



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday, November 25, 2014, 6:30 PM

MILWAUKIE CITY HALL
10722 SE MAIN STREET

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
 - 2.1 September 9, 2014
- 3.0 Information Items**
- 4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse
 - 5.1 Summary: 2nd Story Variance
Applicant/Owner: Ron Woodruff/Perry Nordby
Address: 9925 SE 37th Ave
File: VR-14-02
Staff: Li Alligood
 - 5.2 Summary: Commercial-Limited Zoning Amendment
Applicant: City of Milwaukie
File: ZA-14-03
Staff: Denny Egner
- 6.0 Worksession Items**
- 7.0 Planning Department Other Business/Updates**
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
 - December 9, 2014
 - 1. Public Hearing: ZA-14-03 Commercial-Limited Zoning Amendment *continued tentative*
 - 2. Public Hearing: DR-14-07 Reliable Credit Parking Lot
 - 3. Worksession: CPA-14-02 Moving Forward Milwaukie Downtown Plan and Code Amendments
 - January 13, 2014
 - 1. Public Hearing: DR-14-07 Reliable Credit Parking Lot *continued tentative*
 - 2. Public Hearing: CPA-14-02 Moving Forward Milwaukie Downtown Plan and Code Amendments #1

Milwaukie Planning Commission Statement

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

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

Public Hearing Procedure

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

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

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

Milwaukie Planning Commission:

Sine Bone, Chair
Wilda Parks, Vice Chair
Shannah Anderson
Scott Barbur
Greg Hemer
Shaun Lowcock
Gabe Storm

Planning Department Staff:

Denny Egner, Planning Director
Li Alligood, Senior Planner
Brett Kelver, Associate Planner
Vera Kolias, Associate Planner
Alicia Martin, Administrative Specialist II

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, September 9, 2014
6:30 PM

COMMISSIONERS PRESENT

Sine Bone, Chair
 Wilda Parks, Vice Chair
 Scott Barbur
 Greg Hemer
 Shaun Lowcock
 Gabe Storm

STAFF PRESENT

Denny Egner, Planning Director
 Vera Kolas, Associate Planner

COMMISSIONERS ABSENT

Shannah Anderson

1.0 Call to Order – Procedural Matters*

Chair Bone called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.ci.milwaukie.or.us/meetings>.*

2.0 Planning Commission Minutes

3.0 Information Items

Denny Egner, Planning Director, noted that the first meeting of the Monroe Street Neighborhood Greenway project advisory committee (PAC) was held last week with a bike and car tour of Monroe St. He added that Vice Chair Parks was the chair of the PAC.

Vice Chair Parks said she was pleased at the turnout for the tour. Many good comments and observations were made. She felt that there would be a lot of information to discuss once the PAC had its first true meeting. She encouraged the public to attend meetings and open houses for the project, with the first open house scheduled for the beginning of December.

Mr. Egner noted the next PAC meeting was scheduled for late October.

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

5.0 Public Hearings

6.0 Worksession Items

49 6.1 Summary: Moving Forward Milwaukie Plan and Code Amendments drafts
50 overview with Walking Tour of Downtown
51 Staff: Denny Egner for Li Alligood
52

53 **Denny Egner, Planning Director**, noted that tonight's meeting would be a two-part
54 worksession beginning with a walking tour of downtown to look at and discuss urban design,
55 and then the Commission would return for their regular worksession to discuss uses in the
56 downtown zones.

57
58 He referenced the handouts given to the Commission that included the walking tour guide and a
59 pre-tour overview. He reviewed the pre-tour overview and reminded the Commission of what the
60 development review process entailed. The zoning ordinance outlined specific processes that
61 highlighted standards and guidelines, and he noted the difference between the review types.
62 Currently downtown development required a Type III review that involved the Design and
63 Landmarks Committee and Planning Commission; it was proposed to allow for a more
64 streamlined review option to be available for projects meeting specific criteria, namely Type II
65 review. Residential projects only called for clear and objective review and so he suggested the
66 Commission keep that in mind when considering residential or mixed use projects in downtown.

67
68 **Mr. Egner** pointed to the downtown design checklist and the guidelines, and called out the
69 major principles of the Downtown Land Use Framework Plan. Key principles include mixed
70 uses, which added housing to ensure a lively, pedestrian-friendly downtown, and quality design
71 and materials, and noted that these principles together would enhance Milwaukie's identity.

72
73 The Commission went on a walking tour of downtown Milwaukie and resumed the meeting at
74 7:50 p.m.

75
76 **Mr. Egner** asked the Commissioners to comment on what they saw or noted that should be
77 considered in thinking about the project.

78
79 **Chair Bone** said that, with regard to the right-of-way width to building height ratio, she felt that
80 more of a 3:1 or more was comfortable. She would be interested in exploring more options. Of
81 course, the articulation of the building played a role though.

82
83 **Commissioner Hemer** noted the differences between flat versus peaked roofs, and building
84 height versus floors: a three-floor building could look like a four-story building if peaked roofs
85 were involved.

86
87 **Vice Chair Parks** enjoyed having design elements like differing colors, textures, and design
88 features to create a more diverse look and feel.

89
90 **Commissioner Lowcock** appreciated diversity in design standards and thought it was
91 important to maintain for future development and growth. Creativity was important. The differing

92 facades of the residential floors of the North Main development, for example, created an
93 interesting and diverse feel to the area.

94

95 **Commissioner Barbur** commented on Mr. Egner's use of the term "sense of enclosure" and
96 how it applied to downtown and the surrounding streets.

97

98 **Chair Bone** liked variation in the ground floor façade, like angled or inset entryways and the like
99 to break up the pedestrian experience.

100

101 **Commissioner Storm** asked how to ensure that kind of texture and variation without being
102 prescriptive. It would be easier to be prescriptive than to have more loosely defined guidelines.

103

104 **Commissioner Hemer** pointed out that this would be a significant change of approach and
105 philosophy. Currently the review approach was 'bring your idea to us, we'll take a look at it;'
106 what was being proposed could result in the Planning Director making design decisions or a
107 monoculture downtown. However, if the developers were given a list of choices, then that could
108 allow for some variety while staying within the design goals.

109

110 **Mr. Egner** reminded the Commission that they could review all of these options through this
111 process. However, part of the direction of the MFM project was to find a way to make the
112 development process a little more streamlined and to provide an easier way for developers to
113 get approval for projects. A Type II review process would allow for that with clear and objective
114 standards to apply. For bigger and more complex projects, more discretion and committee
115 review was needed and appropriate.

116

117 **Mr. Egner** said this design discussion would continue as the code was drafted and reviewed.
118 The next meeting would be a joint session with City Council, and the project advisory committee
119 and DLC were invited to attend. The City was awarded a grant from the Department of Land
120 Conservation and Development for an urban designer to provide a presentation to the group. He
121 would include a brief recap of the public feedback received to-date on this project in the staff
122 report for that meeting.

123

124 **Commissioner Hemer** reminded the group of the public input available on the project's
125 webpage. (<http://www.milwaukieoregon.gov/planning/community-involvement-and-outreach-0>)

126

127 **Mr. Egner** reviewed and the Commission discussed the current allowed uses and proposed
128 changes to those uses downtown. The current allowed uses were limited and prescriptive. They
129 discussed eating establishments, size limitations on retail, and office and commercial uses.

130

- 131 • **Commissioner Hemer** noted he was confused about the public feedback with regard to
132 wanting a grocery store but expecting limits on size – how could a grocery store be
133 viable without adequate size and scale allowed?

134

- 135 • **Mr. Egner** noted that size limits would apply to individual businesses rather than
136 footprints; keeping the scale of downtown in mind and avoiding highly auto-oriented uses
137 was important.
138
- 139 • **Chair Bone** felt that allowing a use to take up an entire block does not seem conducive
140 to a good pedestrian experience.
141
- 142 • **Chair Bone** suggested a limit to the footprint of 10,000 sq ft, which would allow for
143 offices to go up. She asked what “traditional office” meant.
144
- 145 ○ **Mr. Butler** explained the difference between traditional offices, which were more
146 inviting offices for Main St that had more activity, versus more back office/call
147 center/industrial type offices.
148
- 149 • **Mr. Egner** explained the intent of allowing manufacturing in downtown as long as it was
150 a secondary use or off of Main St.
151
- 152 • **Mr. Egner** added that parking lots would be conditional uses rather than allowed outright
153 and setbacks would be reduced from 50 ft to 25 ft from Main St but would allow for a
154 parking behind the building.
155

156 **7.0 Planning Department Other Business/Updates**

157

158 **8.0 Planning Commission Discussion Items**

159

160 **9.0 Forecast for Future Meetings:**

- 161 September 23, 2014 1. Public Hearing: CPA-14-01 21st Avenue Extension Removal
162 *(rescheduled to October 14, 2014)*
163 2. Joint Session: Moving Forward Milwaukie Downtown Plan and
164 Code Amendments drafts overview
- 165 October 14, 2014 1. Public Hearing: CPA-14-01 21st Avenue Extension Removal
166 2. Worksession: Moving Forward Milwaukie Downtown Plan and
167 Code Amendments drafts overview
168

169

170 Meeting adjourned at approximately 8:57 p.m.
171
172
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174 Respectfully submitted,

175
176 Alicia Martin, Administrative Specialist II
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Sine Bone, Chair



MILWAUKIE

Dogwood City of the West

To: Planning Commission

Through: Dennis Egner, Planning Director

From: Li Alligood, Senior Planner

Date: November 18, 2014, for November 25, 2014, Public Hearing

Subject: **File:** VR-14-02
Applicant: Ron Woodruff
Owner(s): Perry Nordby
Address: 9925 SE 37th Ave
Legal Description (Map & Taxlot): 11E25DC00100
NDA: Ardenwald-Johnson Creek

ACTION REQUESTED

Approve application VR-14-02 and adopt the recommended Findings and Conditions of Approval found in Attachments 1 and 2. This action would allow for the expansion of the existing nonconforming development on the site through the addition of a second story to the northern façade and the construction of a new covered patio within a portion of the street side yard and rear setbacks.

BACKGROUND INFORMATION

The existing home is located at the corner of SE 3th Ave and Harvey St. The minimum street side yard setback in the underlying Residential zone R-7 is 20 ft from the property line. This section of Harvey St is also subject to an additional yard (or setback) requirement of 45 ft from the Harvey St centerline.

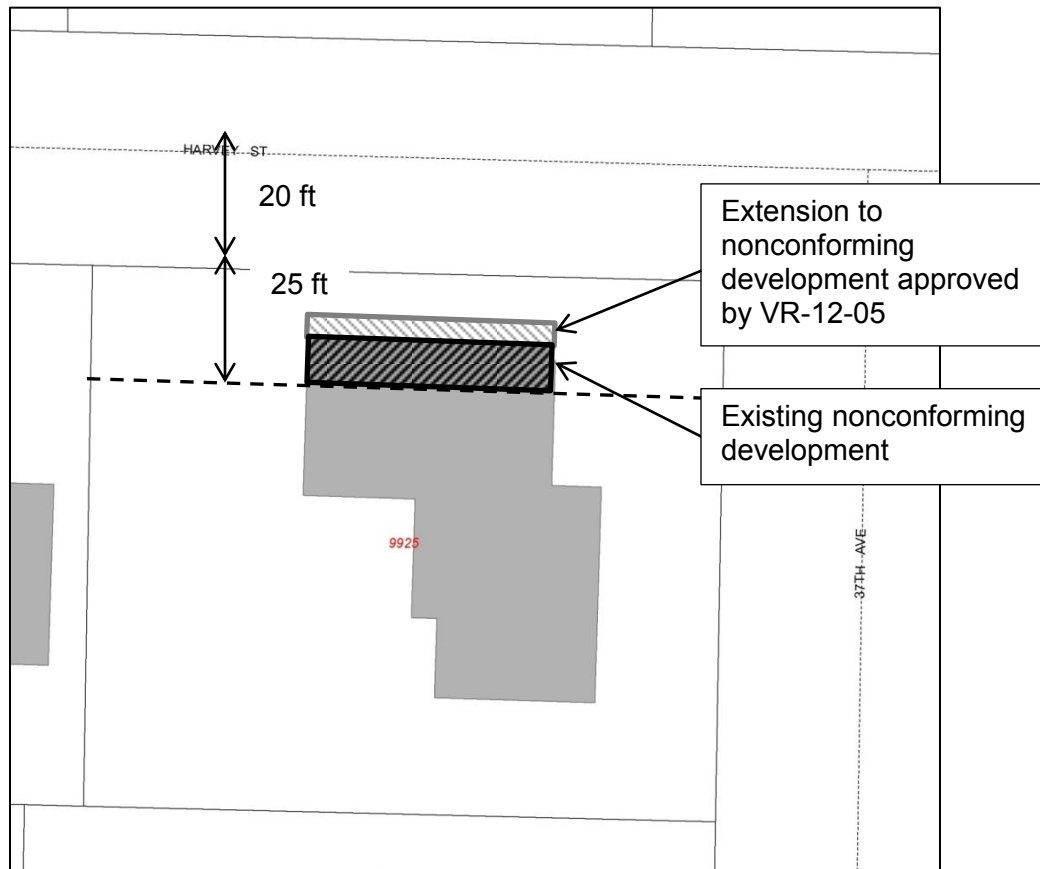
Harvey St is 40 ft wide; the centerline is 20 ft from the applicant's property line; and the effective minimum setback on the site is 25 ft from the Harvey St property line. See Figure 1.

Figure 1. Minimum street side yard setback and additional yard requirements

Source: 2014 RLIS data.

As shown in Figure 1, the northern façade of the existing home is located within the minimum street side yard setback. In 2012, via file #VR-12-05, the applicant requested, and the Planning Commission approved, an extension of the footprint and eaves of the attached garage by 21 in and 27 in, respectively; and extension of the eaves of the dining room 21 in to the north, toward Harvey St. This approval allowed the existing structure to further encroach into the required Harvey St street side yard setback, and extended the existing nonconforming situation. See Figure 2.

Figure 2. Expansion approved by VR-12-05



Source: 2014 RLIS data.

