASE CONTACT THE COMMUNITY DEVELOPMENT DEPARTMENT DURING NORMAL OFFICE HOURS FOR INFORMATION ON THE PROCEDURES AND FEES INVOLVED.
11. **MEETING CONTINUANCE.** THE PLANNING COMMISSION MAY, IF REQUESTED BY ANY PARTY, ALLOW A CONTINUANCE OR LEAVE THE RECORD OPEN FOR THE PRESENTATION OF ADDITIONAL EVIDENCE, TESTIMONY OR ARGUMENT. ANY SUCH CONTINUANCE OR EXTENSION REQUESTED BY THE APPLICANT SHALL RESULT IN AN EXTENSION OF THE 120-DAY TIME PERIOD FOR MAKING A DECISION.

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

#### Milwaukie Planning Commission:

Tracy Cook, Chair  
Judith Borden, Vice Chair  
Barbara Cartmill  
Donald Hammang  
Miller  
ard Steward

#### Planning Department Staff:

Alice Rouyer, Interim Community Development Director  
John Gessner, Interim Planning Director  
Ken Kent, Associate Planner  
Lindsey Nesbitt, Assistant Planner  
Jeanne Garst, Staff Assistant  
Marcia Hamley, Office Assistant  
Shirley Richardson, Hearings Reporter



**TO:** Milwaukie Planning Commission

**THROUGH:** John Gessner, Interim Planning Director *JG*

**FROM:** Kenneth Kent, Associate Planner *KK*

**DATE:** November 13, 2001

**SUBJECT:** NR-01-05, CU-01-01, VR-01-04 and TPR-01-07; Building Addition to an existing dental office located in a Natural Resource Area, and a Setback Variance and a Conditional Use at 2636 SE Harrison

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**I. ACTION REQUESTED**

Approve application NR-01-01, CU-01-01, VR-01-04 and TPR-01-07 with recommended Findings and Conditions of Approval, thereby authorizing a 356 square foot addition to an existing dental office building.

**II. CODE AUTHORITY**

Milwaukie Zoning Ordinance Sections

- 306 - Residential Zone R-2
- 322 - Natural Resource Overlay Zone
- 600 - Conditional Use
- 700 - Variance, Exceptions, and Home Improvement Exceptions
- 500 - Off Street Parking and Loading
- 1011.3 - Minor Quasi-Judicial Review
- 1400 - Transportation Planning, Design Standards and Procedures

**III. DECISION-MAKING PROCESS**

Natural Resource Overlay, Conditional Use and Major Variance applications are subject to quasi-judicial review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with approval criteria of the code sections identified above. In quasi-judicial reviews, the Commission assesses the application against applicable approval criteria and evaluates testimony received at the public hearing. The Commission has three decision-making options as follows:

1. Approve the application upon finding that all approval criteria have been met.
2. Approve the application subject to conditions when they are needed for compliance with approval criteria.
3. Deny the application upon a finding that they do not meet approval criteria.

The final decision on this application, which includes any appeals to the City Council, must be made by January 29, 2002 in accordance with the Oregon Revised Statutes.

**IV. KEY ISSUES**

1. Has the applicant demonstrated that there is a development setback that adequately protects the natural resource, per Section 322.7.A.2?
2. Has the applicant demonstrated that the characteristics of the site are suitable for expansion of a conditional use?
3. Minor Land Partition in 1979 established the rear property line and non-conforming rear setback.
4. Has the applicant demonstrated that they meet variance criteria?
5. Staff believes that the proposal meets applicable approval criteria, and is recommended for approval.

**V. BACKGROUND**

1. **Statistics** (all standards below are as proposed)

Location: 2636 SE Harrison Street

Property Owner: Karen Weliky, DMD and Gary Haight, DMD

Applicant: Karen Weliky, DMD and Gary Haight, DMD  
Zone: Residential Zone R-2  
Natural Resource Overlay Zone  
NDA: Historic Milwaukie  
Lot Size: 0.45 Acres (19,602 square feet)  
Proposed Use: Addition to existing dental office

## 2. Site History

The subject property is located on the south side of Harrison Street, and east of the Spring Creek Apartments. The site is located within the Residential R-2 Zone and the Natural Resource Overlay Zone.

The applicant's building was constructed in approximately 1977. A Minor Land Partition was approved in 1979 creating a flag lot to the rear of the subject office building. The two lots share use of the access off of Harrison Street and the front portion of the parking lot. An office building was approved for the flag lot in 1983.

