



June 30, 2010

Files: WG-10-01, WQR-10-01, VR-10-02, R-10-01

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on June 29, 2010.

Applicants:	Gary Michael and Carolyn Tomei
Location:	11907 SE 19th Ave
Tax Lot:	1S1E35DA02700
Application Types:	Willamette Greenway Review, Water Quality Resource Review, Variance Request, Replat
Decision:	Project Approved with Conditions (1 of 2 Variance Requests Denied)
Review Criteria:	Milwaukie Land Division Ordinance (Title 17) <u>Milwaukie Zoning Ordinance (Title 19):</u> <ul style="list-style-type: none">• Subsection 19.1011.3 Minor quasi-judicial review• 19.303 Residential R-5 zone• 19.320 Willamette Greenway zone• 19.322 Water quality resource regulations• City-implemented portions of Metro's Model Ordinance for Title 13 (Nature in Neighborhoods)• 19.500 Off-street parking and loading• 19.600 Conditional uses• 19.700 Variances, exceptions, and home improvement exceptions• 19.1400 Public facility improvements
Neighborhood:	Island Station

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

Appeal period closes: 5:00 p.m., July 15, 2010

Appeals to the City Council must be accompanied by the appeal fee, be submitted in the proper format, address applicable criteria, and be made on forms provided by the Planning

Department. Milwaukie Planning staff (503-786-7630) can provide information regarding forms, fees, and the appeal process.

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; the hearing was continued to June 29, 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 applicants 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

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.

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.

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.

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.

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).

- 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 applicants have 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 applicants have 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 applicants have 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 applicants have 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.

Replating 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 applicants have 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 applicants have 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 applicants have 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 applicants propose 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 applicants are 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 applicants have 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 applicants 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 applicants are 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 applicants are 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 applicants are responsible for street improvements along the Parcel 2 frontage adjacent to 19th Ave. The street improvements include 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 applicants have 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 applicants are 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 applicants 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 applicants 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:

- A. **Tom Larsen, City Building Official:** No comments at this time.
- B. **Douglas Baer, State Marine Board:** No comments.
- C. **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.
- D. **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.
- E. **Miranda Bateschell, Metro:** The proposal looks fine, given the [resource] classification of the area and the proposed mitigation efforts. Metro has no formal comments.
- F. **Brad Albert, City Engineering Department:** Various comments related primarily to MMC Title 17 Land Division and MMC 19.1400 Public Facility Improvements.
- G. **Kathy Schutt, Oregon Parks and Recreation Department:** No comments.
- H. **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.
- I. **Eric Perkins, owner/resident at 11908 SE 19th Ave and Chair of the Island Station NDA:** Supportive of the development, does not believe it will adversely affect his family or the neighborhood.
- J. **Jo Anne Bird, owner/resident at 12312 SE River Rd:** Opposed to any new construction in Willamette Greenway overlay area or the floodplain (100- or 500-year).
- K. **Lisa Batey, owner/resident at 11912 SE 19th Ave and Planning Commissioner (recused herself from participation in this hearing):** Various comments. Opposed to granting the variance request for a reduced front yard setback. Supportive of the applicants paying a fee in lieu of street improvements on 19th Ave, concerned about stormwater runoff from the street. Concerned about driveway access for the new duplex and potential conflicts with traffic on 19th Ave. Questions about potential impacts to views and the possibility of removing invasive plants as part of mitigation for disturbance of HCA. Note on smaller duplex footprint as one alternative to front yard setback variance. Question about the absence of expertise provided to evaluate likelihood of damage to locust trees behind the proposed duplex.
- L. **Richard and Alicia Hamilton, owners/residents at 11921 SE 19th Ave:** Supportive of the variance request to reduce the front yard setback because it would better protect the two locust trees west of the proposed duplex, would keep more of the duplex out of the floodplain, and would prevent further impacts to views from their property.
- M. **Deanna Taylor, owner/resident at 12111 SE 19th Ave:** Supportive of the project, including the requested variance to reduce the front yard setback, which would protect the two locust trees west of the proposed duplex and would not affect neighborhood livability.

Conditions of Approval

1. The final plat application must be submitted within 6 months of preliminary replat approval, in accordance with Milwaukie Municipal Code (MMC) Subsection 17.24.040. The applicants 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 replat is subject to the requirements of City of Milwaukie Applications WG-10-01, WQR-10-01, VR-10-02, 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. Note: The geothermal heat pump shown on the original plans was withdrawn by the applicants and is not included in this approval.
 - 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.
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.

Katie Mangle
Planning Director

cc: Applicants (Gary Michael and Carolyn Tomei, 11907 SE 19th Ave, Milwaukie)
Planning Commission
Kenny Asher, Community Development/Public Works Director
Gary Parkin, Engineering Director
Brad Albert, Civil Engineer
Tom Larsen, Building Official
Bonnie Lanz, Permit Specialist
Doug Whiteley, Lieutenant Deputy Fire Marshal
NDA: Island Station
Interested Persons
Files: WG-10-01, WQR-10-01, VR-10-02, R-10-01