In 2012, the applicant submitted a building permit to expand the garage footprint and eaves as approved by VR-12-05.¹ The building permit included a single-level garage and was approved on September 18, 2013. See Figure 3.

¹ Milwaukie Building permit #601-12-000391.

nonconforming situation. In order to extend the existing nonconforming situation, a variance review is needed. The applicant has also included two additional variance requests in the application in order to allow the construction of a covered patio to the west of the house and partially within the required rear and street side yard setback, as shown in Figure 4.

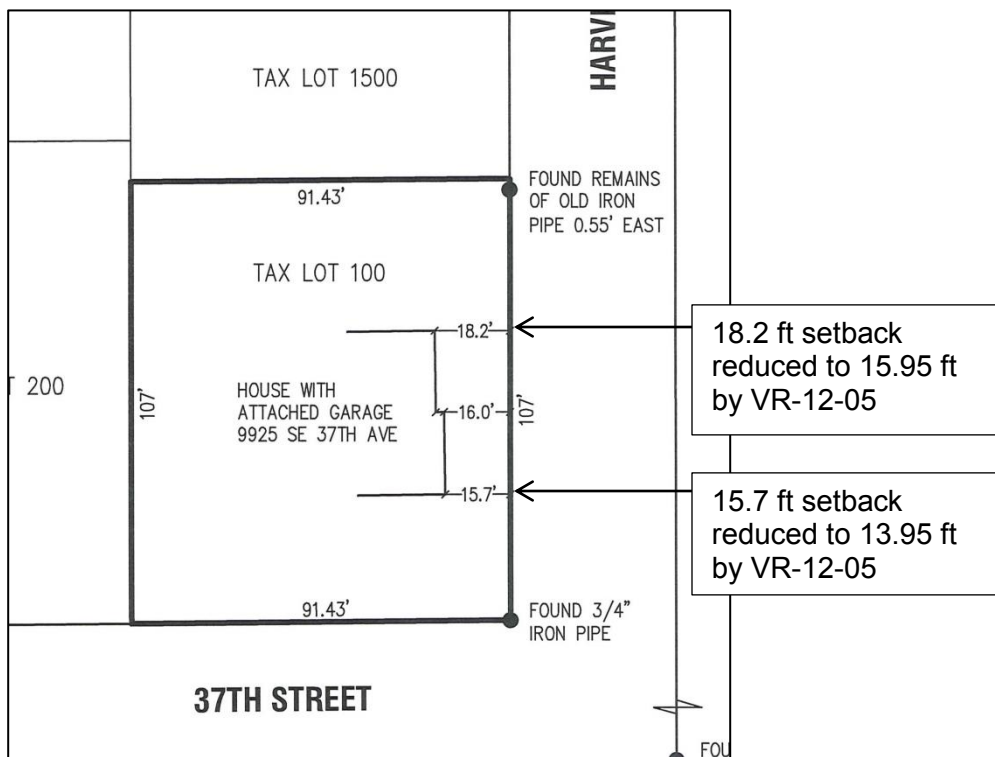
A. Site and Vicinity

The subject property is a residential lot zoned Residential R-7 in the Ardenwald-Johnson Creek neighborhood. The property is located at the southwest corner of Harvey St and 37th Ave. The property is approximately 9,780 sq. ft in area and is developed with a single-family detached dwelling and an attached garage built in 1942, prior to the adoption of the City’s first zoning ordinance. The garage and eaves are located within the required street yard setback to the north (see Attachments 3e-3f).

The property is subject to the street side yard setback requirements of the R-7 zone and the additional yard requirements that are applicable on Harvey St between 32nd and 42nd Aves.²

The existing dwelling is set back 35 ft from the western property line, approximately 20 ft from the southern property line, and between 13.95 and 15.95 ft from Harvey St. See Figure 6.

Figure 6. Hub and Tack Survey of property prior to expansion.



Source: Compass Engineering

² Per MMC Table 19.501.2.A, properties along this section of Harvey St are subject to an additional setback of 25 ft from the centerline of Harvey St.

The existing dwelling and garage are nonconforming in regards to the required additional street side yard setback of 25 ft along Harvey St.

The surrounding properties are developed with single-family detached dwellings.

E. Zoning Designation

Residential zone R-7

F. Comprehensive Plan Designation

Low Density Residential LD

G. Land Use History

- **July 23, 2012:** The Planning Commission approved VR-12-05, allowing: the extension of the footprint of the attached garage by 21 in; extension of the eaves of the attached garage by an additional 6 in (27 in total); and extension of the eaves of the dining room by 21 in to the north.

H. Proposal

The applicant is seeking land use approvals for variances to the required street side yard setback and rear yard setbacks of the R-7 zone. See Attachment 3 for details.

As described above, the required street side yard setback of the R-7 zone is 20 ft; the additional yard requirement along Harvey St requires a setback of 45 ft from the Harvey St centerline. The Harvey St right-of-way is 40 ft wide; the additional yard requirement results in a minimum street side yard setback of 25 ft from the northern property line. That number, rather than the minimum 20 ft street side yard setback, is used to describe the proposal.

The proposal includes the following:

1. Variance to extend the existing nonconforming setback to add a second story. This variance would extend the approved required street side yard setback of 15.95 ft to second story to the existing garage and extend the eaves by 27 inches from the façade of the addition (see Attachments 3a-3c; 3e; and 3g-3i).
2. Variance to the additional street side yard setback from 20 ft to 15 ft to permit construction of a 342 sq ft covered patio area to the west of the house (see Attachments 3d; 3f; and 3l).
3. Variance to the standard rear yard setback from 20 ft to 18 ft to permit construction of a 342 sq ft covered patio area to the west of the house (see Attachments 3d; 3f; and 3l).

The proposal requires approval of the following applications:

1. Type III Variance Review: Variances of more than 25% of the street side yard setback, or which reduce the setback to less than 15 ft, are subject to Type III review. Request 1 is subject to Type III review.

Requests 2-3 could be processed through Type II review. However, per MMC 19.911.3, if one or more of the variance requests is Type III, the application will be processed through

a Type III review. Because the requests were submitted with the Type III request, the application is being processed through Type III review.

KEY ISSUES

Summary

Staff has identified the following key issues for the Planning Commission's consideration.

- A. Does the proposed variance have any negative impacts?

Analysis

A. Does the proposed variance have any negative impacts?

The existing structure is nonconforming in regards to the street side yard setback; the minimum street side yard setback on this property is 25 ft, and the variance approved through VR-12-05 reduced the street side yard setback to 13.95 ft at the east to 15.95 ft at the garage (north). The applicant has not identified any negative impacts of either the second story addition or the proposed patio addition.

Potential negative impacts could include visual impacts to adjacent properties or a reduction in light, air, and light for neighbors. In the absence of any comments expressing concerns about these issues, staff believes that these potential negative impacts do not rise to the level of actual negative impacts because adjacent property owners have not registered concerns about the application. Staff believes that the current proposal is neutral in its impacts and does not require mitigation.

CONCLUSIONS

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

1. Approve the Variance Review for extension of the existing nonconforming development, including a second story and eaves of 27 in, and approval of a variance to the street side yard and rear setbacks for construction of a new covered patio. This will result in the addition of a second story above the garage and the construction of a new covered patio within the required rear and street side yard setback. This will create a new nonconforming situation in regards to the rear and street side yard setbacks on the site.
2. Adopt the attached Findings and Conditions of Approval.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC Section 19.301 Low Density Residential Zones
- MMC Chapter 19.500 Supplementary Development Regulations
- MMC Chapter 19.800 Nonconforming Uses and Development

- MMC Section 19.911 Variances
- MMC Section 19.1006 Type III Review

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The Commission has 4 decision-making options as follows:

- Approve the application subject to the recommended Findings and Conditions of Approval.
- Approve the application with modified Findings and Conditions of Approval. Such modifications need to be read into the record.
- Deny the application upon finding that it does not meet approval criteria.
- Continue the hearing to December 9, 2014.

The final decision on these applications, which includes any appeals to the City Council, must be made by January 28, 2015, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

COMMENTS

Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Building and Engineering, Ardenwald-Johnson Creek Neighborhood District Association (NDA), and Clackamas Fire District #1. The following is a summary of the comments received by the City. See Attachment 4 for further details.

- **Brad Albert, Civil Engineer:** Although Chapter 19.700 is triggered by this application, the Engineering Director has determined that there are insufficient impacts to require the dedication of public right-of-way along Harvey St. Recommends a condition of approval related to the provision of an ADA-compliant driveway approach.

Staff Response: The required for the provision of an ADA-compliant driveway approach was triggered by expansion of the garage, as approved by VR-12-05. Installation of an ADA-compliant driveway approach is an outstanding condition of approval for that application, and will be required prior to final inspection and approval of the renovations.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early PC Mailing	PC Packet	Public Copies	E- Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

	Early PC Mailing	PC Packet	Public Copies	E- Packet
3. Applicant's Narrative and Supporting Documentation dated June 3, August 4, and September 4, 2014.				
a. Narrative – Existing and Proposed Uses (dated September 4, 2014)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Narrative – Type III Variance (dated September 4, 2014)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Narrative – Request #2 (dated June 3, August 4, and September 4, 2014)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Site Plan (dated August 4, 2014)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e. Site Plan – Request #2 (dated September 4, 2014)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f. Garage Floor Plan (dated June 3, 2014)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
g. East Elevation (dated June 3, 2014)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
h. North Elevation (dated September 4, 2014)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
i. South Elevation (dated September 4, 2014)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
j. West Elevation (dated September 4, 2014)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Comments Received	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. List of Record	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/planning/planning-commission-116>.

**Recommended Findings of Approval
File #VR-14-02, Nordby Variance**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, Ron Woodruff, on behalf of Perry Nordby, has applied for relief from the rear and street side yard setbacks and approval to extend the existing nonconforming single-family home by adding a second story within the required street side yard setback and construct a new covered patio at 9925 SE 37th Ave within the required street side yard and rear setbacks. This site is in the R-7 Zone. The land use application file number is VR-14-02.
2. Relief from the setbacks is required because the existing single-family dwelling is nonconforming in regard to the street side yard setback, and the applicant seeks to extend the nonconformity by adding a second story to the northern façade of the house. The proposal requires variances to the required 20 ft street side yard setback of the R-7 zone and the additional yard requirements of Harvey St between 32nd and 42nd Avenues, which requires a setback of 25 ft from the northern property line.
3. This proposal was reviewed and approved by the Planning Commission through VR-12-05. This variance review is required because the applicant proposes to extend the nonconformity approved through VR-12-05 by adding a second story to the dwelling. The proposed design does not substantially conform to the design approved through VR-12-05, and additional review is required.
4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.301 Low Density Residential Zones
 - MMC Subsection 19.501.2 Yard Exceptions
 - MMC 19.700 Public Facility Improvements
 - MMC Chapter 19.800 Nonconforming Uses and Development
 - MMC Section 19.911 Variance Review
 - MMC Section 19.1006 Type III Review
5. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on November 25, 2014, as required by law.
6. MMC 19.301 Low Density Residential Zones
 - a. MMC 19.301 establishes the development standards that are applicable to this site. Table 1 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

The existing house is located at a slight angle to Harvey St, and the existing street side yard setbacks of the garage range from 14.95 ft to 15.95 ft, as approved by VR-12-05. The applicant has proposed retaining the existing garage setback of 14.95 - 15.95 ft and extending the nonconformity by adding a second story to the northern façade of the house.

The applicant has also proposed the addition of a covered 18 ft x 19 ft patio area to the west of the existing house, 18 ft from the rear lot line and 20 ft from the street side yard lot line.

Table 1. Compliance with relevant R-7 standards

R-7 Zone	Standards	Existing	Proposed
Lot Coverage	30% max.	Approx. 22%	Approx. 25%
Minimum Vegetation	30% min.	Approx. 60%	Approx. 57%
Street-Side Yard Setback	20 ft	14.95-15.95 ft (house) None (patio)	No change (house) 15 ft ¹ (patio)
Rear Yard Setback	20 ft	~34 ft	18 ft ¹
Building Height	2.5 stories or 35 ft (whichever is less)	1 story, 13 ft	2 stories, 21 ft

Upon approval of the variance requests, the Planning Commission finds that the proposal complies with the applicable standards of the R-7 zone.

7. MMC Chapter 19.500 Supplementary Development Regulations
 - a. MMC 19.501.2 establishes additional setback requirements for buildings located along certain major streets.
 - b. MMC 19.501.2 establishes additional yard requirements for buildings along certain major streets. These additional yard requirements are measured from the centerline of the right-of-way to the closest point of any building, plus the yard requirement of the underlying zone. The additional yard requirement for Harvey St is 25 ft from centerline.

As proposed, the second-story addition would extend the nonconforming structure by adding a second story that is located 14.95 - 15.95 ft from the street side yard setback.

The proposed covered patio would be located 20 ft from the Harvey St property line, or 40 ft from the Harvey St centerline. The applicant has requested a variance to the street side yard setback requirement of 20 ft, proposing to reduce it to 15 ft. The proposed covered patio requires a variance from this standard.

Table 2 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

Table 2 – Compliance with Yard Exceptions

	Yard Standards	Existing <small>Error! Bookmark not defined.</small>	Proposed (Patio)
Additional Setback	45 ft from street centerline	N/A	40 ft

Upon approval of the variance requests, the Planning Commission finds that the proposal complies with the applicable standards of MMC 19.500.

8. MMC Chapter 19.700 Public Facility Improvements
 - a. MMC 19.702 establishes the applicability of this section

¹ The applicant has requested a variance to the street side yard and rear yard setback standards of the R-7 zone.

The applicant proposes an expansion of the existing home by 280 sq ft. The Engineering Department finds that MMC Chapter 19.700 is triggered by this variance application because the addition of habitable living space is greater than 200 sq ft.

The City has conducted a review to determine if the proposed development has a sufficient nexus and impacts to warrant the imposition of right-of-way dedication under the standards established by the US Supreme Court through *Koontz v. St. Johns River Water Management District* (2013) and other case law.

Although there is a sufficient *nexus* to warrant the imposition of right-of-way dedication relating to the expansion, it has been determined that the *impacts* do not warrant the imposition of right-of-way dedication.