## 3. Summary Project Description

The applicant is proposing to add 356 square feet to an existing 3,469 square foot office building for a total of 3,825 square feet of building area. The proposed addition is located at the southeast corner of the building, adjacent to the parking lot. The goal of this project is to provide handicap accessibility to the building, including access from the parking lot, a handicap restroom, accessible dental exam room and accessible consultation room/office.

See Exhibit 2 for reductions of the site/landscape plan. See Exhibit C - Applicant's Narrative for further project information.

## VI. ANALYSIS OF PROPOSAL

### Evaluation of Zoning Criteria

This section addresses specific criteria that require Commission consideration in reaching a decision in this application.

### Natural Resource Overlay

The property is designated as a Natural Resource Site in the Comprehensive Plan. The resource feature on the subject property is a pond area that is part Spring Creek, situated along the west side of the property. The property slopes down steeply from the parking lot and existing building to the creek, with an elevation difference of approximately 20 from the normal water line to the level development area of the site.

Comprehensive Plan Chapter 3 – Environmental and Natural Resources Element establishes policies for protection of natural resource areas and their associated values through preservation, conservation, mitigation and acquisition of resources. The Comprehensive Plan identifies that riparian buffers provide significant tree and vegetative cover, flood protection, sediment and erosion control, groundwater discharge and recharge, and wildlife habitat.

Section 322.7 of the Zoning Ordinance specifies standards for development activities located in natural resources areas. These standards generally protect resources by limiting the type of activity, its location, or by limiting or compensating development impacts by requiring mitigation.

The applicant has responded to the approval criteria of section 322.7.A (Exhibit C). The following discussion addresses those approval criteria that warrant discussion by the Planning Commission.

**Has the applicant demonstrated that there is a development setback that adequately protects the resource, per Section 322.7.A.2?**

The proposed addition is located along a portion of the south side and front of the building. The existing building is located from approximately 30 to 45 feet from the edge of the creek. At its closest point, the addition will be approximately 67 feet from the edge of the creek.

Metro Functional Plan, Title 3 establishes a 50-foot development setback from natural resource sites for the region. The point from which this setback is taken, in the case of streams is the ordinary high bank. Where the slope exceeds 25 percent adjacent to a water feature, the setback begins at the point where the slope breaks to less than 25 percent. Under these standards, the closest point of the addition would be 45 feet from the Title 3 setback. However, the existing building is 10 feet from the setback. Title 3 allows additions where it does not encroach closer to the protected water feature than the existing structure. The proposed project is consistent with the Title 3 setback standard.

Based on the above discussion, staff believes that applicant has demonstrated that the proposal meets the approval criteria of Section 322, Natural Resource Overlay Zone,

including site preparation and construction practices that will prevent erosion. A recommended condition requires that the applicant provide a landscape plan, including native species to be incorporated into existing site landscaping in the area of the addition.

#### Off-Street Parking

The proposed addition increases the required parking from 13 to 15 spaces. However, with the by right reduction in minimum required parking for sites within 500 feet of a transit stop, the number of required parking spaces is reduced to 14. The applicant provides 14 parking spaces on their property, meeting off-street parking requirements. It should be noted that the existing parking lot is shared with the office building to the rear. Based on the uses currently on-site, a total of 30 parking spaces are required. The site provides a total of 42 parking spaces.

There is a reciprocal parking agreement between the subject property and the flag lot to the south. The agreement provides for non-exclusive access, parking and utility use of the parking area and drive isle east of the subject building. When the office building to the rear was approved in 1979, it was necessary to provide the shared parking agreement to meet parking standards in effect at that time.

#### Transportation Planning

The Transportation Plan Review regulations under Section 1400 apply to all additions. In review of the criteria for this project, improvement of the driveway approach off of Harrison Street and provision of bicycle parking would be the only transportation improvement required. Proposed conditions of approval require improving the driveway approach and installation of two bicycle parking spaces.

#### Conditional Use

In the R-2 Zone, dental offices are permitted with approval of a condition use application by the Planning Commission. An expansion of the conditional use requires approval by the Planning Commission. Staff believes the applicant has demonstrated that the application meets approval criteria under Section 600. A key issue for conditional uses is whether the characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements and natural features (See Section 601.2D). The proposed addition is a minor expansion of an existing conditional use, and as addressed by the Variance and Natural Resource applications is suitable for the site.

#### Variance

The applicant is requesting a variance of 5 feet to the required 15-foot rear setback in order to locate the proposed building addition 10 feet from the rear property line. The

existing building is currently 10 feet from the rear property line. The location of the property line came about with approval of a minor land partition in 1979 that created the rear parcel, which currently houses law offices. In reviewing the record, it is not clear how yards were determined at the time of the minor land partition.