The Planning Commission finds that this section is applicable, and there is sufficient nexus but insufficient impacts to require right-of-way dedication and no right-of-way dedication will be required.

9. MMC Chapter 19.800 Nonconforming Uses and Development

- a. MMC 19.804.2 establishes provisions for approving the alteration or expansion of nonconforming development.

The existing structure is nonconforming in regards to the street side yard setback. The applicant proposes to extend the height of the existing garage by approximately 13 ft. Per MMC 19.804.2.A, alterations or expansions that increase or extend the nonconformity are not allowed unless a variance is approved pursuant to MMC 19.911.

The Planning Commission finds adding a second story to the existing dwelling is an extension of the nonconformity, and that MMC 19.911 is applicable to that component of this application.

10. MMC Chapter 19.911 Variances

- a. MMC 19.911.3 establishes the review process for variance applications.

The applicant has requested a variance to extend the existing nonconforming street side yard setback, by adding a second story to the northern façade of the house. As approved by VR-12-05, the minimum street side yard width standard of 20 ft was reduced to 13.95 ft, a variance of 30%. The request for the minimum street side yard width standards exceed 25%, and must be processed through Type III review.

The applicant has also requested a variance of 20% to the minimum street side yard setback and 10% to the minimum rear setback to construct a new covered patio.

The Planning Commission finds that the application is subject to Type II review for the proposed construction of a covered patio, and Type III review for the proposed addition of a second story.

- b. MMC 19.011.4.A establishes criteria for approving Type II Variance applications.

An application for a Type II Variance shall be approved when all of the following criteria have been met.

- (1) *The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare*

Neither staff nor the applicant has identified any negative impacts of the variance proposal.

The Planning Commission finds that this criterion is met.

- (2) *The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.*

The street-side yard faces Harvey St, which is classified as a “neighborhood route” in the Milwaukie Transportation System Plan where adjacent to the subject property. As noted in Finding 6.b, Harvey St requires an additional 25-ft setback measured from the centerline of the right-of-way, plus the standard 20-ft setback of the R-7 zone. No right-of-way dedication is required along the Harvey St frontage at the time of this proposal; additional right-of-way width may be needed for future improvements to the street. However, the existing and proposed development is set back a sufficient distance from Harvey St to avoid interference with planned future improvements to Harvey St.

The proposed variance will not limit the future construction of any public transportation or utility improvements in the public right-of-way.

The Planning Commission finds that this criterion is met.

- (3) *Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.*

The proposed variance is intended to both sustain the integrity of and enhance the existing building design. Over the past several years, the property owner has converted the home from a 1940s bungalow to an Arts and Crafts design. The proposed expansion and addition will continue this conversion.

The Planning Director finds that this criterion is met.

- (4) *Impacts from the proposed variance will be mitigated to the extent practicable.*

As noted in Finding 10.c (1), neither staff nor the applicant has identified any potential negative impacts.

The Planning Commission finds that there are no impacts to be mitigated, and this criterion is met.

The Planning Commission finds that these criteria are met.

- c. MMC 19.911.4.B establishes criteria for approving Type III Variance applications.

An application for a Type III Variance shall be approved when all of the criteria in either 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

The applicant has chosen to address the criteria of 19.911.4.B.1 Discretionary Relief Criteria.

- (1) *The applicant’s alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.*

Neither staff nor the applicant has identified any negative impacts of the variance proposal.

The applicant has identified the following benefits of the variance proposal: Adding a gable dormer can be seen as adding interest and variation to the overall Craftsman Style of the house.

The Planning Commission finds that this criterion is met.

- (2) *The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:*

- (a) *The proposed variance avoids or minimizes impacts to surrounding properties.*

The proposed variance will affect the northern façade of the home, which is not adjacent to any other property.

The Planning Commission finds that this criterion is met.

- (b) *The proposed variance has desirable public benefits.*

“Public benefits” are typically understood to refer to benefits to be enjoyed by members of the general public as a result of a particular project, or preservation of a public resource. Aesthetic improvements of a specific and limited nature do not typically constitute a public benefit.

The Planning Commission finds that this criterion is not applicable.

- (c) *The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.*

This criterion encourages flexibility in site planning and development when the existing built or natural environment provide challenges to standard development or site planning. The site is flat and rectilinear and is developed with a conventional single-family dwelling.

The Planning Commission finds that this criterion is not applicable.

The Planning Commission finds that the applicant has demonstrated that the project meets criteria (2)(a) within this subsection, and therefore this subsection is satisfied.

- (3) *Impacts from the proposed variance will be mitigated to the extent practicable.*

As noted in Finding 10.c (1), neither staff nor the applicant has identified any potential negative impacts.

The Planning Commission finds that there are no impacts to be mitigated, and this criterion is met.

The Planning Commission finds that these criteria are met.

11. As per MMC 19.906.2.C, the proposed development is exempt from the requirement to submit a development review application and the other requirements of MMC 19.906 Development Review. However, the proposal must still comply with all applicable development standards and will be reviewed during the building permit review process.
12. As per MMC 19.1001.7.E, this variance request shall expire and become void unless the proposed development completes the following steps:
 - A. Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (by November 25, 2016).

- B. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by November 25, 2018).
13. The application was referred to the following departments and agencies on October 15, 2014: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Ardenwald-Johnson Creek Neighborhood District Association Chairperson and Land Use Committee. Notice of the application was also sent to surrounding property owners within 300 ft of the site on November 5, 2014, and a sign was posted on the property on November 12, 2014. The following is a summary of the comments received by the City.
- **Brad Albert, Civil Engineer:** Although Chapter 19.700 is triggered by this application, the Engineering Director has determined that there are insufficient impacts to require the dedication of public right-of-way along Harvey St. Recommends a condition of approval related to the provision of an ADA-compliant driveway approach.

Staff Response: The required for the provision of an ADA-compliant driveway approach was triggered by expansion of the garage, as approved by VR-12-05. Installation of an ADA-compliant driveway approach is an outstanding condition of approval for that application, and will be required prior to final inspection and approval of the renovations.

**Recommended Conditions of Approval
File #VR-14-02, Nordby Variance**

1. At the time of submission of any building permit application, the following shall be resolved:
 - a. Final plans submitted for building permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped “received” by the City on June 3, August 4, and September 4, 2014, except as otherwise modified by these conditions.
 - b. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
2. Prior to final inspection of any building permit, the following shall be resolved:
 - a. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.

Additional Requirements

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various point in the development and permitting process.

1. Development activity on the site shall be limited to 7 a.m. to 10 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday, per MMC Subsection 8.08.070(l).

2,000 fee for MPE III



PLANNING DEPARTMENT
6101 SE Johnson Creek Blvd
Milwaukie OR 97206

PHONE: 503-786-7630
FAX: 503-774-8236
E-MAIL: planning@milwaukieoregon.gov

Application for Land Use Action

Master File #: VR-14-02

Review type*: I II III IV V

CHECK ALL APPLICATION TYPES THAT APPLY:

<input type="checkbox"/> Amendment to Maps and/or Ordinances: <input type="checkbox"/> Comprehensive Plan Text Amendment <input type="checkbox"/> Comprehensive Plan Map Amendment <input type="checkbox"/> Zoning Text Amendment <input type="checkbox"/> Zoning Map Amendment	<input type="checkbox"/> Land Division: <input type="checkbox"/> Final Plat <input type="checkbox"/> Lot Consolidation <input type="checkbox"/> Partition <input type="checkbox"/> Property Line Adjustment <input type="checkbox"/> Replat <input type="checkbox"/> Subdivision	<input type="checkbox"/> Planned Development <input checked="" type="checkbox"/> Residential Dwelling: <input type="checkbox"/> Accessory Dwelling Unit <input type="checkbox"/> Duplex <input type="checkbox"/> Manufactured Dwelling Park <input type="checkbox"/> Temporary Dwelling Unit
<input type="checkbox"/> Code Interpretation <input type="checkbox"/> Community Service Use <input type="checkbox"/> Conditional Use <input type="checkbox"/> Development Review <input type="checkbox"/> Director Determination <input type="checkbox"/> Downtown Design Review <input type="checkbox"/> Extension to Expiring Approval <input type="checkbox"/> Historic Resource: <input type="checkbox"/> Alteration <input type="checkbox"/> Demolition <input type="checkbox"/> Status Designation <input type="checkbox"/> Status Deletion	<input type="checkbox"/> Miscellaneous: <input type="checkbox"/> Barbed Wire Fencing <input type="checkbox"/> Bee Colony <input type="checkbox"/> Mixed Use Overlay Review <input type="checkbox"/> Modification to Existing Approval <input type="checkbox"/> Natural Resource Review <input type="checkbox"/> Nonconforming Use Alteration <input type="checkbox"/> Parking: <input type="checkbox"/> Quantity Determination <input type="checkbox"/> Quantity Modification <input type="checkbox"/> Shared Parking <input type="checkbox"/> Structured Parking	<input type="checkbox"/> Sign Review <input type="checkbox"/> Transportation Facilities Review <input checked="" type="checkbox"/> Variance: <input type="checkbox"/> Use Exception <input checked="" type="checkbox"/> Variance <input type="checkbox"/> Willamette Greenway Review <input type="checkbox"/> Other: _____

Use separate application forms for:

- Annexation and/or Boundary Change
- Compensation for Reduction in Property Value (Measure 37)
- Daily Display Sign
- Appeal

RESPONSIBLE PARTIES:

APPLICANT (owner or other eligible applicant—see reverse): Perry Nordby

Mailing address: 9925 SE 37th Ave Milw, OR Zip: 97222

Phone(s): 503-475-4518 E-mail: pnordby@jarOregon.com
503-652-2180

APPLICANT'S REPRESENTATIVE (if different than above): Row Woodruff, Architect

Mailing address: 1225 SE Math St Portland, OR Zip: 97202

Phone(s): 503-708-8151 E-mail: hwgroup@yahoo.com

SITE INFORMATION:

Address: 9925 SE 37th Ave Map & Tax Lot(s): 1S1E25DL0010D

Comprehensive Plan Designation: _____ Zoning: R7 Size of property: 91-43' x 107'

PROPOSAL (describe briefly):

SECOND STORY LIVING SPACE ADDED ABOVE EXISTING GARAGE AND DINING ROOM LEVEL.

SIGNATURE:

ATTEST: I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: [Signature] Date: 5/11/14

IMPORTANT INFORMATION ON REVERSE SIDE

*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1.



PLANNING DEPARTMENT
6101 SE Johnson Creek Blvd
Milwaukie OR 97206

PHONE: 503-786-7630
FAX: 503-774-8236
E-MAIL: planning@milwaukieoregon.gov

For all Land Use Applications
(except Annexations and Development Review)

Submittal Requirements

All land use applications must be accompanied by a signed copy of this form (see reverse for signature block) and the information listed below. The information submitted must be sufficiently detailed and specific to the proposal to allow for adequate review. Failure to submit this information may result in the application being deemed incomplete per the Milwaukie Municipal Code (MMC) and Oregon Revised Statutes.

Contact Milwaukie Planning staff at 503-786-7630 or planning@milwaukieoregon.gov for assistance with Milwaukie's land use application requirements.

1. **All required land use application forms and fees**, including any deposits.
Applications without the required application forms and fees will not be accepted.
2. **Proof of ownership or eligibility to initiate application** per MMC Subsection 19.1001.6.A.
Where written authorization is required, applications without written authorization will not be accepted.
3. **Detailed and comprehensive description** of all existing and proposed uses and structures, including a summary of all information contained in any site plans.
Depending upon the development being proposed, the description may need to include both a written and graphic component such as elevation drawings, 3-D models, photo simulations, etc. Where subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary on-site "story pole" installations, and photographic representations thereof, may be required at the time of application submittal or prior to the public hearing.
4. **Detailed statement** that demonstrates how the proposal meets all applicable application-specific approval criteria (check with staff) and all applicable development standards (listed below):
 - a. **Base zone standards** in Chapter 19.300.
 - b. **Overlay zone standards** in Chapter 19.400.
 - c. **Supplementary development regulations** in Chapter 19.500.
 - d. **Off-street parking and loading standards and requirements** in Chapter 19.600.
 - e. **Public facility standards and requirements**, including any required street improvements, in Chapter 19.700.
5. **Site plan(s), preliminary plat, or final plat** as appropriate.
See Site Plan, Preliminary Plat, and Final Plat Requirements for guidance.
6. **Copy of valid preapplication conference report**, when a conference was required.

22 orig

Ron Woodruff
Architect
1225 SE Mall St.
Portland, OR 97202
Rbwgroup1@yahoo.com

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PLANNING DEPARTMENT

August 1, 2014
(Revised 9/4/14)

Perry Nordby property
9925 SE 37th Ave.
Milwaukie, OR 97222

Re: Description of all existing and proposed uses and structures described in the two site plans dated 5/22/14 and 9/4/14

The existing house is originally a one storey structure that includes a 8x12 portable tool shed on south side of the lot. There are two parking spaces at the front of the existing garage. There are optional spaces used for parking on east side of the property at the gravel shoulder outside of the property line...these spaces are used for parking on both sides of 37th Ave. for most of 37th Ave. to the south. The existing floor plan of the house is a two bedroom, one bath, living room, kitchen and dining room configuration. The garage is a two car garage built with the original house.

There is an existing soutside patio on west side of the house and open covered porch on the east side facing SE 37th Ave. Decorative fences, existing sidewalks, low rock walls and grape arbor wall structures are identified on the site plan. Existing trees are also shown and are not in conflict with any future development .

Proposed uses are:

- 1) Expansion of the garage to include a second level used for storage/hobby purposes. This level is above the existing garage and dining room footprint below. The proposed addition is accessed by stairs going up from the existing garage ground level.
- 2) Addition of covered patio, open on three sides, attached to west side of garage measuring 19' x 18'. A open cooking grill is included, located near an existing chimney flue on the west side of the existing garage.

22
0124
Sept. 4, 2014

Type III Variance VR-14-02

9925 SE 37th Ave.

Milwaukie OR 97222

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PLANNING DEPARTMENT

General Narrative on variance request #2 for covered patio at west side of garage

The applicant's alternative provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

This request is for an open on three (3) sided covered patio with open cooking grill in the area of an existing chimney flue.

Potential impacts on the north side are minimal since there is not a residence adjacent to the north side (Harvey St. side).

Potential impact to the west side could be considered minimal with setback of 18'. There is a residence on the west side. Activities in the proposed covered patio would be primarily outdoor cooking and dining as a low level activity, hopefully compatible with the neighboring residence.

Benefits are, outdoor cooking and dining in a space out of the weather during the rainy seasons, also a location to place outdoor patio furniture in a semi-protected environment.

Base Zone Standards

Setback on the north (Harvey St. side) of baseline code is 25'. This proposal is asking for setback on north side of 20'.

Setback on west side of baseline code is 20'. This proposal is asking for setback of 18'.

Lot coverage in 22%, less than the 30% of baseline code lot coverage.

Off-street parking was addressed in previous narrative for second level construction over garage

August 4, 2014

Type III Variance VR-14-02

9925 SE 37th Ave.

Milwaukie Or 97222

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AUG 04 2014
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PLANNING DEPARTMENT

General narrative on variance request

The applicant's alternative analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

The existing garage footprint was modified in extending length to the North by 21" VR-12-05.

This request is to extend the height of the second level over the existing garage footprint with a 2'-3" eave on the gable front at north side, the second level is also partially over the existing dining room on north side of the single storey residence.

Potential impact due to increased height facing Harvey St could be considered minimal since there is not a residence adjacent to the north side. Benefits are to include additional living space for the occupant in the form of increased. general storage and hobby space.

Base Zone Standards

The proposed height is 27' which is less than the allowed R7 height of 35'. Setback from the Harvey St. side yard requirement of baseline code is 20' (45' from Harvey St. centerline). The existing setback of the garage footprint is 15.7' which is less than the allowed setback therefore requiring a variance to allow a second level addition that is less than the baseline code setback. Lot coverage will not be affected. Off-street parking requires 1 space outside of required street side yard. Two spaces in garage are partially within required street side yard (approved by the last variance VR-12-05).

22
Type III Variance

9925 S.E. 39th Ave.

Milwaukie

Perry Nordby, Owner

June 3, 2014

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JUN 03 2014
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PLANNING DEPARTMENT

b. The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:

- 1) The proposed variance avoids or minimizes impacts to surrounding properties.

The proposed elevation addition to the existing single level garage is primarily seen on all sides of the garage level. The dominant elevation change from the previous Type III approval is on the north (Harvey St.) side. The west and south sides have wall extensions to accommodate a second level area proposed to be additional living space accessed from from the stairs below at ground level of the existing garage. The east side elevation is a complimentary gable dormer meant to extend the second level living space. (see attached elevation, front view drawings)

Impacts on surrounding properties are minimal if any. On the west side, the building roof ridge height is 27ft. from ground level. The setback from this side is 37 ft. from the west property line. The south side is similar with a setback of a longer distance. (see south elevation drawing)

The east side impacts are a gable dormer approximately in the middle of the existing house which can be seen as adding interest and variation to the overall Craftsman Style of the house.

2) The proposed variance has desirable public benefits.

As stated in the previous Type III Application on this property, aesthetic improvements do not typically constitute a public benefit.

3) The proposed variance responds to the existing built environment or natural environment in a creative and sensitive manner.

This criterion is not applicable as found in the previous Type III Application due to the flat rectilinear site which does not present any development issues.

General narrative for reason to add second level multipurpose space above garage and ground level dining room:

The second level of storage/sewing room, above the existing garage and dining room, was added to increase the usable space above the garage. This was first conceived as attic storage space but grew to include storage/sewing room space, which is accessed by stairs at the ground level in the existing garage footprint.

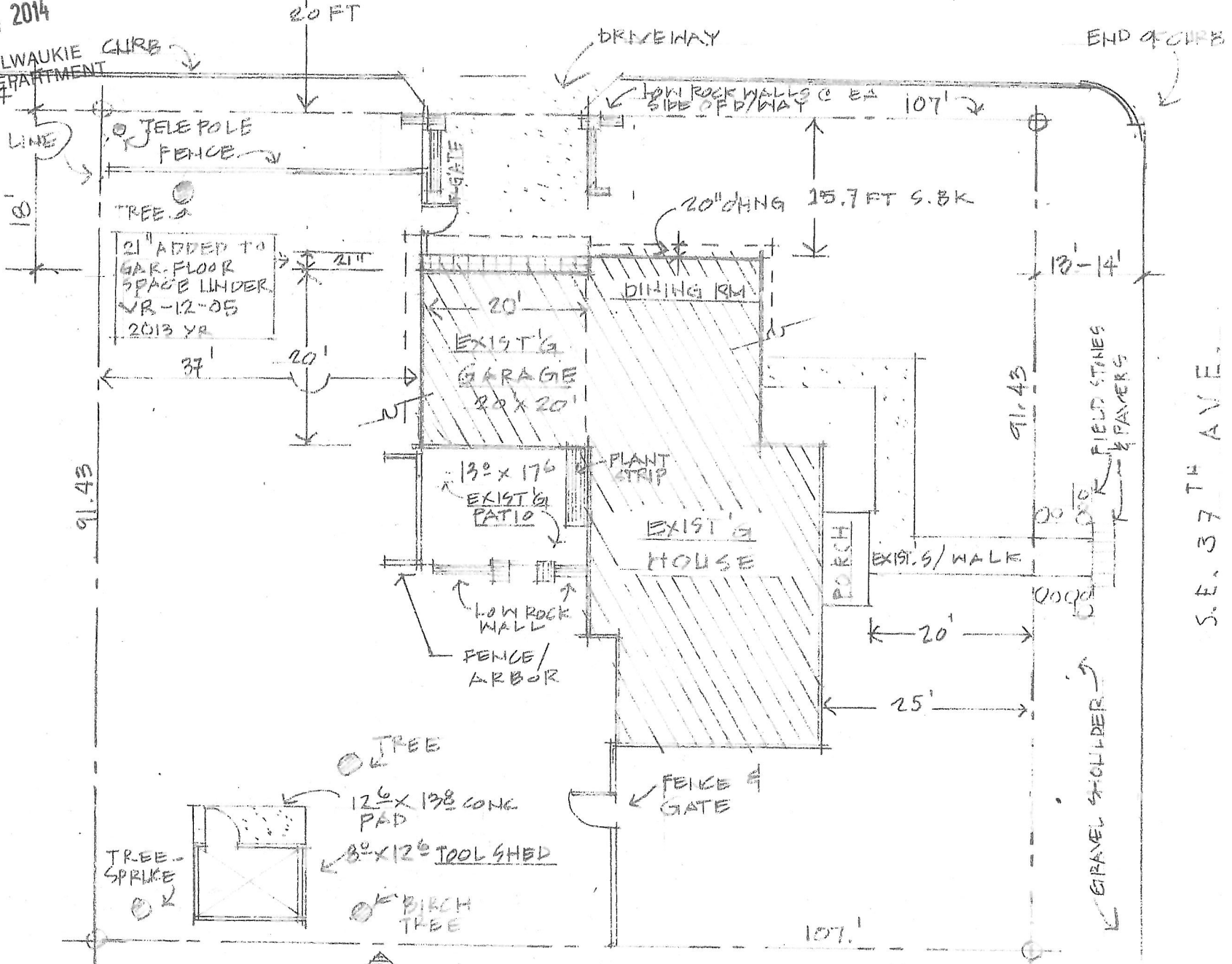
When these additions were thought of we did not realize the additions would be in violation the previous approval of the Type III Application.

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AUG 04 2014

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← CENTER LINE OF ST. → ← SE HARVEY ST. →



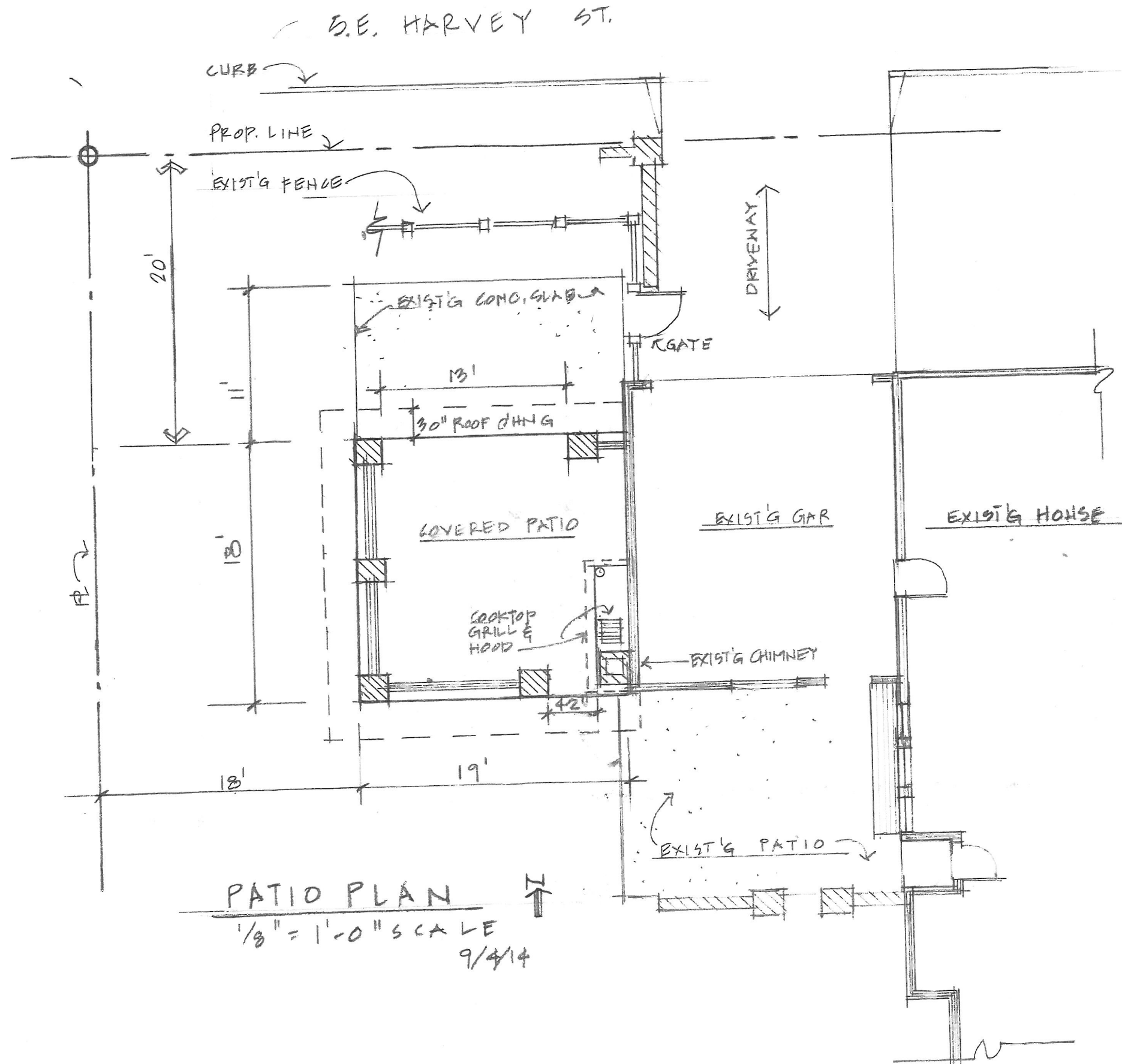
SITE PLAN
 SC. 1/16" = 1 FT
 PREPARED BY: RON WOODRUFF 5/22/14



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SEP 04 2014

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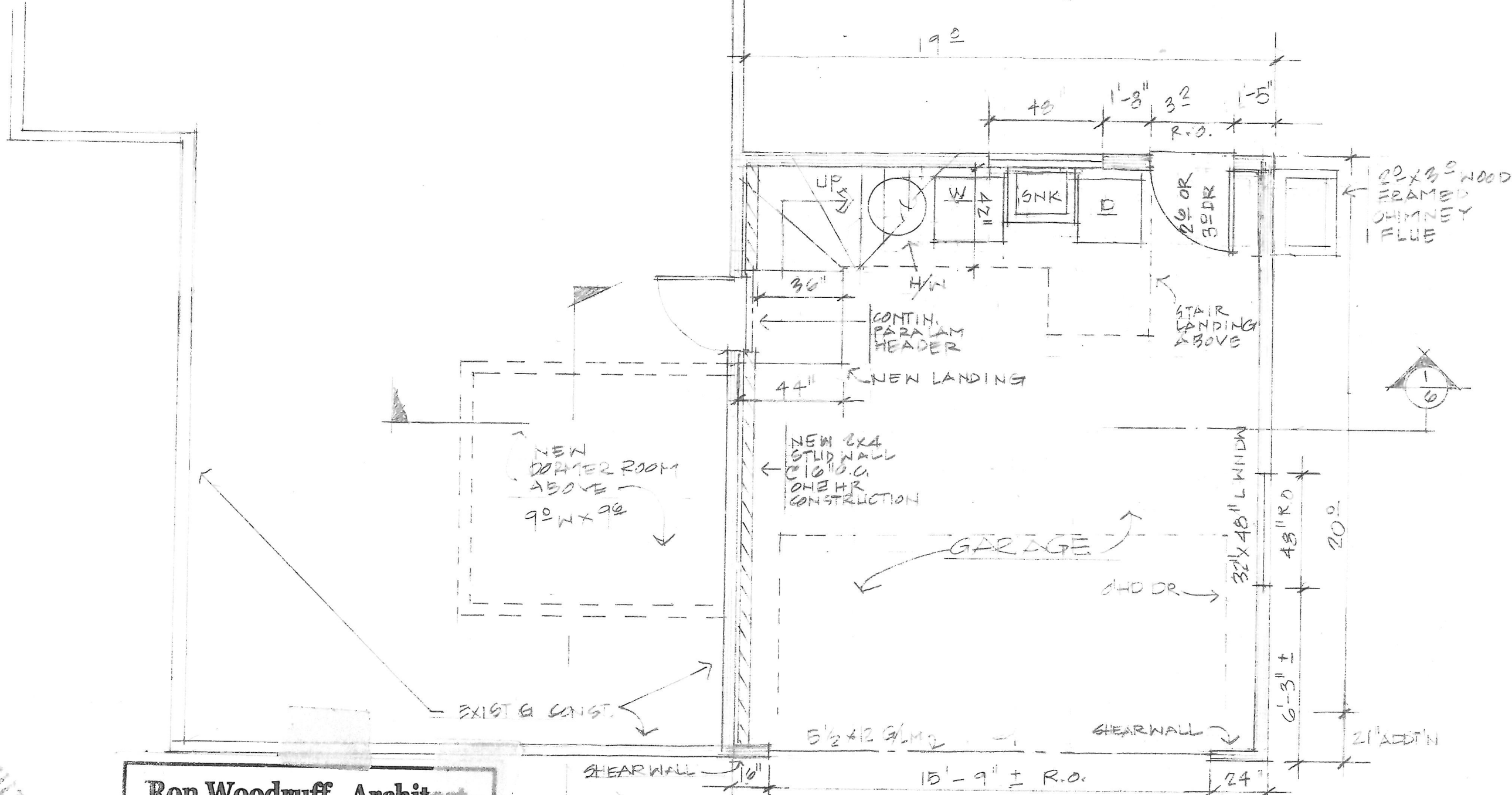