Since the record is not clear on how yards were defined at the time of the minor land partition, the existing setback is considered non-conforming, and thus a new encroachment requires a variance as addressed in this application.

In order to approve a variance, the Planning Commission must make the findings contained in Section 702.1. The following discussion addresses the required findings as they relate to the proposed project.

**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.**

The applicant has noted that the unique circumstances of the property include the steep slope and creek to the rear of the building that limits the ability to develop the site. It is staff's opinion that site constraints satisfy this finding.

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

The applicant indicates that given site constraints, there are no feasible alternatives to accomplishing their proposal without a variance. They also note that the variance is the minimum necessary and does not move the building any closer to the rear property line than its current closest point.

Staff believes that the applicant has demonstrated compliance with this finding.

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

The applicant indicates that there will be no adverse effects upon other property as a result of the variance. The applicant also notes that native plantings will be incorporated along side and in front of the addition to integrate it with existing site landscaping.

With incorporation of landscaping, staff believes that the applicant has demonstrated compliance with this finding.

## **VII. COMMENTS**

Comments in support of the application from Roger Cornell, of the Historic Milwaukie Neighborhood Association Land Use Committee is attached as Exhibit D.

The Public Works Department has reviewed the proposal and provided comments regarding requirements for the proposed addition, as follows.

Paul Roeger, Civil Engineer, October 11, 2001

An erosion control plan and permit application must be submitted along with the building permit application.

City water and sanitary sewer serve the existing building. Additional system development charges (SDCs) will be based on the additional plumbing fixtures added to the building. A complete plan showing all existing plumbing fixtures in the building must be submitted along with the building permit application in order for us to properly determine additional SDCs.

The existing storm drainage from the site is piped to a catch basin in Harrison Street. New roof drains must be connected to the existing storm system on site. Roof drains may NOT be run to the creek. Any additional SDC for storm drainage will be based on the square footage of impervious surface added to the site.

Harrison Street is an existing arterial street with curb and sidewalk on both sides of the street. The sidewalk has some minor tripping hazards that must be ground down to improve pedestrian safety along the entire frontage of this property. The driveway approach should also be improved to current City standards by increasing the wing length to 8-feet to prevent vehicles from getting into the landscape area between the curb and sidewalk.

The transportation SDC is based on the square footage of gross floor area added to the site and the trips generated by the proposed use of the building per the Trip Generation handbook from the Institute of Transportation Engineers.

Recommended Conditions of approval are as follows:

1. An erosion control plan and permit application must be submitted along with the building permit application.
2. New roof drains must be connected to the existing storm system on site.

- 3. Minor tripping hazards on the sidewalk along the entire frontage of this property must be ground down to improve pedestrian safety.
- 4. All additional SDCs must be paid at the time the building permit is issued.

**VIII. CONCLUSION**

Based on the above discussion, it is staff's opinion that the applicant has demonstrated that the proposed project meets applicable approval criteria.

**IX. RECOMMENDED FINDINGS**

- 1. Karen Weliky, DMD and Gary Haight, DMD (Applicants/Owners) are proposing to add 356 square feet to the existing 3,469 square foot office building at 2636 Harrison Street to provide handicap accessibility for a dental office.
- 2. Application NR-01-05, CU-01-01, VR-01-04 and TPR-01-07 have been processed and public notice provided in accordance with requirements of Zoning Ordinance Section 1011.3 Quasi-Judicial Review.
- 3. The applicant is seeking a variance of minimum rear setback in association with an application for Natural Resource Overlay and Conditional Use Application at 2636 SE Harrison Street. The property is zoned R-2 Residential.
- 4. The minimum rear setback in the R-2 Zone is 15 feet. The applicant is proposing a 5-foot variance to the proposed addition to be setback 10 feet from the rear property line.
- 5. The requested variance of 5 feet is 66 % of the minimum required rear yard setback and therefore constitutes a major variance pursuant to Zoning Ordinance Section 704.
- 6. The Planning Commission may grant a major variance when it is found that all criteria for granting variances are met. The criteria for granting a variance have been met as follows:
  - 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.

The property is located in a Natural Resource Overlay Zone, with a significant natural resource feature situated along the eastern property line. From the existing building, the property slopes steeply to the east down to Spring Creek, limiting developable area along the east side of the building. The existing building predates current ownership.

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

The steep slope and natural resource feature located to the east of the building limit potential alternative locations for the proposed addition. The proposed addition will be in line with the existing building and will not increase the existing encroachment of the rear setback.

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

The closest point of the building to the rear property line will not be reduced by the proposed variance. A revised landscape plan will be required to integrate the addition with the existing site landscaping and mitigate potential adverse effects.