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TREAD $10\frac{1}{2}"$
 RISE $7\frac{5}{8}"$
 3-2x12 PER
 STAIR RUN

TYPICAL STAIR DETAIL

$\frac{1}{4}" = 1'-0"$ SCALE



Ron Woodruff, Architect

- Residential design and remodeling
- Commercial design
- Project management
- Planning and zoning research

Cell: 503.708.8151 Home Office: 503.236.8774
 Email: rbwgroup1@yahoo.com

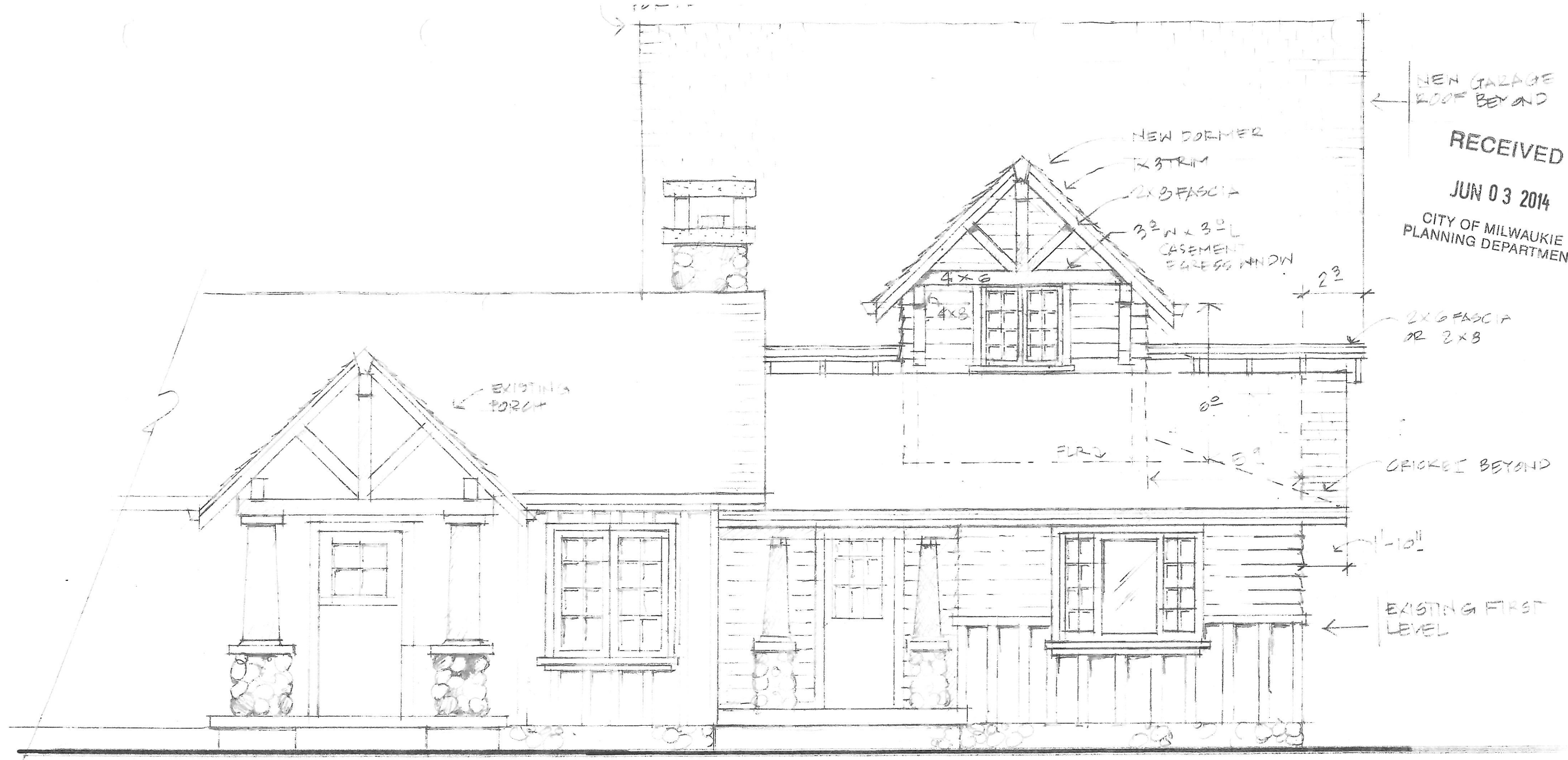
ADDENDUM TO PERMIT # 401-12-000391

GARAGE FLOOR PLAN $\frac{1}{4}"$ SCALE

PERRY NORDBY HOUSE
 ADDITION # 9925 SE 37TH MILW. OR
 97222

11/1/13,
 2/25/14

SHT. #
1
OF
8



NEW GARAGE
ROOF BEYOND

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JUN 03 2014

CITY OF MILWAUKIE
PLANNING DEPARTMENT

EAST ELEVATION

1/4" = 1'-0" SCALE

10/28/13



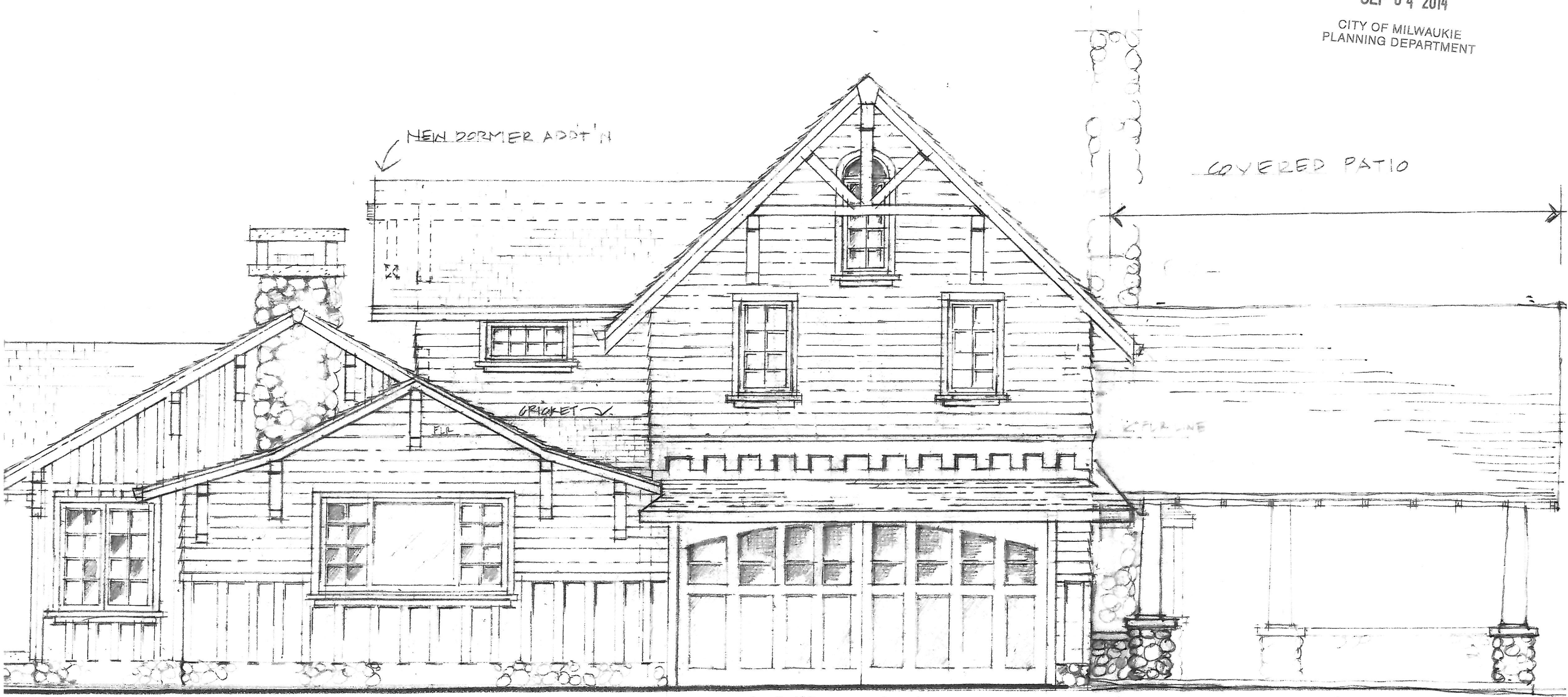
SHEET #
2
OF
8

6

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PLANNING DEPARTMENT



EXISTING CONSTRUCTION

NEW 2ND LEVEL ABOVE
GARAGE ADDITION

COVERED PORCH

NORTH ELEVATION

1/4" = 1'-0" SCALE

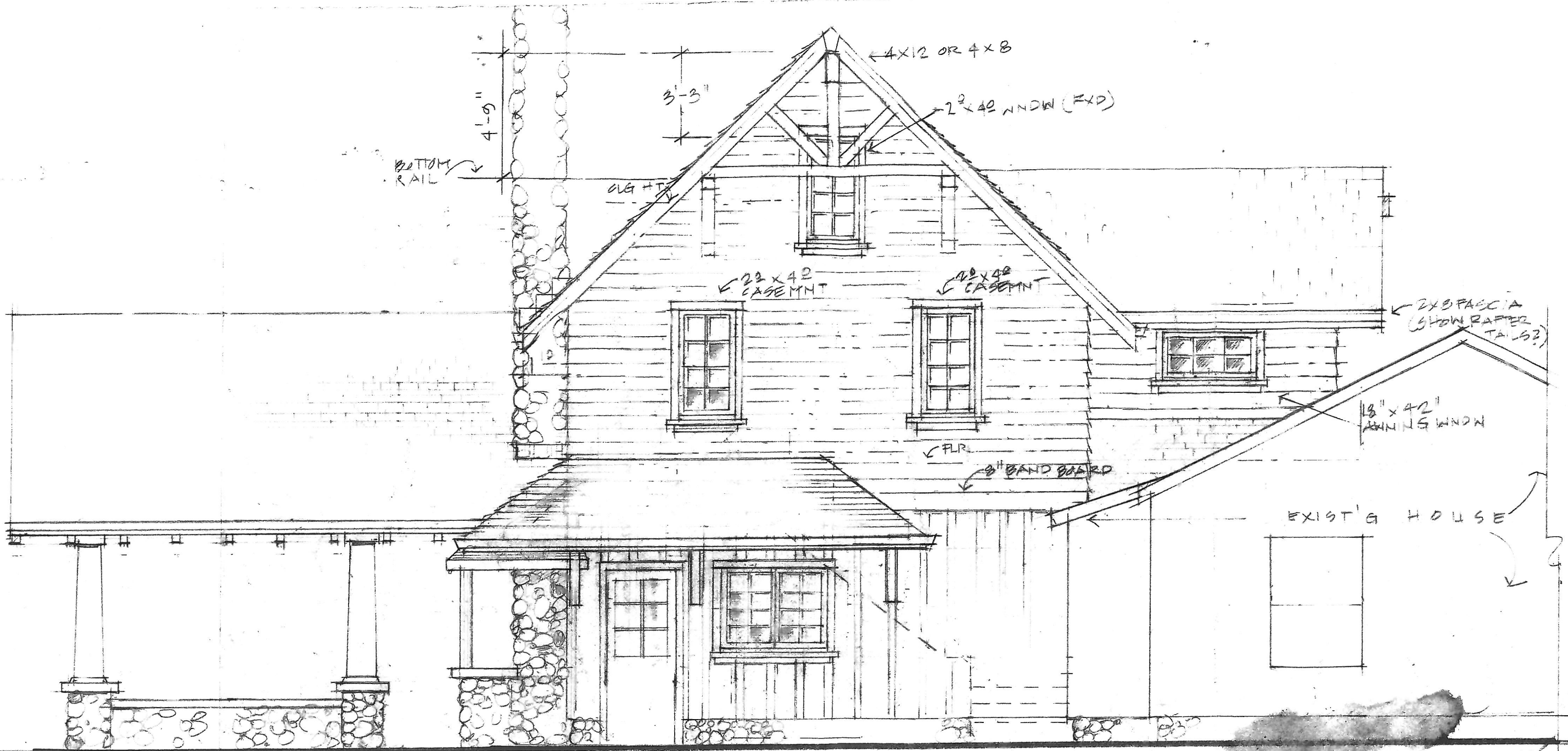
11/1/13

2/26/14

FLH

REGISTERED ARCHITECT
 RONALD H. ...
 ...
 ...

SHEET #
3
OF
8



COVERED PATIO

SOUTH ELEVATION

1/4" SCALE

- 10/31/13
- 2/26/14
- 5/20/14
- 9/4/14

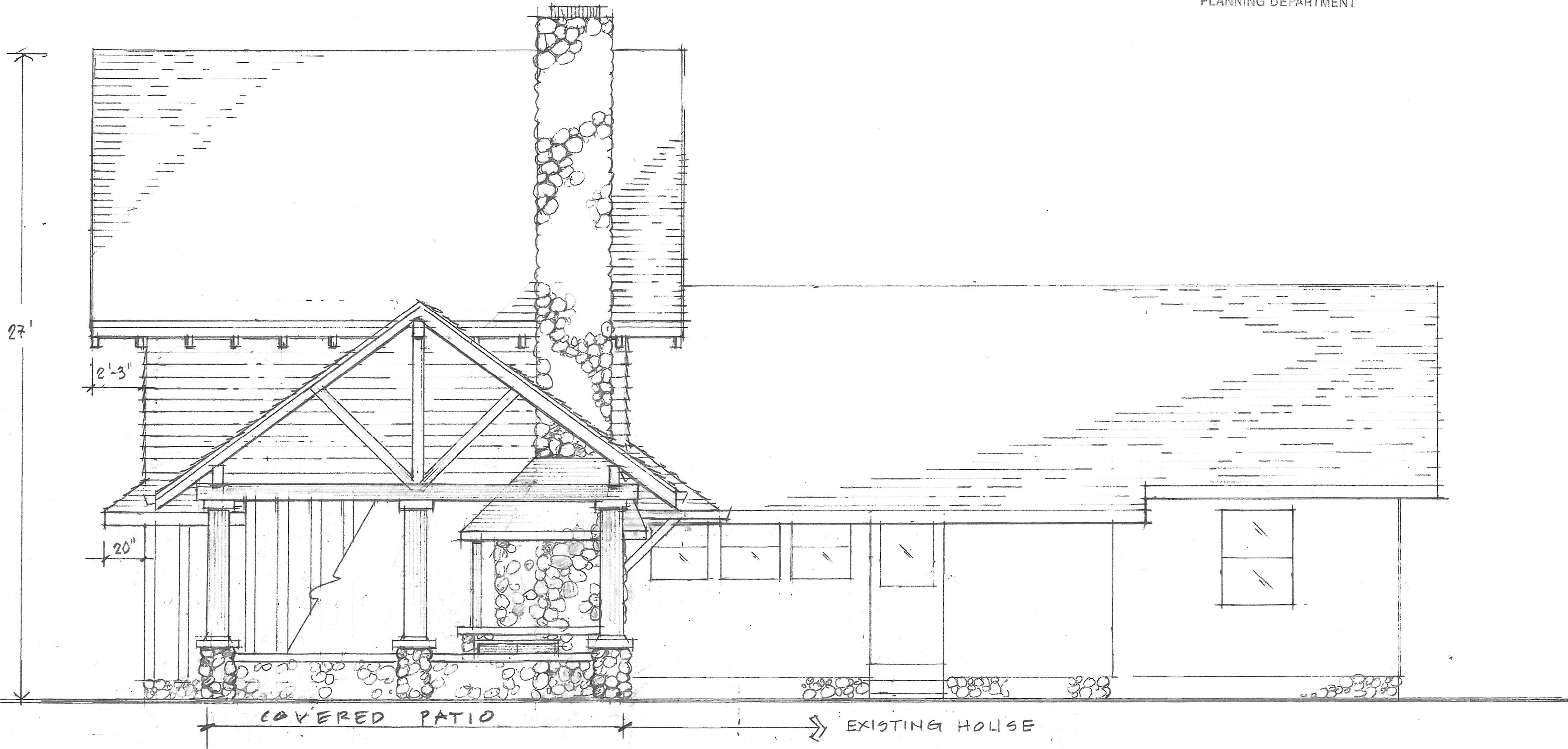
REGISTERED ARCHITECT
 STATE OF OREGON

54

RECEIVED

SEP 04 2014

CITY OF MILWAUKIE
PLANNING DEPARTMENT



WEST ELEVATION

1/4" = 1'-0" SCALE

9/4/14

MEMORANDUM

TO: Community Development Department
THROUGH: Jason Rice, Engineering Director
FROM: Brad Albert, Civil Engineer
RE: Variance – 9925 SE 37th Avenue
VR-14-02
DATE: November 12, 2014

Proposed living space expansion over the garage which would increase encroachment into the street side yard and rear setbacks.

1. MMC Chapter 19.700 – Transportation Planning, Design Standards, and Procedures

The Engineering Department finds that MMC Chapter 19.700 is triggered by this variance application because the addition of habitable living space is greater than 200 square feet. The City has conducted a review to determine if the proposed development has a sufficient nexus and impacts to warrant the imposition of right of way dedication under the standards established by the US Supreme Court. Although there is a sufficient nexus, it has been determined that the impacts do not warrant such a condition.

The applicant is required to construct a concrete driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) prior to final inspection.

Recommended Conditions of Approval

Prior to final inspection of building permit, the following shall be required:

1. Construct a new driveway approach at the existing driveway onto SE Harvey Street to meet all guidelines of the Americans with Disabilities Act (ADA) prior to final inspection. The driveway approach apron shall be between 9 feet and 20 feet in width, at least 7.5 feet from the side property line.

Other notes

None

**List of Record
File #VR-14-02, Nordby Variance**

The following documents are part of the official record for this application as of November 18, 2014.

1. Application
 - a. Preapplication conference report for meeting on October 20, 2011 (sent November 3, 2011)
 - b. Submittal forms: land use application form(s), proof of ownership, property owner authorization, Submittal Requirements form, fee receipt (received June 3, 2014)
 - c. Narrative addressing code standards and criteria
 - (1) Narrative addressing Existing and Proposed Uses (received September 4, 2014)
 - (2) Narrative addressing Type III Variance criteria (received September 4, 2014)
 - (3) Narrative addressing variance criteria for proposed covered patio
 - (a) Version #1 (received June 3, 2014)
 - (b) Version #2 (received August 4, 2014)
 - (c) Version #3 (received September 4, 2014)
 - d. Plans and drawings
 - (1) Site plan (received August 4, 2014)
 - (2) Site plan – Request #2 (received September 4, 2014)
 - (3) Garage floor plan (received June 3, 2014)
 - (4) East elevation (received June 3, 2014)
 - (5) North elevation (received September 4, 2014)
 - (6) South elevation (received September 4, 2014)
 - (7) West elevation (received September 4, 2014)
2. Notification information
 - a. Application referral and mailing list. Sent to: Engineering, Building, Planning, Clackamas Fire District #1, and Chair and Land Use Committee for Ardenwald-Johnson Creek Neighborhood District Association(s). (Sent September 24, 2014.)
 - b. Sign notice for Planning Commission public hearing on November 25, 2014 (posted at the site on November 12, 2014)
 - c. Sign posting affidavit (dated November 12, 2014)
 - d. Mailed notice for Planning Commission public hearing on November 25, 2014 (sent to properties within 300' radius of site on November 5, 2014)
 - e. Certification of legal notice mailing, with attached mailing list (dated November 5, 2014)
 - f. Notice map

- g. Returned notice envelopes
- 3. Materials from City Planning staff
 - a. Letter deeming application incomplete (sent July 2, 2014, and September 24, 2014)
 - b. Letter deeming application complete (sent October 9, 2014)
- 4. Agency and staff responses
 - a. Brad Albert, Civil Engineer. Determined that 19.700 is applicable but the Engineering Department cannot require dedication of public right-of-way. (Received November 12, 2014.)
- 5. Public comments received - None
- 6. Staff Report(s)
 - a. Report for Planning Commission public hearing on November 25, 2014 (dated November 18, 2014)
 - (1) Recommended Findings in Support of Approval
 - (2) Recommended Conditions of Approval
 - (3) Application items #1.c-d
 - (4) Agency and staff response items #4.a



MILWAUKIE

Dogwood City of the West

To: Planning Commission
From: Dennis Egner, Planning Director
Date: November 17, 2014, for November 25, 2014, Public Hearing

Subject: File: ZA-14-03

Applicant: City of Milwaukie

Owners: Elizabeth Stein (West Linn), Bok Soon Park (Happy Valley), and I & A Corporation (Oregon City)

Addresses: 9391, 9410, and 9401 SE 32nd Avenue

Legal Description (Map & Taxlot): 11E25BD07700, 11E25DB01600, and 11E25CA01000

NDA: Ardenwald-Johnson Creek

ACTION REQUESTED

Recommend approval of application ZA-14-03 and recommended Findings of Approval found in Attachment 1. This action would recommend Council approval of a zoning ordinance text amendment to allow eating establishments to be listed as a permitted use in the C-L Limited Commercial Zone on three commercial properties at the intersection of 32nd Ave and Olsen St.

BACKGROUND INFORMATION

The third component of the City's Moving Forward Milwaukie project will address "Neighborhood Main Streets". The commercially zoned property along 32nd Ave between the Floss St/Boyd St intersection and Rockwood St will be the one of the areas examined. According to the original timeline, work on Neighborhood Main Streets was to have begun this fall. Given the extensive public and council discussion regarding the downtown portion of Moving Forward Milwaukie, it is likely that the Neighborhood Main Streets component will not begin until early 2015. In recognition of this delay, City staff initiated the current zoning text amendment in order to address one of the key issues in the existing code, i.e., the code prohibits restaurants in the C-L Zone.

The proposed text amendment would allow eating establishments as a permitted use in the C-L Zone on three existing commercial properties (see Figure 1). This change would allow

restaurants, cafes, delis, and similar uses to operate legally in the zone. As proposed, the text amendment would prevent drive through uses and would limit the size of any eating establishment to no more than 3,250 sq ft in size.

Staff has proposed this change with its limitation on location, as a short-term fix that will be revisited during the Neighborhood Main Streets project. At that time, the City can evaluate whether it is appropriate to allow a broader range of uses, including eating establishments, on other C-L zoned properties along 32nd Ave.

Proposal to allow Eating Establishment in the C-L Zone

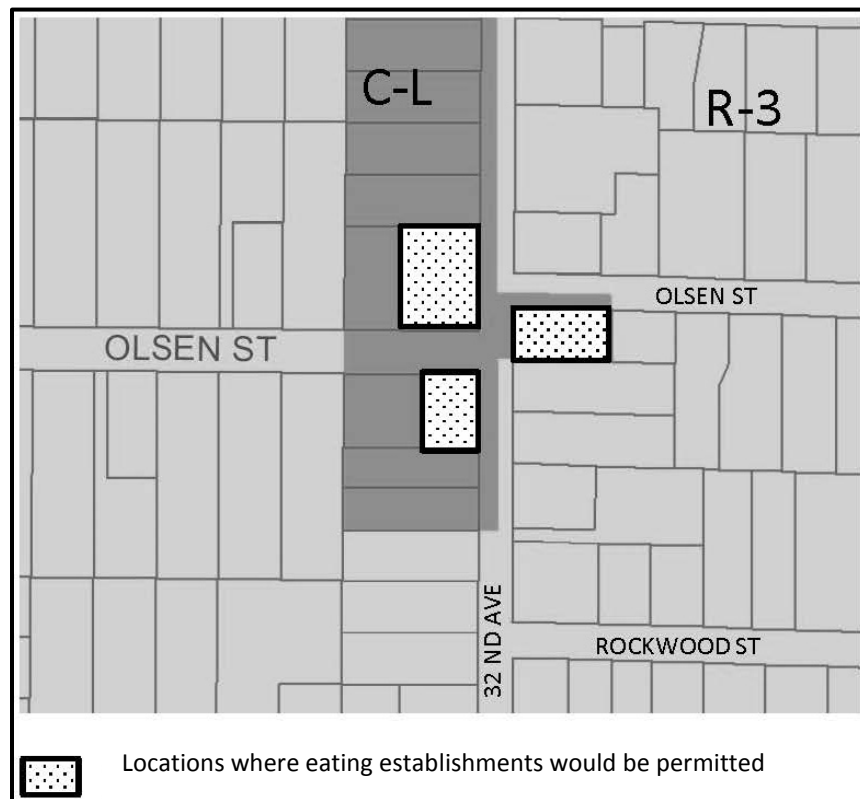


Figure 1. Proposal to allow eating establishments in the C-L Zone

B. Zoning Designation

The properties are zoned C-L Limited Commercial. No change in zoning is proposed. The text amendment will add to the list of permitted uses for three properties in the zone.

C. Comprehensive Plan Designation

All properties in the C-L Zone along 32nd Ave are designated C-Commercial on the land use map of the Comprehensive Plan.

The Land Use section of the Comprehensive Plan (Chapter 4) does not provide clear guidance as to what type of commercial area the 32nd Ave commercial area is supposed to

be. The plan describes the following types of commercial areas: regional shopping center, community center, district center, convenience center, highway oriented center, and town center.

The Comprehensive Plan's only reference to the 32nd Ave commercial area is found in the Neighborhood Element of the Plan's Land Use Chapter where Guideline #4 for Neighborhood Area 2 (Ardenwald) states:

Guideline #4 – Commercial Area

To limit the 32nd Avenue commercial area to its present location, and encourage maintenance and rehabilitation of existing commercial facilities and surrounding areas.

D. Land Use History

Many of properties along 32nd Ave within the C-L Zone have been in commercial use for many years. According to a December, 1965 report entitled Existing Land Use in Milwaukie, Oregon, the properties on the northwest and southwest corners of 32nd Ave were being used for commercial purposes at that time. The report depicts the property on the southeast corner as vacant.

City Comprehensive Plans have called out the area along 32nd Ave as commercial district since 1969. The 1979 Comprehensive Plan depicts the properties that are currently zoned C-L along 32nd Ave as C-Commercial on the land use map.

E. Proposal

The proposal is to amend the text of the C-L Zone to include eating establishments as a permitted use. The C-L Zone currently allows a variety of commercial and office uses as outright permitted uses including: professional offices, government offices, insurance and real estate offices, personal services (barbers, tailors), and retail trade establishments including food stores, drug stores, gift shops, and hardware stores. A copy of the C-L Zone text is included as Attachment 2. As proposed, the change would only apply to the following three properties:

- 9391 SE 32nd Avenue – occupied by an auto repair business, Luther Davis Auto Repair
- 9410 SE 32nd Avenue – occupied by a convenience store, Eric's Market
- 9401 SE 32nd Avenue – occupied by a café/coffee shop, Liz's Creative Cafe

The proposal requires approval of a Zoning Ordinance text amendment.