7. In order to meet the requirements of Section 1400, Transportation Planning, Design Standards and Procedures, the driveway approach will be required to be brought up to City standards, and bicycle parking will be provided.
8. The Application complies with applicable criteria of Section 306, Residential R-2 Zone, Section 500, Off-Street Parking, Section 600, Conditional Uses, Section 1400, Transportation Planning, Design Standards and Procedures, and Section 700 Variances, Exceptions, and Home Improvement Exceptions.
9. Various salmonid species have been listed as threatened in the region and regulations have been issued prohibiting actions that result in a "take". The regulations implementing the take prohibition list development as an activity that can result in a take. However, the rules also acknowledge that development can be properly conducted without resulting in a take. A condition of approval requires compliance with all applicable laws, including the Endangered Species Act. Therefore, the activities authorized by this approval will not result in a violation of the Endangered Species Act.

**X. RECOMMENDED CONDITIONS OF APPROVAL**

1. Prior to issuance of a building permit, final site and architectural development plans, including landscaping plans shall be in substantial conformance with the plans approved by this action. Reference is made to development plans dated August 31, 2001, application submission materials, and minutes of the Planning Commission's public hearing.

2. Prior to issuance of a grading or building permit, the following shall be submitted to the satisfaction of the Planning Director:
  - a. Narrative of all actions taken to comply with these conditions of approval;
  - b. Narrative description of all changes made to the plans but not required by these conditions of approval;
  - c. Tree preservation methods for all trees that may be subject to construction impacts including excavation and soil compaction.
3. Prior to issuance of a building permit, and commencement of any earth disturbing activities, the applicant shall submit an erosion control plan and obtain an erosion control permit.
4. Prior to start of construction or any earth disturbing activity, erosion controls and construction barriers shall be installed and inspected by the City in accordance with an approved erosion control permit.
5. Prior to issuance of a building or grading permit, the applicant shall submit a landscape plan, including native plant species to incorporate the addition into the existing site landscaping.
6. Prior to issuance of a certificate of occupancy, a detailed narrative of actions taken to comply with all conditions of this approval shall be submitted to the satisfaction of the Planning Director.
7. Prior to issuance of a building permit, a revised site plan shall be submitted providing a bicycle rack proving parking spaces for a minimum of 2 bicycles.
8. Prior to issuance of a certificate of occupancy, the applicant shall obtain a Right of Way permit and complete work to increase the wing length of the driveway approach on Harrison Street to 8-feet, per City standards.
9. Prior to issuance of a certificate of occupancy, the approved landscape plan shall be installed to the satisfaction of the Planning Director.
10. Prior to issuance of a certificate of occupancy, storm water from roof drains shall be collected and piped to the existing storm system on site.
11. The applicant shall comply with all applicable federal, state and local laws and regulations relating to environmental protections, including but not limited to the Endangered Species Act and all water quality and stream protection regulations.

**XI. ADVISORY COMMENTS**

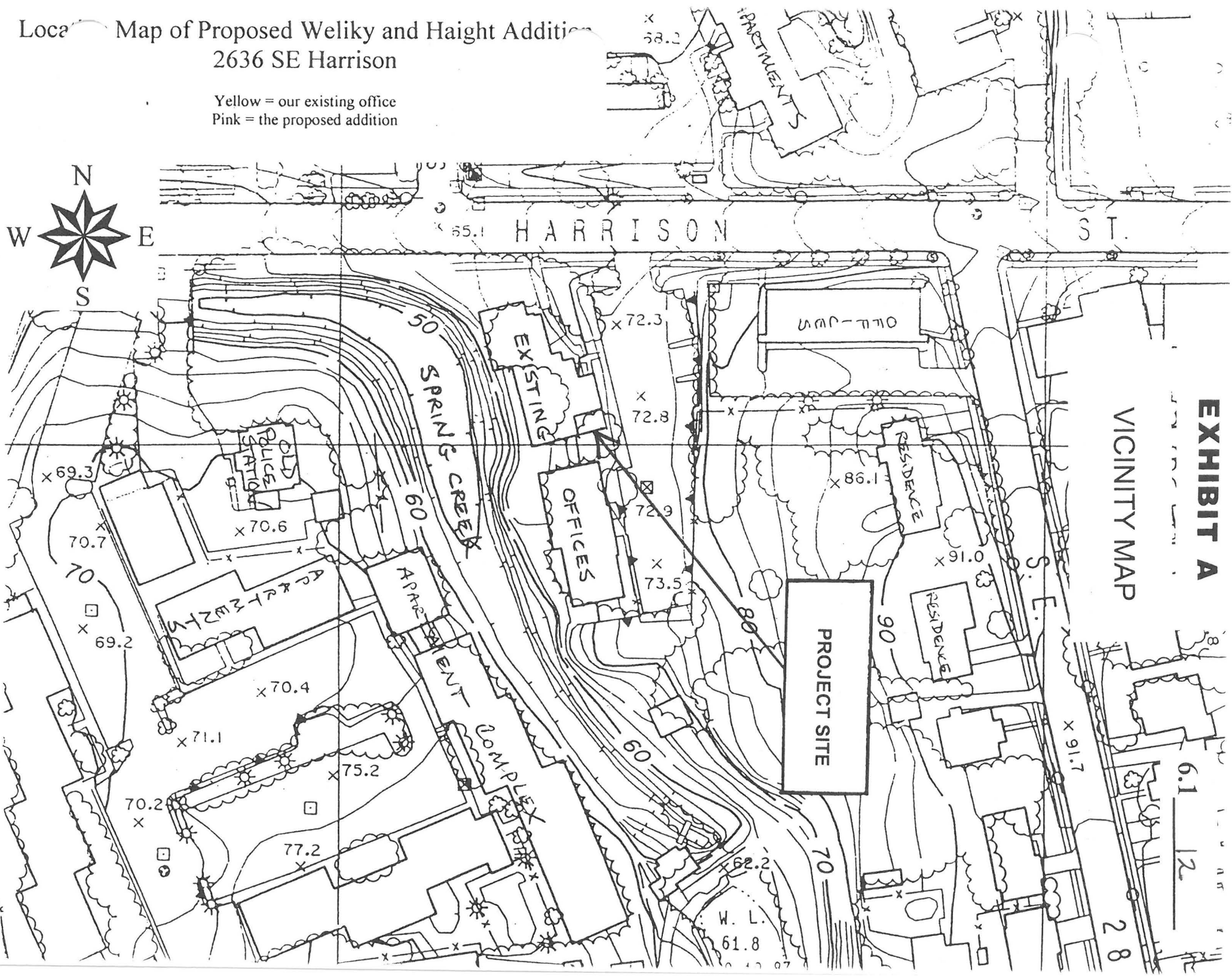
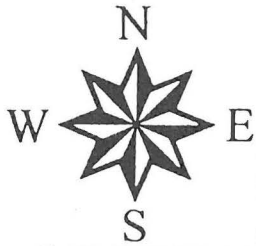
1. System Development Charges (SDCs) are to be paid at the time of building permit issuance.
2. Minor tripping hazards on the sidewalk in front of the property along Harrison Street shall be ground down or otherwise removed to improve pedestrian safety.