KEY ISSUES

Summary

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

- A. Is the proposed amendment consistent with the relevant goals, objectives and policies of the comprehensive plan?

Relevant goals, objectives, and policies include:

- 1) The Goal Statement of the Economic Base and Industrial/Commercial Land Use Element reads as follows:

To continue to support and encourage the development of a broad industrial base in the City, and to encourage the expansion of service facilities in the community.

- 2) Objective #6 – Commercial Land Use states:

To encourage new commercial uses to locate within designated commercial areas of the City, in order to take maximum advantage of existing access and public facilities serving these areas.

- 3) Objective #10 – Commercial Land Use – Convenience Centers states:

To limit intrusion of commercial uses into neighborhood areas, while providing easy accessibility to residents.

- 4) Policy 3 under Objective #10 reads:

Local convenience centers will be designed to minimize the impacts on adjacent properties through visual screening, lighting controls, etc.

Analysis

Is the proposed amendment consistent with the relevant goals, objectives and policies of the comprehensive plan?

The proposed text amendment provides a community benefit by allowing a greater range of commercial services including restaurants, coffee houses, and delis in close proximity to residential properties in the area. Currently, the closest commercially zoned area that allows eating establishments is the C-G General Commercial area in the Central Milwaukie commercial area located almost ½ mile to the south along 32nd Ave.

Surrounding zoning is primarily R-7 Low Density Residential. There is a community benefit of having eating establishments in close proximity to a residential area so that residents have the opportunity to walk or ride bikes to the businesses. The location also allows for a shorter vehicle trip if a resident chooses to drive. The amendment therefore increases the utility of the existing commercial district and allows area residents and businesses to take better advantage of existing access and public facilities in the area.

The greatest potential impact to surrounding property owners would be an increase in traffic and parking. Currently, convenience stores are permitted outright in the C-L Zone and they are known to have a relatively high capacity for trip generation. According to the Institute of Traffic Engineers Trip Generation Manual (7th edition), convenience stores generate approximately 77 trips per 1,000 sq ft during the PM peak hour. The Trip Generation Manual indicates that the potential peak trips generated by high turnover restaurants (18 per 1,000 sq ft in the PM) and coffee shops (73 per 1,000 sq ft in the AM) would be lower than what could be generated by convenience stores. This assumes that these uses do not include drive through service.

Prohibiting drive through service and limiting the size of the eating establishments will help to minimize any impacts on the surrounding neighborhood. If Commissioner's are concerned about potential impacts, an option would be to reduce the proposed size limitation that was proposed in the draft ordinance. The current draft lists 3,250 square feet as the maximize size (this was based on the approximate square footage of the building in which Liz's Creative Café is located). Liz's Creative Café actually occupies about ½ of the building so that a 2,000 sq ft

limit would adequately accommodate that use. The proposed text amendment will legalize Liz's Creative Café which is an existing non-conforming use.

Additional commercial properties with C-L zoning are located along 32nd Ave. The proposed text amendment will only apply to the three identified properties at the corner of Olsen St. and 32nd Ave. It is expected that expanding the range of uses (to possibly include eating establishments) for other C-L zoned properties will be examined when the Moving Forward Milwaukie project initiates work on the Neighborhood Main Street phase of the project.

CONCLUSIONS

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

1. Recommend approval of the proposed Zoning Ordinance text amendment to allow eating establishments as a permitted use in the C-L Zone.
2. Recommend adoption of the attached recommended Findings of Approval.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC Section 19.902 Amendments to Maps and Ordinances
- MMC Section 19.1008 Type V Review

This application is subject to Type V review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above and forward a recommendation to City Council.

The Commission has 4 decision-making options as follows:

- A. Recommend that City Council approve the proposed text amendment as presented in Attachment 1.
- B. Recommend that City Council approve the proposed text amendment with modifications to the materials in Attachment 1.
- C. Recommend that City Council not approve the proposed text amendments.
- D. Continue the hearing.

The application is a legislative action and is not subject to the 120-day clock.

COMMENTS

Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Engineering Department, Ardenwald-Johnson Creek Neighborhood District Association (NDA), Metro, Department of Land Conservation and Development, affected property owners, and properties within 400 ft of the subject sites. Notice was also posted at City Hall, Ledding Library, the Public Safety Building, and the Johnson Creek Facility. One comment in support was received as of November 17, 2014. Any comments received before the hearing will be provided to the Planning Commission.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	E- Packet
1. Draft Ordinance	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit A. Recommended Findings in Support of Approval	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit A.1 Supplemental Findings in Support of Approval	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit B. Proposed Zoning Text Amendments (Underline/Strikeout Version)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit C. Proposed Zoning Text Amendments (Clean Version)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Limited Commercial C-L Zone Current Text	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Comments Received	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/planning/planning-commission-113>.



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No.

An ordinance of the City Council of the City of Milwaukie, Oregon, to amend Title 19 Zoning, Section 19.306 Limited Commercial Zone C-L, to allow eating establishments in certain areas of the C-L Zone (File #ZA-14-03).

WHEREAS, the C-L Zone along 32nd Ave provides a range of convenience services to neighborhood residents but does not allow eating establishments such as cafes, restaurants, coffee houses, and delis;

WHEREAS, the City of Milwaukie finds that permitting eating establishments in the C-L Zone would enhance the C-L district and the surrounding neighborhood;

WHEREAS, any impacts to the surrounding neighborhood can be mitigated by limiting the location and size of the eating establishments and by prohibiting drive through facilities; and

WHEREAS, the Planning Commission held a duly advertised public hearing on the amendments on November 25, 2014, with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes, and recommended approval; and

WHEREAS, the City Council held a duly advertised public hearing with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes;

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Findings. Findings of fact in support of the proposed amendments to Title 19 are attached as Exhibit A.

Section 2. Amendments. Title 19 Zoning is amended as described in Exhibit B (strikeout/underline version) and Exhibit C (clean version).

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Recommended Findings in Support of Approval File #ZA-14-03, C-L Zone Text Amendment

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision regarding this application.

1. The applicant, Milwaukie City Council, has applied for a zoning ordinance text amendment to add eating establishments to the list of permitted uses in the C-L Limited Commercial Zone. The land use application file number is ZA-14-03.
2. As proposed, the text amendment would only apply to three commercial properties at the intersection of 32nd Ave and Olsen St. The properties are:
 - 9391 SE 32nd Avenue – occupied by an auto repair business, Luther Davis Auto Repair
 - 9410 SE 32nd Avenue – occupied by a convenience store, Eric's Market
 - 9401 SE 32nd Avenue – occupied by a café/coffee shop, Liz's Creative Cafe
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Section 19.1000 Review Procedures
4. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. A public hearing before the Planning Commission was held on November 25, 2014, as required by law.
5. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
 - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

The amendment is proposed by the City of Milwaukie and was initiated by the City Planning Director on October 10, 2014.
 - b. MMC Section 19.1008 establishes requirements for Type V review.
 - (1) MMC Subsection 19.1008.3.A.1 requires opportunity for public comment and review. Opportunity for public comment and review has been provided. Public notice in the form of email to the Neighborhood District Associations, a Measure 56 notice to property owners, a public notice to property owners within 400 feet, and information on the City website have publicized the Planning Commission's hearing on the proposed amendment to encourage comment by any interested party.
 - (2) MMC Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public. A notice of the Planning Commission's November 25, 2014, hearing was posted as required on October 24, 2014.
 - (3) MMC Subsection 19.1008.3.A.2 requires notice be sent to individual property owners if the proposal affects a discrete geographic area. The Planning Director has determined that the proposal affects a discrete geographic area and notice was provided to individual property owners within 400 ft of the site. The notice was sent on November 5, 2014.
 - (4) MMC Subsection 19.1008.3.B and C require notice of a Type V application to be sent to Metro 45 days prior to the first evidentiary hearing and to the Department

of Land Conservation and Development 35 days prior to the first evidentiary hearing. This notice was sent to Metro and DLCD on October 10, 2014.

- (5) MMC Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the application would affect the permissible uses of land for those property owners. A Measure 56 notice was sent to the affected property owners on November 5, 2014.
- (6) MMC Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application. The Planning Commission held a duly advertised public hearing on November 25, 2014, and passed a motion recommending that the City Council approve the zoning ordinance text amendment. The City Council held a duly advertised public hearing on _____, 2015, and approved the text amendment.

6. MMC Section 19.902 Amendments to Maps and Ordinances

- a. MMC 19.902.5.A establishes the review process for zoning text amendments.

The code states that changes to Title 19 shall be subject to Type V review per MMC 19.1008.

- b. MMC 19.902.5.B establishes five criteria (listed below) for approval of changes to the zoning ordinance text. The City Council finds that the approval criteria have been met for the reasons listed below each of the criterion.

- (1) The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.

The proposed code amendment to add eating establishments to the list of permitted uses in the C-L Limited Commercial Zone does not conflict with any provision of the Milwaukie Municipal Code. All other code provisions can operate and be enforced with this change.

- (2) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.

Only the goals, objectives, and policies of Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.

- a) The Goal Statement of the Economic Base and Industrial/Commercial Land Use Element reads as follows:

To continue to support and encourage the development of a broad industrial base in the City, and to encourage the expansion of service facilities in the community.

- b) Objective #6 – Commercial Land Use states:

To encourage new commercial uses to locate within designated commercial areas of the City, in order to take maximum advantage of existing access and public facilities serving these areas.

- c) Objective #10 – Commercial Land Use – Convenience Centers states:

To limit intrusion of commercial uses into neighborhood areas, while providing easy accessibility to residents.

- d) Policy 3 under Objective #10 reads:

Local convenience centers will be designed to minimize the impacts on adjacent properties through visual screening, lighting controls, etc.

The proposed zoning text amendment is consistent with the relevant goals, objectives, and policies of the Comprehensive Plan for the following reasons:

- *Eating establishments in the C-L Zone will expand service facilities in the community;*
- *Expanding the list of uses in the C-L Zone to include eating establishments encourages new commercial uses within an existing commercial area and takes advantage of existing access and service;*
- *Adding eating establishments to the list of uses in the C-L Zone provides neighborhood residents with easy accessibility to an expanded range of services without expanding the geographic area of the zone; and*
- *The proposed text amendment includes safeguards to minimize impacts on adjacent properties. Safeguards include: 1. The use is limited to three properties; 2. The size of any individual eating establishment is limited to no more than 3,250 sq ft; and 3. No drive through facilities are permitted.*

- (3) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

- (4) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

The proposed amendments are found to be consistent with the Transportation Planning Rule for the following reasons. The proposed text amendment does not impact the transportation system given that it does not create the opportunity for any more vehicle trips than are currently allowed under the existing set of uses in the C-L Zone. The C-L Zone presently allows convenience stores as an outright permitted use. Convenience stores are recognized as having a relatively high capacity for trip generation. According to the Institute of Traffic Engineers Trip Generation Manual (7th edition), convenience stores generate approximately 77 trips per 1,000 sq ft during the PM peak hour. The Trip Generation Manual indicates that the potential peak trips generated by the types of eating establishments that might locate in the C-L Zone would be lower than what could be generated by convenience stores. The types of eating establishments considered include high turnover restaurants (18 trips per 1,000 sq ft in the PM) and coffee shops (73 trips per 1,000 sq ft in the AM). The trip numbers are for uses that do not have drive through service.

- (5) The proposed amendment is consistent with relevant federal regulations.

No federal regulations are relevant to the proposed zoning text amendment.

**Recommended Supplemental Findings in Support of Approval
File #ZA-14-03, C-L Zone Text Amendment**

The following are supplemental findings for approval of ZA-14-03. The findings address the review process and approval criteria of MMC 19.902.6 Zoning Map Amendments.

1. MMC Section 19.902.6.A sets forth the review procedures for Zoning Map Amendments. The proposed C-L Zone Text Amendment has been developed in a manner that it applies to only 3 properties located at the intersection of 32nd Ave. and Olsen St. The properties together comprise approximately 23,132 sq ft in area. Because the proposal applies to such a small area and so few properties, it has an effect similar to that of a zoning map amendment.

MMC 19.902.6.A.1 states:

"Generally, Zoning Map amendments that involve 5 or more properties or encompass more than 2 acres of land are legislative in nature and subject to Type V review. Zoning Map amendments that involve fewer properties and encompass a smaller area of land are quasi-judicial in nature and subject to Type III review".

MMC 19.902.6.A.2 states:

"Changes that affect both the Zoning Map and the text of Titles 14, 17, or 19, or other land use regulations within the Milwaukie Municipal Code shall be evaluated through a Type V review per section 19.1008. These changes are subject to the approval criteria of Subsections 19.902.5.B and 19.902.6.B".

The proposed amendments are text amendments that apply to only 3 properties and thus have the effect of a Zoning Map amendment. Therefore, findings have been prepared to address the criteria of both Subsections 19.902.5.B and 19.902.6.B. The original set of findings address MMC 19.902.5.B and this set of supplemental findings address MMC 19.902.6.B.

2. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review and MMC Section 19.1006 Type III Review. A public hearing before the Planning Commission was held on November 25, 2014, as required by law.
3. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
 - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual and that Type III applications involving map amendments may be initiated by Milwaukie City Council, Planning Commission, or Planning Director.

The amendment has been proposed by the City of Milwaukie and was initiated by the City Planning Director on October 10, 2014.
 - b. MMC Section 19.1006 establishes requirements for Type III review and Subsection 19.1006.3.D.3 provides notice requirements that are specific to map amendments.
 - (1) MMC Subsection 19.1006.3.D.3.a requires a public notice to be provided 20 days prior to the public hearing. The owners of the subject properties, the owners of property within 400 feet of the subject properties, and the Ardenwald-

Johnson Creek Neighborhood District Association were sent notice on November 5, 2014, 20 days prior to the public hearing.

- (2) As required by MMC Subsection 19.1006.3.D.3.b., a Measure 56 notice was mailed to owners of the subject properties. The notice was sent on November 5, 20 days prior to the public hearing.