**XII. EXHIBITS**

- A. Vicinity Map
- B. Proposed Plans
- C. Applicants Narrative
- D. Comments

Location Map of Proposed Weliky and Haight Addition  
2636 SE Harrison

Yellow = our existing office  
Pink = the proposed addition



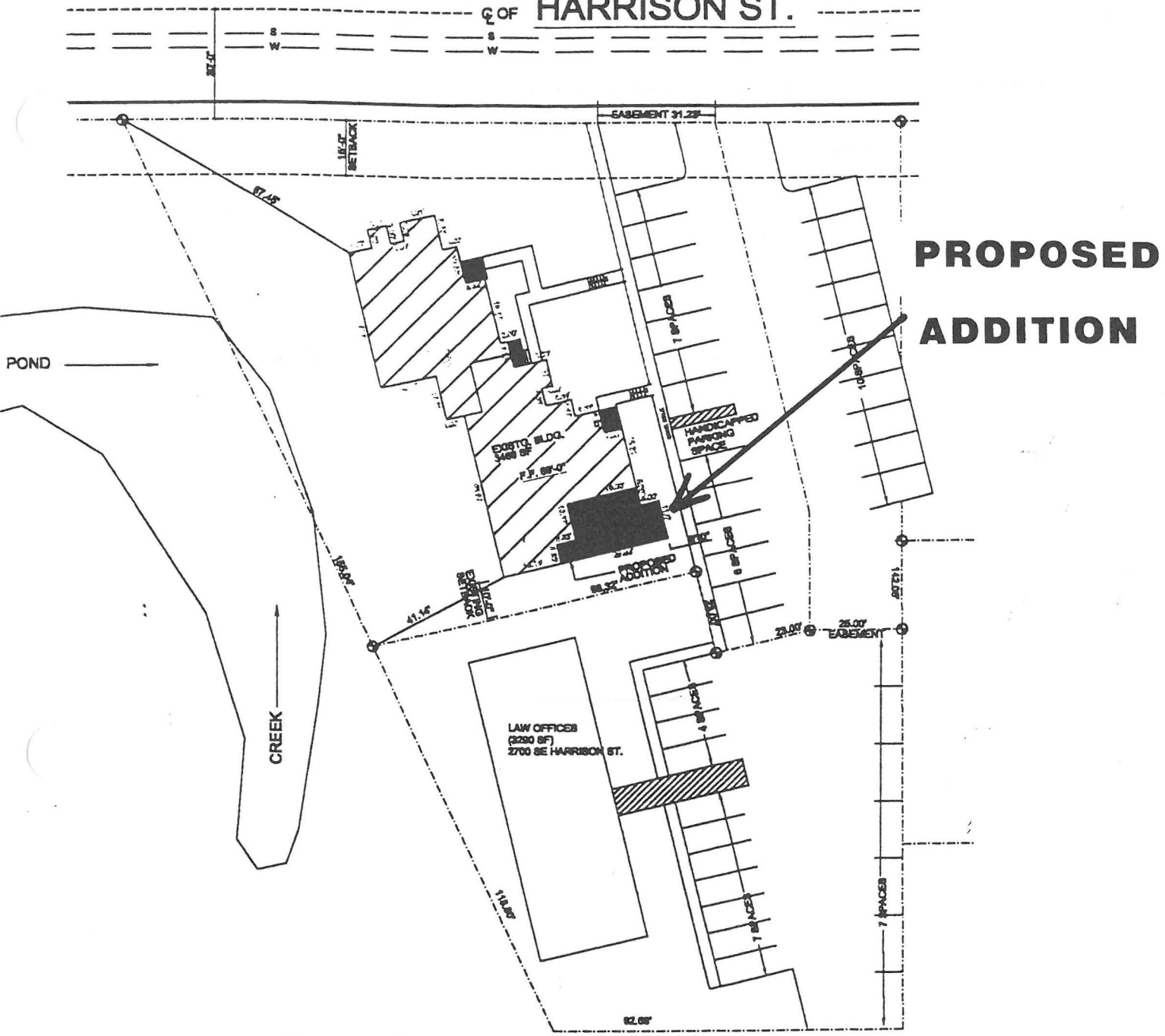
**EXHIBIT A**  
VICINITY MAP

6.1  
12  
28

# EXHIBIT B

6.1 13

☐ OF HARRISON ST.



## PROPOSED ADDITION

### PROPOSED SITE PLAN

SCALE: 1" = 40'

MAP NO. 11E3688  
TAX LOT: 0100

LOT COVERAGE: 19.5%



NORTH



**EXHIBIT C**  
7 PAGES

6.1 14

Gary Haight, DMD  
Karen Weliky, DMD

2636 S.E. Harrison  
Milwaukie, OR 97222

(503) 659-9658

September 29, 2001

Planning Commission  
City of Milwaukie  
Oregon

**RECEIVED**

OCT - 1 2001

CITY OF MILWAUKIE  
COMMUNITY DEVELOPMENT

Dear members of the Planning Commission,

We are submitting plans for a small addition to our existing building in order to provide handicapped access to our disabled and elderly patients. Our family dental practice has been in this location for approximately 25 years and we have owned and operated it for the past 9 ½ years. We chose this location in Milwaukie for our business because of the sense of community we feel from our patients and because of the natural beauty that exists at this building location on the banks of Spring Creek.


In keeping with the spirit of our vision, we have carefully planned the addition to be fully integrated with the natural surroundings. We plan to minimally impact the environment and plantings that exist, and to add additional native plants such as azaleas and rhododendrons to enhance the new addition. We also feel we can better serve our patients and the community by making our office handicapped accessible. Since we have owned the practice, several of our patients who were previously healthy, have been confined to wheelchairs or have difficulty with the steps, making it impossible for us to treat them.

Our plan includes a wheelchair ramp, larger wheelchair accessible treatment operatory, easily accessible consultation room, and a wheelchair accessible bathroom.

The square footage of our proposed addition is approximately 10.2 % of the existing building area. We have enclosed the information requested showing that the proposed addition meets the criteria for conditional use, variance, and natural resource permits.

We look forward to meeting with you to discuss any questions you may have. Thank you for your consideration.

Sincerely, =

  
Karen Weliky, DMD

  
Gary Haight, DMD

Dr. Weliky and Dr. Haight Dental Office Remodel  
 2636 SE Harrison St.  
 Milwaukie, OR 97222  
 503 - 659-9658

RECEIVED

OCT - 1 2001

CITY OF MILWAUKIE  
 COMMUNITY DEVELOPMENT

**Proposal**

We have owned and operated this family dental practice for 9 ½ years at this location. A portion of our clientele is elderly or disabled. In an effort to make the building accessible to both of these types of patients we are proposing to modify the existing structure to bring it up to current ADA standards while maintaining a dignified entry for all our patients. We also have plans for a small addition to the existing building to create a handicapped accessible treatment operatory, restroom, and consultation room. We have carefully planned the addition to be fully integrated with the natural surroundings.

**Approval Criteria: Variance**

**Subsection 702.1, Criteria for granting variances:**

- A. Due to the circumstances and limitations of the property, there are no other options for a small addition that would provide ADA compliant handicapped access with a dignified entrance into the reception area of the existing building. There is a slope and creek to the rear of the building that precludes an addition in that direction.

The existing structure currently has a nonconforming ten foot rear yard setback. The proposed addition aligns with the existing setback and therefore does not extend beyond the existing structure and does not create any greater impact on the rear yard setback requirement.

Please note that the existing building was permitted and built prior to the land division that created the parcel and building due south. The planning department approved the current land division with the understanding that it was creating a non-conforming rear yard setback.

Please note that the area of the addition is the "functional" side yard of the existing building and borders the "functional" side yard of the neighboring building to the south. Therefore, although technically considered a rear yard, perhaps the planning department intended to consider this area under the side yard set back restrictions when permitting the original buildings. The proposed addition does meet the setback requirements for a side yard.

**Criteria met**

- B. As explained above, there are no feasible alternatives to the variance. The proposed addition does not extend beyond the existing structure and therefore does not create any greater impact on the rear yard setback requirement. This is the minimum variance necessary to allow the construction of a treatment operatory of adequate size to accommodate a wheelchair and a ramp/entrance that meets the ADA standards.

**Criteria met**

- C. There will be no adverse effects upon other properties since the proposed addition does not extend beyond the existing structure towards the only building adjacent to the addition. The plan includes planting of additional native plants (azaleas and rhododendrons) alongside and in front of the addition to further integrate it with the already existing landscape and surroundings.

**Criteria met**

OCT - 1 2001

Dr. Weliky and Dr. Haight Dental Office Remodel  
2636 SE Harrison St.  
Milwaukie, OR 97222  
503 - 659-9658

CITY OF MILWAUKIE  
COMMUNITY DEVELOPMENT

**Proposal**

We have owned and operated this family dental practice for 9 ½ years at this location. A portion of our clientele is elderly or disabled. In an effort to make the building accessible to both of these types of patients we are proposing to modify the existing structure to bring it up to current ADA standards while maintaining a dignified entry for all our patients. We also have plans for a small addition to the existing building to create a handicapped accessible treatment operatory, restroom, and consultation room. We have carefully planned the addition to be fully integrated with the natural surroundings.

**Approval Criteria: Natural Resource Review****Section 322.7 Development Standards**

The proposed addition site is located on the southeast corner of the existing building. Spring Creek is located along the west side of the building. Since the addition is located on the opposite side of the building from the creek it has no impact on the vegetation, water flow or animal habitat associated with the creek. The addition will not be visible from the natural resource area (Spring Creek).

We have carefully planned the addition to be fully integrated with the beauty of the natural surroundings. We plan to minimally impact the environment and existing plantings, and to incorporate additional native plants to enhance the new addition.

There will be no need to remove trees, no lights will be added, no outdoor activities will be associated with the construction or use of the proposed addition.

Storm water flows from the new construction will be incorporated into the drainage of the existing building and therefore will have no impact on the natural resource area.

**Criteria met**

JUL 31 2001

CITY OF MILWAUKIE  
COMMUNITY DEVELOPMENT

**Weliky/Haight Dental Office Remodel**  
2636 SE Harrison Street  
Milwaukie, OR 97222-7533

**Proposal**

The owners of this project operate a family dentistry business. A portion of their clientele is either elderly or handicapped. In an effort to make the building accessible to both of these types of clients, the owners are proposing to modify the existing structure to bring it up to current ADA standards. Additionally, they would like to create an operatory room that will allow for handicap accessibility.

**Approval Criteria**

**Comprehensive Plan Goals and Policies**

**Section 306 Residential Zone R-2**

**Section 306.2 Conditional uses permitted**

In an R-2 zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 600:

- C. Offices, studios.....**dentists**,.....and others of a professional nature whose activities generate minimal amount of traffic, except in transitional area.  
**Criteria met.**

**Zoning Ordinance Sections:**

**Section 600 Conditional uses**

**Section 601.2 Applicant's responsibilities**

At the public hearing the applicant shall provide evidence that all requirements of this Ordinance 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.  
**Criteria met. See Section 306-2C above.**
- B. The use meets the standards for the underlying zone.