4. MMC Section 19.902 Amendments to Maps and Ordinances

- a. MMC 19.902.6.B establishes eight criteria (listed below) for approval of changes to the zoning map. The City Council finds that the approval criteria have been met for the reasons listed below each of the criterion.

- (1) The proposed amendment is compatible with the surrounding area based on the following factors:
- a. Site location and character of the area.
 - b. Predominant land use pattern of the area.
 - c. Expected changes in the development pattern of the area.

The proposed amendments apply to three properties that are currently in commercial use and zoned C-L Limited Commercial. The area to the north and south along the west side of 32nd Ave is also zoned C-L. The areas to the east and west along Olsen St. are zoned R-7 Low Density Residential and are occupied by single family homes. The proposed amendment does not result in any expansion of commercial use into the adjoining neighborhoods. The change simply adds eating establishments to the list of permitted uses for the three subject properties. This change should have a positive effect on the character of the area by increasing opportunities for the siting of restaurants, coffee houses, and delis in walkable proximity to a residential area.

- (2) The need is demonstrated for uses allowed by the proposed amendment.

A need exists for the proposed amendment given that the property at SE corner of 32nd Ave. and Olsen St. is currently occupied by Liz's Creative Café – a small coffeehouse and café. The business has strong community based support and is the location where Ardenwald-Johnson Creek Neighborhood District Association meetings are held.

- (3) The availability is shown of suitable alternative areas with the same or similar zoning.

It is assumed that this criterion refers to the lack of availability of other suitable areas. Properties to the north and south of the subject properties on the west side of 32nd Ave. are also zoned C-L Limited Commercial. The current C-L zoning prevents any of these properties from being used for eating establishments. The subject properties include a site that is already being used as a café and it has proven to be a well suited location for the use.

- (4) The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.

The subject properties are already being used for commercial purposes. The proposed amendment does not create any additional demands on public

transportation, public utilities, or public services. The application was referred to the City Engineering and Building departments for review and no service-related issues were identified.

- (5) The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.

The Milwaukie Transportation Systems Plan identifies 32nd Ave. as a "collector street". Olsen St. to the east is identified as a "neighborhood route" and to the west as a "local street". The proposed amendments are expected to have no impact on the functional classification and level of service of any of these streets.

In addition, the proposed amendments are found to be consistent with the State of Oregon Transportation Planning Rule. The proposed amendment does not impact the transportation system given that it does not create the opportunity for any more vehicle trips than are currently allowed under the existing set of uses in the C-L Zone. The C-L Zone presently allows convenience stores as an outright permitted use. Convenience stores are recognized as having a relatively high capacity for trip generation. According to the Institute of Traffic Engineers Trip Generation Manual (7th edition), convenience stores generate approximately 77 trips per 1,000 sq ft during the PM peak hour. The Trip Generation Manual indicates that the potential peak trips generated by the types of eating establishments that might locate in the C-L Zone would be lower than what could be generated by convenience stores. The types of eating establishments considered include high turnover restaurants (18 trips per 1,000 sq ft in the PM) and coffee shops (73 trips per 1,000 sq ft in the AM). The trip numbers are for uses that do not have drive through service. No transportation impact study was found to be necessary for this amendment.

- (6) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

The Comprehensive Plan Land Use Map designates the subject properties as C-Commercial. The C-L Limited Commercial Zone is consistent with that plan designation. The proposed amendment does not change the C-L designation for the subject properties.

Only the goals, objectives, and policies of Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.

- a) The Goal Statement of the Economic Base and Industrial/Commercial Land Use Element reads as follows:

To continue to support and encourage the development of a broad industrial base in the City, and to encourage the expansion of service facilities in the community.

- b) Objective #6 – Commercial Land Use states:

To encourage new commercial uses to locate within designated commercial areas of the City, in order to take maximum advantage of existing access and public facilities serving these areas.

- c) Objective #10 – Commercial Land Use – Convenience Centers states:

To limit intrusion of commercial uses into neighborhood areas, while providing easy accessibility to residents.

d) Policy 3 under Objective #10 reads:

Local convenience centers will be designed to minimize the impacts on adjacent properties through visual screening, lighting controls, etc.

The proposed zoning text amendment is consistent with the relevant goals, objectives, and policies of the Comprehensive Plan for the following reasons:

- *Eating establishments in the C-L Zone will expand service facilities in the community;*
- *Expanding the list of uses in the C-L Zone to include eating establishments encourages new commercial uses within an existing commercial area and takes advantage of existing access and service;*
- *Adding eating establishments to the list of uses in the C-L Zone provides neighborhood residents with easy accessibility to an expanded range of services without expanding the geographic area of the zone; and*
- *The proposed text amendment includes safeguards to minimize impacts on adjacent properties. Safeguards include: 1. The use is limited to three properties; 2. The size of any individual eating establishment is limited to no more than 3,250 sq ft; and 3. No drive through facilities are permitted.*

(7) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

(8) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

The proposed amendments are found to be consistent with the Transportation Planning Rule. See the discussion above under Criterion 5 for the reasons the proposal complies with the rule.

Underline/Strikeout Amendments

TITLE 19 ZONING

CHAPTER 19.300 BASE ZONES

19.306 LIMITED COMMERCIAL ZONE C-L

In a C-L Zone the following regulations shall apply:

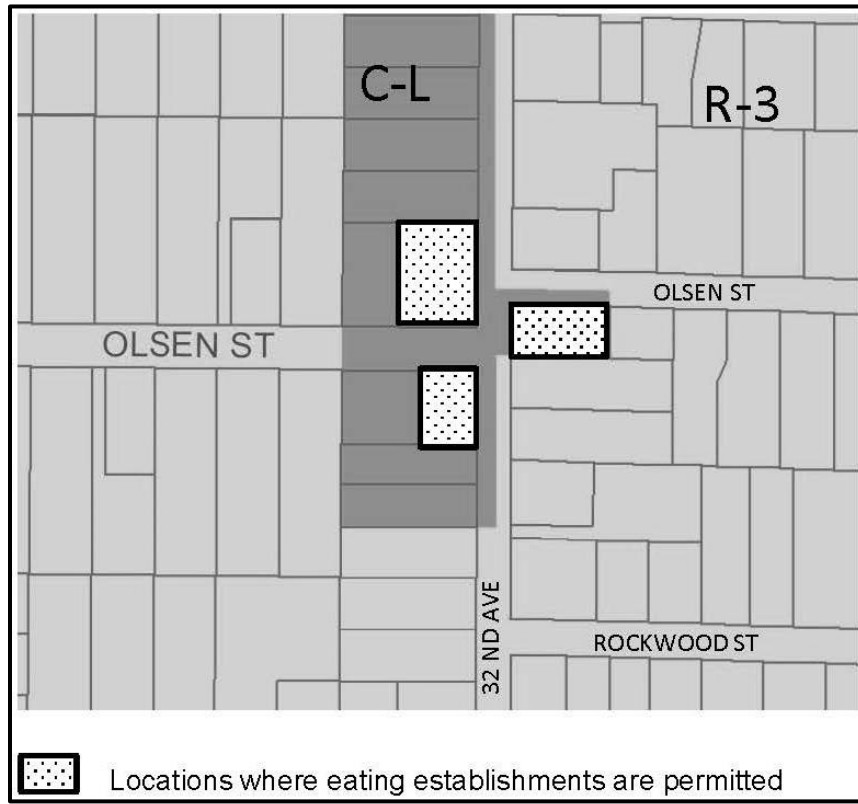
19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- A. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others of a professional nature.
- B. Offices of administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, scientific, or statistical organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- D. Personal service business such as a barber shop, tailor shop, or laundry and dry cleaning pickup station.
- E. Eating establishments, when located on a site depicted in Figure 19.306.1.E, and provided the floor area does not exceed 3,250 sq ft and the use does not include drive-through facilities.

Proposed Code Amendment

Figure 19.306.1.E
Eating Establishment Locations in the C-L Zone



EF. Any other use similar to the above and not listed elsewhere.

Clean Amendments

TITLE 19 ZONING

CHAPTER 19.300 BASE ZONES

19.306 LIMITED COMMERCIAL ZONE C-L

In a C-L Zone the following regulations shall apply:

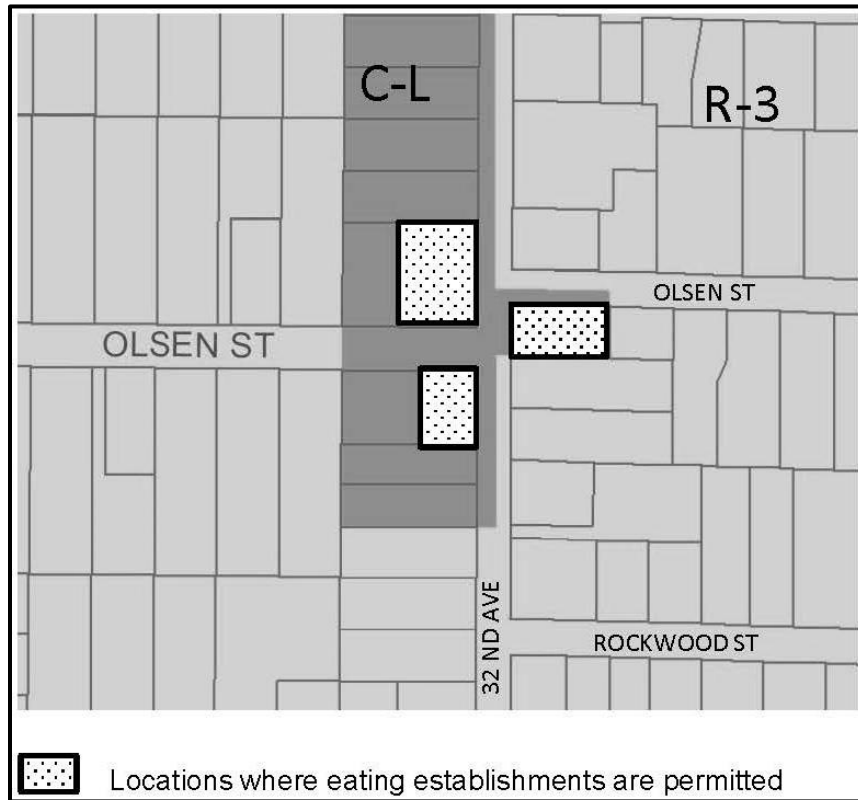
19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- A. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others of a professional nature.
- B. Offices of administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, scientific, or statistical organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- D. Personal service business such as a barber shop, tailor shop, or laundry and dry cleaning pickup station.
- E. Eating establishments, when located on a site depicted in Figure 19.306.1.E, and provided the floor area does not exceed 3,250 sq ft and the use does not include drive-through facilities.

Proposed Code Amendment

Figure 19.306.1.E
Eating Establishment Locations in the C-L Zone



F. Any other use similar to the above and not listed elsewhere.

19.306

19.306 LIMITED COMMERCIAL ZONE C-L

In a C-L Zone the following regulations shall apply:

19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- A. Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists, and others of a professional nature.
- B. Offices of administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, scientific, or statistical organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- D. Personal service business such as a barber shop, tailor shop, or laundry and dry cleaning pickup station.
- E. Any other use similar to the above and not listed elsewhere.

19.306.2 Conditional Uses Permitted

In a C-L Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- A. Funeral home;
- B. Marina and boat sales;
- C. Parking facility;
- D. Repair, maintenance, or service of the type of goods to be found in any permitted retail trade establishment;
- E. Financial institution;
- F. Trade or commercial school;
- G. Single-family detached dwelling;
- H. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock;
- I. Duplex or multifamily development;
- J. Senior and retirement housing;
- K. Residential home;
- L. Congregate housing facility;
- M. High-impact commercial, except adult entertainment businesses;
- N. Any other use similar to the above and not listed elsewhere.

19.306.3 Standards

In a C-L Zone the following standards shall apply:

- A. Lot size. None, except as follows for dwelling. Lot area shall be at least 5,000 sq ft. Lot area for the first dwelling unit shall be at least 5,000 sq ft and for dwelling units over 1 there shall be not less than an average of 1,000 sq ft. Lot width shall be at least 50 ft. Lot depth shall be at least 80 ft.
- B. Front yard. None, except as provided in Subsections 19.306.3.E and 19.501.2.A.
- C. Side yard. None, except as provided in Subsections 19.306.3.E and 19.501.2.A.
- D. Rear yard. None, except as provided in Subsections 19.306.3.E and 19.501.2.A.
- E. Transition area. A transition area shall be maintained according to Subsection 19.504.6.
- F. Frontage requirements. Every lot shall abut a public street other than an alley for at least 35 ft except as permitted under the Land Division Ordinance.
- G. Off-street parking and loading. As specified in Chapter 19.600.
- H. Height restriction. Maximum height of any structure shall be 3 stories or 45 ft, whichever is less.
- I. Open use. A use not contained within an enclosed building, such as open storage, abutting or facing a residential zone, shall be screened with a sight-obscuring fence not less than 6 ft high.
- J. Minimum vegetation. Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, etc., shall be 15% of the total area of the lot.
- K. Transportation requirements and standards. As specified in Chapter 19.700.

19.306.4 Prohibited Uses

The following uses and their accessory uses are prohibited:

- A. Adult entertainment businesses. (Ord. 2051 § 2, 2012; Ord. 2025 § 2, 2011)

BRYAN J. DORR

2755 SE Olsen St.
Milwaukie, Oregon 97222
(503) 866-4805 • bryan.dorr@bjdorr.com • www.bjdorr.com

November 14, 2014

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

Re: ZA-14-03 (Limited Commercial Zone Ordinance Change in Ardenwald NDA)

Dear Denny Egner:

As an Ardenwald-Johnson Creek resident, I am expressing my support for ZA-14-03, the proposed Limited Commercial zone ordinance change for the three businesses along SE 32nd Ave. at SE Olsen St. to include "eating establishments" as a permitted use in the Limited Commercial zone. Currently, there are no "eating establishments" in the central Ardenwald-Johnson Creek Neighborhood within the Milwaukie city limits.

Best regards,

A handwritten signature in black ink, appearing to read "Bryan Dorr", with a long horizontal line extending to the right.

Bryan Dorr