**Section 306.3 Standards**

In an R-2 Zone the following standards shall apply:

- A. Lot size: Lot area shall be at least 5,000 square feet.  
**Criteria met. Lot size 19,602 square feet.**

B. Front yard: A front yard shall be at least fifteen (15) feet.  
**Criteria met. The existing front yard setback is approximately 25 feet.**

C. Side yard: A side yard shall be at least 5 feet, and there shall be one additional foot of side yard for each 3 feet of height over two 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.

**Criteria met. The existing side yard setbacks are greater than thirty (30) feet.**

D. Rear yard: A rear yard shall be at least fifteen (15) feet.  
**Criteria met. The existing structure currently has a non-conforming ten (10) foot rear yard setback. The proposed addition aligns with the existing setback and therefore does not create any greater impact on the rear yard setback requirement. (Please note: This building was permitted and built prior to the land division creating the parcel due south. The planning department approved the land division with the understanding that it was creating a non-conforming rear yard setback.)**

E. Yard abutting a major street: A yard abutting a major street listed in Section 411 shall be established in accordance with the standard set forth therein.

**This site does not abut a major street.**

F. Off-street parking and loading: As specified in Section 500.

MAX ALLOWED →

**Table 503.9 – Health Practitioner’s office –  
5 spaces/1000 square feet of floor area.**

**The proposed total square footage, including the addition, is 3,825 square feet. 19 parking spaces are required.**

MAX ALLOWED →

**The parking requirement for the office building located south of this project (2700 Harrison) is 1 space/295 square feet.**

**The total square footage of this building is 3290 square feet. 11 parking spaces are required.**

**The total existing parking provided for both of these buildings is 41 spaces plus one handicap parking space. This equals eleven (11) spaces above and beyond that required.**

G. Height restriction: Maximum height of a structure shall be three stories or 45 feet, whichever is less.

**The Proposed structure will match the height of the existing structure. Approximately Twenty-Five feet tall.**

H. Lot Coverage: Maximum area that may be covered by the dwelling structure an accessory buildings shall not exceed 45 percent of the total area of the lot.

**The lot is 19,602 Square Feet. The structure, including addition, is 3825 Square Feet. Therefore the lot coverage is 19.5%**

I. Minimum vegetation and open space: Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, or left as open space or used as recreational area, etc. will be 35 percent of the total area of the lot. At least half of this area will be of the same general character as the area with dwelling units.

**The open space provided by the proposed site plan is 42% of the total lot area. There is considerable mature landscaping on this site which will not be impacted by this addition.**

J. Access requirements: Every lot shall abut a public street other than an alley for at least 35 feet except as provided in the Subdivision Ordinance.

**This site has 208 feet of frontage onto Harrison Street.**

K. Transition Area: A transition area shall be maintained according to Section 414.

**Does not apply to this application.**

L. Minimum density: Minimum development densities for subdivision, planned development, mixed use development, and other proposals reviewed by the Planning Commission, pursuant to subsection 1103.1, Minor Quasi-Judicial review, shall be at least 11.6 to 17.4 dwelling units per net acre.

**Does not apply to this application.**

**Section 601.2 Applicant's responsibilities (cont'd)**

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

**This proposal satisfies the goals and policies of the Comprehensive Plan based upon the information provided above.**

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

**The characteristics of the site are the crux of the issue presented in this application. The applicant is proposing to provide access to the building by constructing a handicap ramp.**

- 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.

**This application is very timely considering the site abuts a public right of way in which public transportation can be accessed and both public facilities and services exist for the area affected by this use.**

# EXHIBIT D

6.1 21

RECEIVED VIA E-MAIL

Milwaukie Planning Commission  
6101 SE Johnson Creek Blvd.  
Milwaukie, Oregon 97222

November 1, 2001

Planning Commission:

I am writing this in support of a Conditional Use; Natural Resource Review; and Variance (File #CU-01-01; NR-01-04) to add 356 square feet additional office space to an existing 3,469 sq. ft. office building. I am currently a patient of Karen Weliky (applicant and property owner) and have actually seen the proposed space involved in this request.

Additionally, I am the Historic Milwaukie Neighborhood Association's representative for the Land Use Committee and have reviewed the plans and application. In short, I see no negative impact or decreased livability to the community or the neighborhood. In fact, this enhances the livability of our community by providing needed access for those with disabilities. It is a good idea.

I urge you to promptly approve this application.

Respectfully,

Roger Cornell  
Historic Milwaukie Neighborhood Association  
Land Use Committee representative